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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

FAUSTINO ARCINIEGA, as an individual
and on behalf of all employees similarly
situated,

Plaintiff,

v.

PROTECTIVE INDUSTRIES, INC., A
Delaware Corporation; CAPLUGS, an
unknown entity, EVERGREEN
INDUSTRIES, INC. A California
Corporation and DOES 1 through 50,
inclusive,

Defendants.

Case No. 19STCV08558

CLASS ACTION

**REVISED STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

Assigned for all purposes to:
Hon. Amy D. Hogue, Dept. 7

Complaint Filed: March 13, 2019
Trial Date: None Yet Set

STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

IT IS HEREBY STIPULATED, by and among Plaintiff FAUSTINO ARCINIEGA, on behalf of himself and the Settlement Class Members on the one hand, and Defendant PROTECTIVE INDUSTRIES, INC. doing business as CAPPLUGS, and subject to the approval of the Court, that the above-captioned action is hereby being compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action Settlement and Release (the "Settlement").

1. DEFINITIONS

Capitalized terms used in this Settlement shall have the meanings set forth below:

1.1. "Action" shall mean the lawsuit entitled *ARCINIEGA v. PROTECTIVE INDUSTRIES INC.; CAPPLUGS; EVERGREEN INDUSTRIES INC.*; and DOES 1 through 50, pending in the Superior Court of the State of California, County of Los Angeles, and designated as Case No. 19STCV08558.

1.2. "Claims Administrator" means Phoenix Settlement Administrators.

1.3. "Claims Administration Costs" means the amount to be paid to the third-party Claims Administrator to administer the Settlement, not to exceed Twenty Thousand Dollars (\$20,000.00).

1.4. "Class Counsel" means Kevin Mahoney, of the Mahoney Law Group, APC.

1.5. "Class Counsel Award" means reasonable attorneys' fees for Class Counsel's litigation and resolution of this Action in a maximum amount of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) or (1/3rd of the Gross Settlement Amount). The Court shall determine the amount of the Class Counsel Award, and it shall be paid from the Gross Settlement Amount.

1.6. "Class Counsel Costs" means expenses incurred by Class Counsel for Class Counsel's litigation and resolution of this Action, not to exceed Twenty Thousand Dollars (\$20,000.00). The Court shall determine the amount of the Class Counsel Costs, and it shall be paid from the Gross Settlement Amount.

1.7. "Class Information" means information regarding Settlement Class Members that

1 Defendant Protective Industries Inc. dba CAPLUGS will in good faith compile from its records
2 and provide to the Claims Administrator. Class Information shall be provided as a Microsoft
3 Excel spreadsheet and shall include: each Settlement Class Member’s full name; last known
4 address; last four (4) digits of social security number; employee identification number; and the
5 total number of workweeks each Settlement Class Member worked for Defendant Protective
6 Industries Inc., during the Class Period.

7 1.8. “Class Period” means the period from March 13, 2015, through and including the
8 date the Court grants Preliminary Approval of the Settlement.

9 1.9. “Class Representative Enhancement Award” means the amount that the Court
10 authorizes to be paid to the Class Representative Faustino Arciniga, not to exceed Seven
11 Thousand Five Hundred Dollars (\$7,500.00), in addition to his Individual Settlement Payment,
12 for his service in connection with being the Class Representative. The Class Representative
13 Enhancement Award shall be paid from the Gross Settlement Amount. Any portion of the
14 requested Class Representative Enhancement Award that is not awarded to Plaintiff Faustino
15 Arciniega shall be part of the Net Settlement Amount.

16 1.10. “Court” means the Superior Court of the State of California for the County of Los
17 Angeles.

18 1.11. “Defendant” means Protective Industries Inc. dba CAPLUGS, and all of its current
19 and former parents, owners, subsidiaries, predecessors and successors, and each of their
20 respective officers, directors, partners, shareholders and agents, and any other successors,
21 assigns, or legal representatives.

22 1.12. “Defense Counsel” means Troy A. Valdez of Coblenz Patch Duffy & Bass LLP.

23 1.13. “Effective Date” means the date that the Gross Settlement Amount is fully funded
24 as agreed to in this Agreement.

25 1.14. “Employee” means Plaintiff Faustino Arciniega.

26 1.15. “Employer” means Defendant Protective Industries Inc. dba CAPLUGS;
27 Evergreen Industries Inc. dba CAPLUGS, and all of their current and former parents, owners,
28 subsidiaries, predecessors and successors, and each of their respective officers, directors, partners,

1 shareholders and agents, and any other successors, assigns, or legal representatives.

2 1.16. "Employee Taxes" means the employee's share of any and all applicable federal,
3 state, and local payroll taxes on the portion of Participating Class Members' Individual
4 Settlement Payment that constitutes wages. The Employee Taxes will be paid out of the Net
5 Settlement Amount.

6 1.17. "Employer Taxes" means the employer's share of any and all applicable federal,
7 state, and local payroll taxes on the portion of Participating Class Members' Individual
8 Settlement Payment that constitutes wages. The Employer Taxes will be paid separately by the
9 Employer and shall not be paid out of the Gross Settlement Amount.

10 1.18. "Final Approval Hearing" means the hearing held by the Court, pursuant to class
11 action procedures and requirements, on the motion for final approval of the Settlement.

12 1.19. "Final Approval Date" means the date, which the Court grants final approval of
13 the Settlement.

14 1.20. "Final Judgment" means the Court's entry of an order of judgment in this Action
15 following the Court's final approval of the Settlement.

16 1.21. "Gross Settlement Amount" means the maximum amount Defendant shall have to
17 pay in connection with this Settlement, by way of a common fund, which shall be inclusive of
18 all Individual Settlement Amounts to Participating Class Members, Class Counsel Award, Class
19 Counsel Costs, Claims Administrator Costs, Class Representative Enhancement Award,
20 Employee Taxes, and PAGA Allocation. Subject to Court approval and the terms of this
21 Settlement, the Gross Settlement Amount Defendant shall be required to pay is Five Hundred
22 Twenty-Five Thousand Dollars (\$525,000.00). No portion of the Gross Settlement Amount will
23 revert to Defendant, and the Settlement does not require Participating Class Members to submit
24 claims as a prerequisite to receiving their Individual Settlement Payment. This settlement sum is
25 based on Defendant's representation that the class size is approximately one hundred eighty-two
26 (182) individuals. Defendant shall not be required to pay more than the Gross Settlement
27 Amount, as long as the class size does not increase by more than ten (10) percent (i.e, if the class
28 size increases to eleven (11) percent, the Settlement Agreement shall increase proportionately,

1 i.e., by eleven percent of the Gross Settlement Amount), and so forth. Under no other
2 circumstances shall Defendant be required to pay more than the Gross Settlement Amount except
3 as provided for in this Settlement.

4 1.22. "Individual Settlement Payment" means the amount payable to each Participating
5 Class Member, as calculated pursuant to Paragraph 3.22 of the Settlement, from the Net
6 Settlement Amount. Checks for Individual Settlement Payments will specifically indicate that
7 they are void if not negotiated within one hundred eight (180) days of their issuance.

8 1.23. "LWDA PAGA Allocation" means seven thousand five hundred dollars
9 (\$7,500.00), representing seventy-five percent (75%) of the PAGA Allocation, and is the amount
10 payable from the Gross Settlement Amount to California's Labor Workforce Development
11 Agency.

12 1.24. "Net Settlement Amount" means the Gross Settlement Amount, less (i) the Class
13 Representative Payment approved by the Superior Court (not to exceed \$7,500.00); (ii) the Class
14 Counsel Fees Payment approved by the Superior Court (not to exceed \$175,000.00); (iii) the Class
15 Counsel Litigation Expenses Payment approved by the Superior Court (not to exceed \$20,000.00)
16 (iv) the PAGA payment approved by the Superior Court (\$7,500.00); (v) the Settlement
17 Administrator Payment approved by the Superior Court (not to exceed \$20,000), (vi) any other
18 fees or expenses (other than Class Counsel Fees Payment and Class Counsel Litigation Expenses
19 Payment) incurred by implementing the terms and conditions of this Agreement as approved by
20 the Superior Court.

21 1.25. "Non-Participating Class Member" shall mean a Settlement Class Member who
22 submits a complete, valid and timely request to be excluded from the Settlement pursuant to the
23 instructions provided in the Class Notice and/or who has signed a release with Defendant to
24 resolve any claims as alleged in the Action.

25 1.26. "Notice of Objection" means a written statement of objection to the Settlement
26 made and signed by a Settlement Class Member and includes the following: (1) the full name of
27 the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3)
28 the last four (4) digits of the Settlement Class Member's Social Security number and/or the

1 Employee ID number; (4) the basis for the objection; and, (5) whether the Settlement Class
2 Member intends to appear at the Final Approval Hearing.

3 1.27. "Notice of Settlement" means the Notice of Proposed Class Action Settlement
4 (substantially in the form attached hereto as **Exhibit "A"**).

5 1.28. "Notice Packet" means the Notice of Proposed Class Action Settlement, Notice of
6 Estimated Individual Settlement Payment, and the Request for Exclusion.

7 1.29. "PAGA Allocation" means Ten Thousand Dollars (\$10,000.00), allocated from
8 the Gross Settlement Amount for the compromise of claims for civil penalties brought under the
9 Labor Code Private Attorneys General Act of 2004 ("PAGA"). Per California Labor Code section
10 2699(i), seven thousand five hundred dollars (\$7,500.00), representing seventy five percent (75%)
11 of the PAGA Allocation, will be paid to California's Labor Workforce Development Agency.
12 The remaining Two Thousand Five Hundred Dollars (\$2,500.00), representing twenty five
13 percent (25%) of the PAGA Allocation, shall be part of the Net Settlement Amount to be
14 distributed to Participating and Non-Participating Class Members.

15 1.30. "PAGA Period" shall mean the period from March 12, 2018 up to and including
16 the date of Preliminary Approval of the Settlement.

17 1.31. "Participating Class Members" means all Settlement Class Members who do not
18 submit a valid and timely Request for Exclusion.

19 1.32. "Parties" means Plaintiff and Defendant collectively, and "Party" shall mean any
20 Plaintiff or any Defendant, individually.

21 1.33. "Plaintiff" means Faustino Arciniega.

22 1.34. "Plaintiff's General Released Claims" means, in addition to the releases made by
23 Participating Class Members, Plaintiff, on behalf of himself, his heirs, successors, assigns,
24 executors, trustees, and estates, in exchange for the terms and conditions of this Agreement,
25 including the Class Representative Enhancement Award requested or as otherwise authorized by
26 the Court, shall also, as of the Effective Date, fully and forever release the Released Parties, to
27 the full extent permitted by law, of and from any and all claims arising from his employment with
28 Defendant, known and unknown, asserted and unasserted, which Plaintiff had or may have had

1 against the Released Parties, whether sounding in tort, in contract, in law, in equity or otherwise,
2 and including but not limited to all claims for violation of any local, state, or federal statute, rule,
3 or regulation.

4 1.35. "Preliminary Approval Date" means the date the Court enters the Preliminary
5 Approval Order for the Settlement.

6 1.36. "Preliminary Approval Order" means the Proposed Order (filed concurrently with
7 this Settlement) for preliminary approval of the Settlement, as amended by the Court.

8 1.37. "Released Claims" means any and all known and unknown claims, debts,
9 liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or
10 causes of action contingent or accrued for, arising out of the allegations and claims asserted in
11 the Action, including without limitation, all wage and hour claims for unpaid wages including
12 minimum wage payments, failure to pay wages during employment, failure to pay overtime,
13 failure to pay wages upon termination, uniform maintenance costs, meal and rest break
14 violations, wage statement violations and penalties, waiting time penalties, reimbursement,
15 restitution and other equitable relief, disgorgement, conversion, unjust enrichment, civil and
16 statutory penalties, interests, liquidated damages, punitive damages, attorneys' fees and costs,
17 claims under California Labor Code sections 201-203, 204, 223, 226, 226.7, 510, 512, 558.1,
18 1194, 1194.2, 1197, 2698-2699.5, 2802, Industrial Welfare Commission Wage Order No. 1,
19 claims under California Business & Professions Code sections 17200-17204, penalties pursuant
20 to the Private Attorneys General Act ("PAGA"), and any other benefit claims on account of the
21 allegations asserted in the Action. This release shall apply to all claims arising at any point
22 between March 13, 2015 through the date the Court grants Preliminary Approval of the
23 Settlement, based on the facts alleged in the operative First Amended Complaint.

24 1.38. "**Released Parties**" means Protective Industries Inc., and all of its current,
25 former, and future parents, owners, subsidiaries, predecessors (including but not limited to
26 Evergreen Industries, Inc.) and successors, and each of their respective agents, employees,
27 officers, directors, spouses, partners, shareholders, agents, and any other successors, assigns, or
28 legal representatives, as well as any other individual or entity which could be jointly liable with

1 any of the foregoing.

2 1.39. **“Request for Exclusion”** means a Settlement Class Member’s completed Request
3 for Exclusion form to opt out of the Settlement in the form substantially similar to that attached
4 hereto as **Exhibit B**.

5 1.40. **“Response Deadline”** means the date sixty (60) days after the Claims
6 Administrator mails Notice Packets to Settlement Class Members, and shall be the last date on
7 which Settlement Class Members may: (a) postmark Requests for Exclusion from the Settlement,
8 or (b) postmark Objections to the Settlement.

9 1.41. **“Settlement”** means the terms of this Stipulation of Class Action Settlement and
10 Release.

11 1.42. **“Settlement Class Member(s)”** or **“Settlement Class”** means all non-exempt
12 employees, currently and formerly employed by Defendant, in the State of California during the
13 Class Period. Similarly Aggrieved Employees, as defined below, are included in this Settlement
14 Class.

15 1.43. **“Similarly Aggrieved Employees”** means all non-exempt employees, currently
16 and formerly employed by Defendant in the State of California during the period January 6, 2018,
17 through the date the Court grants Preliminary Approval of the Settlement. For purposes of this
18 Settlement, these Similarly Aggrieved Employees are members of the Settlement Class.

19 1.44. **RECITALS**

20 2.1. **Class Certification**. The Parties stipulate and agree to the certification of this
21 Action for purposes of this Settlement only. Should the Settlement not become final and effective,
22 class certification shall immediately be set aside (subject to further proceedings on motion of any
23 party to certify or deny certification thereafter), the Settlement shall be deemed null and void, and
24 will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose
25 whatsoever. The Parties’ willingness to stipulate to class certification as part of the Settlement
26 shall have no bearing on and shall not be admissible in or considered in connection with, the issue
27 of whether a class should be certified in a non-settlement context in this Action, and shall have
28 no bearing on and shall not be admissible or considered in connection with the issue of whether

1 a class should be certified in any other lawsuit.

2 2.2. Procedural History. On March 13, 2019, Plaintiff Faustino Arciniega, a former
3 employee of Defendant filed the Action in the Superior Court of California for the County of Los
4 Angeles as a proposed class action on behalf of all current and former non-exempt California
5 employees of Defendant during the period of March 13, 2015 through the date of final judgment.
6 Plaintiff Arciniega alleged that Defendant, (1) failed to pay all wages, including overtime wages,
7 (2) failed to provide meal periods; (3) failed to provide rest periods; (4) failed to provide accurate
8 itemized wage statements; (5) failed to pay wages upon termination of employment; (6) failed to
9 pay earned wages; (7) failed to reimburse for necessary business expenditures; and (8) engaged
10 in unfair business practices. On July 5, 2019, Plaintiff filed a First Amended Complaint to add a
11 ninth cause of action adding penalties under the Private Attorney’s General Act (“PAGA”), Labor
12 Code section 2698, et seq. Plaintiff Arciniega sought recovery under the California Labor Code,
13 the applicable Industrial Welfare Commission Wage Order, and the California Business &
14 Professions Code.

15 2.3. Settlement Negotiations. On October 1, 2020, the Parties participated in a private
16 mediation session with Judge Peter Lichtman, a well-respected, experienced mediator in the field
17 of wage and hour class actions. Prior to the mediation, Class Counsel conducted extensive
18 informal discovery and investigation during the prosecution of the Action. The informal
19 discovery and investigation included, among other things: (1) inspection and analysis of employee
20 documents and data, including personnel files, time and payroll records, employment policies and
21 procedures, and other relevant documents; (2) evaluation of legal positions taken by Defendant;
22 (3) evaluation of potential class-wide damages and PAGA penalties; and (4) review and research
23 of applicable law with respect to the claims and potential defenses brought by Defendant. Class
24 Counsel has vigorously prosecuted this Class Action, and Defendant have vigorously defended
25 it. The Parties have engaged in sufficient discovery and investigation to assess the relative merits
26 of the claims and contentions of the Parties. Based on this information and the settlement
27 discussions during the mediation conducted at arm’s length, the Parties came to an agreement
28 October 1, 2020. The settlement is the result of an informed and detailed evaluation of the

1 potential liability of total exposure in relation to the costs and risks associated with continued
2 litigation of the Action.

3 2.4. Benefits of Settlement to Settlement Class Members. Plaintiff and Class Counsel
4 recognize the length of continued proceedings necessary to litigate their disputes through
5 certification, trial, and any possible appeal. Plaintiff and Class Counsel have also taken into
6 account the uncertainty and risk of the outcome of further litigation, the difficulties and delays
7 inherent in such litigation, including, but not limited to, the risks related to a contested motion for
8 class certification, and the risks related to liability raised by the issues in this case. Plaintiff and
9 Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims
10 asserted in the Action and the difficulties in establishing damages for the Settlement Class
11 Members. Plaintiff and Class Counsel have also taken into account Defendant's agreement to
12 enter into a settlement that confers substantial relief upon Settlement Class Members. Based on
13 the foregoing, Plaintiff and Class Counsel have determined that this Settlement is a fair, adequate,
14 and reasonable, and is in the best interests of the Settlement Class Members.

15 2.5. Defendant's Denial of Wrongdoing and Liability and Reasons for Settlement.
16 Defendant contends that the Settlement Class Members were properly and timely paid all wages
17 owed, including, but not limited to, all straight time and overtime, were properly reimbursed, and
18 were provided meal and rest periods as required under California law. However, Defendant has
19 concluded that any further defense of this litigation would be protracted and expensive for all
20 Parties. Substantial amounts of time, energy and resources of Defendant have been and, unless
21 this Settlement is made, will continue to be devoted to the defense of the claims asserted by
22 Plaintiff and Settlement Class Members. Defendant has also taken into account the risks of further
23 litigation in reaching their decision to enter into this Settlement. Defendant has concluded that
24 further proceedings in the Action would be protracted and expensive and that it is desirable that
25 the Action be fully and finally settled in the manner and upon the terms and conditions set forth
26 in this Settlement in order to dispose of burdensome and protracted litigation, to permit the
27 operation of Defendant's business without further expensive litigation and the distraction and
28 diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken

1 into account the uncertainty and risks inherent in any litigation, especially in complex cases such
2 as this Action. Defendant has therefore determined that it is desirable and beneficial to them that
3 the Action be settled in the manner and upon the terms and conditions set forth in this Settlement.

4 2.6. No Admissions. The Parties understand and agree that this Settlement is the result
5 of a good faith compromise of disputed claims and allegations, and Defendant is entering into
6 this Settlement Agreement solely to resolve doubtful and disputed matters. No part of this
7 Settlement Agreement or any conduct or written or oral statements made in connection with this
8 Settlement, whether or not the Settlement Agreement is finally approved and/or consummated,
9 may be offered as or construed to be an admission or concession of any kind by either of the
10 Parties. In particular, but without limiting the generality of the foregoing, nothing about this
11 Settlement or Settlement Agreement shall be offered or construed as an admission that
12 Defendant has violated any of their obligations under the California Labor Code, or of liability
13 in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever on the part of
14 Defendant and/or Released Parties. In addition, this Settlement Agreement shall not be offered
15 or be admissible in evidence against any of the Parties or any of the Released Parties, except in
16 any action or proceeding brought by or against Plaintiff, the Class, Class Members, or Defendant
17 to enforce its terms, or by Defendant in defense of any claims brought by Plaintiff, the Class,
18 Class Members. The provision of this paragraph shall become effective when this Settlement is
19 signed and shall be binding on the Parties and their counsel regardless of whether the Settlement
20 Agreement is preliminarily and/or finally approved or terminated for any reason, or rendered
21 null and void.

22 2.7. Settlement Class Members' Claims. Plaintiff claims that the Released Claims
23 have merit and give rise to liability on the part of Defendant. This Settlement is a compromise
24 of disputed claims. Nothing contained in this Settlement and no documents referred to herein,
25 nor any action taken to carry out this Settlement may be construed or used as an admission by
26 or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the
27 claims asserted.

28 2.8. Defendant's Defenses. Defendant has denied and continue to deny each and all of

1 the allegations, claims, and contentions alleged by Plaintiff in the Action. Defendant has
2 expressly denied and continues to deny all charges of wrongdoing or liability against it arising
3 out of any of the conduct, statements, acts, or omissions alleged in the Action. Defendant
4 contends that it complied in good faith with California and federal wage-and-hour laws and has
5 dealt legally and fairly with Plaintiff and Settlement Class Members and Similarly Aggrieved
6 Employees. Defendant further denies that, for any purpose other than settling the Action, these
7 claims are appropriate for class or representative treatment.

8 2.9. Gross Amount Payable by Defendant. Under the terms of this Settlement, the
9 gross amount payable by Defendant shall not exceed the Gross Settlement Amount of Five
10 Hundred Twenty-Five Thousand Dollars (\$525,000.00) as provided by this Agreement,
11 exclusive of the normal employer’s share of any payroll taxes attributable to the Settlement
12 Share payments allocated to wages. Employer shall pay the employer’s share of taxes separate
13 and apart from the Gross Settlement Amount.

14 **3. TERMS OF SETTLEMENT**

15 The Parties agree as follows:

16 3.1. Binding Settlement. This Settlement shall bind the Parties and all Participating
17 Class Members, subject to the terms and conditions hereof and the Court’s approval.

18 3.2. Release as To Plaintiff and All Settlement Class Members.

19 3.2.1. Release as All Settlement Class Members. As of the Effective Date,
20 all Settlement Class Members, including Plaintiff, who do not opt out
21 of the Settlement, will be deemed to have fully, finally and forever
22 released, settled, compromised, relinquished, and discharged the
23 Released Parties from the Released Claims for the period of March 13,
24 2015 to the Preliminary Approval Date. Settlement Class Members,
25 including Plaintiff, who do not opt out of the Settlement will be deemed
26 to have released any further attempt, by lawsuit, administrative claim
27 or action, arbitration, demand, or other action of any kind by each and
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all of the Settlement Class Members (including participation to any extent in any class or collective action), to obtain recovery against the Defendant that is reasonably related to the Released Claims for harms arising during the Class Period. Non-Participating Class Members or Settlement Class Members who opt-out of the Settlement will still be deemed to have released any claims he or she may have under PAGA during the PAGA period, as disclosed in the LWDA letter dated March 12, 2019 and the facts as alleged in the operative First Amended Complaint.

3.2.2. Release as To Plaintiff. As of the Effective Date, Plaintiff will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of Plaintiff's General Released Claims against the Released Parties. With respect to the Plaintiff's General Released Claims only, Plaintiff shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the California *Civil Code*, or any other similar provision under federal or state law, which section provides:

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

Plaintiff may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Plaintiff's General Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the

1 Plaintiff's General Released Claims, whether known or unknown, suspected or unsuspected,
2 contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of
3 law or equity now existing or coming into existence in the future, including, but not limited to,
4 conduct that is negligent, intentional, with or without malice or a breach of any duty, law or rule,
5 without regard to the subsequent discovery or existence of such different or additional facts.
6 Plaintiff agrees not to sue or otherwise make a claim against any of the Released Parties for
7 Plaintiffs' General Released Claims.

8 3.3. Release as to Defendant: Pursuant to this Agreement, Defendant and Released
9 Parties and on behalf of their agents, representatives, attorneys, insurers, assigns, and/or anyone
10 acting on their respective behalf, and in consideration of the promises, assurances, and covenants
11 set forth in this Agreement, hereby fully release the Employee and Employee's heirs, agents,
12 representatives, assigns, executors, and/or anyone on Employee's behalf (collectively, the
13 "Employee Released Parties") from all claims or causes of action by reason of any injuries
14 and/or damages or losses, known or unknown, foreseen or unforeseen, patent or latent, which
15 the Company has sustained or which may be sustained as a result of any facts and circumstances
16 arising out of or in any way related to Employee's employment with the Company, and to any
17 other disputes, claims, disagreements, or controversies, between the Parties up to and including
18 the date of this Agreement is signed.

19
20 3.4. Tax Liability. The Parties understand and agree that the Parties are not providing
21 tax or legal advice. Participating Class Members will remain responsible for any Employee
22 Taxes. Participating Class Members will assume any employee tax obligations or consequences
23 that may arise from this Settlement and should consult with a tax expert if they have questions.
24 However, Individual Settlement Payments will be allocated as follows: twenty percent (20%) as
25 wages (a W-2 will be issued) and eighty percent (80%) as interest and penalties (a 1099 will be
26 issued). Any required payroll deductions will be based on this apportionment. The Parties agree
27 that, in the event that any taxing body determines that additional employee taxes are due from
28 any Participating Class Member, such Participating Class Member assumes all responsibility

1 for the payment of such taxes.

2 3.5. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision
3 of this Settlement, and no written communication or disclosure between or among the Parties,
4 Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall any
5 such communication or disclosure constitute or be construed or be relied upon as, tax advice
6 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
7 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
8 independent legal and tax counsel for advice (including tax advice) in connection with this
9 Settlement, (b) has not entered into this Settlement based upon the recommendation of any other
10 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
11 communication or disclosure by any attorney or advisor to any other party to avoid any tax
12 penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any
13 other party has imposed any limitation that protects the confidentiality of any such attorney's or
14 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure
15 by the acknowledging party of the tax treatment or tax structure of any transaction, including
16 any transaction contemplated by this Settlement.
17

18 3.6. Settlement Approval and Implementation Procedures. As part of this Settlement,
19 the Parties agree to the following procedures for obtaining the Court's preliminary approval of
20 the Settlement, certifying the Settlement Class, notifying Settlement Class Members of the
21 Settlement, obtaining the Court's final approval of the Settlement, and processing the Individual
22 Settlement Payments.

23 3.7. Preliminary Approval and Certification. As soon as practicable after execution of
24 this Settlement, but no later than thirty (30) days, the Parties will jointly submit this Settlement
25 to the Court for its preliminary approval. Such submission will include this Settlement, the
26 proposed Notice Packet, the proposed Preliminary Approval Order, and any memoranda and
27 evidence as may be necessary for the Court to determine that this Settlement is fair, adequate,
28 and reasonable. The Parties agree to request the Court to enter an order conditionally certifying

1 the Settlement Class after the preliminary approval hearing, in accordance with California Rules
2 of Court, Rule 3.769(c).

3 3.8. Class Information. No more than twenty-one (21) calendar days after the entry of
4 the Preliminary Approval Order, Defendant, shall provide the Claims Administrator with the
5 Class Information for purposes of mailing Notice Packets to Settlement Class Members,
6 including: 1. Class Member's full name; 2. Class Member's last known address; 3. Class
7 Member's last four (4) digits of social security number; 4. Class Member's employee
8 identification number; and 5. based on Defendant's payroll records, the Class Member's total
9 number of workweeks. The Settlement Administrator shall use commercially reasonable efforts
10 to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized
11 disclosure or use of such data other than as permitted by the Settlement. The Settlement
12 Administrator shall ensure that the Class Notice and any other communications to Class
13 Members shall not include the Class Members' social security number, except for the last four
14 (4) digits, if necessary.

15
16 3.9. Notice by First Class U.S. Mail. Upon receipt of the Class Information, the Claims
17 Administrator will perform a search on the National Change of Address database to update the
18 Settlement Class Members' addresses. No more than ten (10) calendar days after receiving the
19 Class Information from Defendant, as provided herein, the Claims Administrator shall mail
20 copies of the Notice Packet to all Settlement Class Members by regular First-Class U.S. Mail.
21 The Claims Administrator shall exercise its best judgment to determine the current mailing
22 address for each Settlement Class Member. The address identified by the Claims Administrator
23 as the current mailing address shall be presumed to be the best mailing address for each
24 Settlement Class Member. The Settlement Administrator shall continue throughout the notice
25 period to determine the current mailing address for Settlement Class Members .

26 3.10. Undeliverable Notices. Any Notice Packets returned to the Claims Administrator
27 as undeliverable on or before the sixty (60) day Response Deadline shall be re-mailed to the
28 forwarding address affixed thereto.

1 3.11. For each Settlement Class Member whose Notice Packet is returned, there will be
2 one (1) skip trace by the Claims Administrator. If an updated mailing address is identified, the
3 Claims Administrator shall resend the Notice Packet to the Settlement Class Member. One (1)
4 supplemental Notice Packet shall be mailed to each Settlement Class Member whose original
5 Notice Packet is returned as undeliverable to the Claims Administrator. Such re-mailing shall
6 be made within five (5) business days of the Claims Administrator receiving notice that the
7 respective Notice Packet was undeliverable. Any requests by the Claims Administrator for
8 documents or information from Defendant must be responded to within a reasonable amount of
9 time by counsel for Defendant. It is the intent of the Parties that reasonable means be used to
10 locate the Settlement Class Members and apprise them of their rights.

11 3.12. Settlement Class Members to whom Notice Packets are resent after having been
12 returned undeliverable to the Claims Administrator, during the entire Response Deadline, shall
13 have an additional fourteen (14) calendar days from the date of re-mailing, or until the sixty (60)
14 day Response Deadline has expired, whichever is later, to mail the Request for Exclusion or a
15 Notice of Objection. Notice Packets that are resent shall inform the recipient of this adjusted
16 deadline. The date of the postmark on the return envelope shall be the exclusive means used to
17 determine whether a Settlement Class Member has returned his or her Request for Exclusion on
18 or before the adjusted deadline. It will be conclusively presumed that if an envelope so mailed
19 has not been returned within twenty (20) days of the mailing, that the Settlement Class Member
20 received the Notice Packet. If a Settlement Class Member's Notice Packet is returned to the
21 Claims Administrator more than once as undeliverable, then an additional Notice Packet shall
22 not be re-mailed. Nothing further shall be required of, or done by, the Parties, Class Counsel, or
23 Defendant's Counsel to provide notice of the proposed Settlement.

24 3.13. Compliance with the procedures specified in paragraphs 3.9-3.12 of this
25 Settlement shall constitute due and sufficient notice to Settlement Class Members of this
26 Settlement and shall satisfy the requirement of due process. In the event the procedures set forth
27 herein are followed and the intended recipient of a Notice Packet still does not receive the Notice
28

1 Packet, the intended recipient will be a participating Class Member and will be bound by all
2 terms of the Settlement and the Order Granting Final Approval entered by the Court. Nothing
3 else shall be required of, or done by, the Parties, Class Counsel, and Defense Counsel to provide
4 notice of the proposed Settlement.

5 3.14. Disputes. Settlement Class Members will have the opportunity during the sixty
6 (60) day response period, should they disagree with Defendant’s records regarding their days
7 worked during the Class Period, to provide documentation and/or an explanation to show
8 contrary days worked. A space will be provided on the Notice of Settlement Payment for Class
9 Members to raise such disputes. For a Class Member’s dispute to be considered, the Class
10 Member must fully complete the Notice and timely return it to the Settlement Administrator.
11 Class Members will have sixty (60) days after the date the Notice Packet is mailed by the
12 Settlement Administrator to mail in a dispute, including any supporting evidence the Class
13 Member may have. The date of the postmark of the return mailing envelope shall be the
14 exclusive means used to determine whether a dispute has been timely submitted to the
15 Settlement Administrator. If there is a dispute, the Claims Administrator will consult with the
16 Parties to determine whether an adjustment is warranted. The Claims Administrator shall
17 determine the eligibility for, and the amounts of, any Individual Settlement Payments under the
18 terms of this Settlement. The Claims Administrator’s determination of the eligibility for and
19 amount of any Individual Settlement Payment shall be binding upon the Settlement Class
20 Member and the Parties.

21
22 3.15. Exclusions (Opt-Outs). The Notice Packet shall state that Settlement Class
23 Members who wish to exclude themselves from the Settlement must submit a Request for
24 Exclusion Form by the Response Deadline. The Request for Exclusion: (1) must contain the
25 name, address, and the last four (4) digits of the Social Security number of the Settlement Class
26 Member requesting exclusion/ or an Employee Identification Number, (2) must be signed by the
27 Settlement Class Member; and (3) must be postmarked by the Response Deadline and returned
28 to the Claims Administrator at the specified address. If the Request for Exclusion does not

1 contain the information listed in (1)-(2), it will not be deemed valid for exclusion from this
2 Settlement. The date of the postmark on the return-mailing envelope shall be the exclusive
3 means used to determine whether a Request for Exclusion has been timely submitted. Any
4 Settlement Class Member who requests to be excluded from the Settlement will not be entitled
5 to any recovery under the Settlement and will not be bound by the terms of the Settlement.
6 Settlement Class Members who receive a Notice Packet, but fail to submit a valid and timely
7 Request for Exclusion on or before the Response Deadline shall be bound by all terms of the
8 Settlement and any Final Judgment entered in this Action if the Settlement is approved by the
9 Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
10 members of the Settlement Class to submit Requests for Exclusion from the Settlement. Class
11 Counsel shall not represent any Settlement Class Member with respect to any such Requests for
12 Exclusion. Settlement Class Members who submit a valid Request for Exclusion may not also
13 submit a Notice of Objection. Non-Participating Class Members (Settlement Class Members
14 who request to be excluded from the Settlement) will still receive a share of the PAGA allocation
15 if the Settlement Class Member worked during the PAGA period and will be deemed to have
16 released any PAGA claims as disclosed in the LWDA letter dated March 12, 2019 and the facts
17 as alleged in the operative First Amended Complaint that he or she may have as a result of the
18 Settlement.
19

20 3.16. Objections. The Notice Packet shall state that Settlement Class Members who
21 wish to remain Class Members, but desire to object to the Settlement must not submit a Request
22 for Exclusion and must submit a written statement of objection (“Notice of Objection”) by the
23 Response Deadline to the Claims Administrator. The Notice of Objection must be signed by the
24 Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the
25 dates of employment of the Settlement Class Member; (3) the last four (4) digits of the
26 Settlement Class Member’s Social Security number or the Employee ID number; (4) the basis
27 for the objection; and (5) whether the Settlement Class Member intends to appear at the Final
28 Approval Hearing. The Notice of Objection must be postmarked by the Response Deadline and

1 returned to the Claims Administrator at the specified address. Within five (5) days of receiving
2 a notice of objection from a Settlement Class Member, the Claims Administrator shall forward
3 the notice of objection to Class Counsel and Defense Counsel. The Parties will thereafter lodge
4 the Settlement Class Member's Notice of Objection with the Court. Settlement Class Members,
5 regardless of whether or not they submit a timely Notice of Objection, will have a right to appear
6 at the Final Approval Hearing, with or without an attorney to raise his or her objection to the
7 Settlement with the Court. Settlement Class Members may appear remotely pursuant to the
8 current social distancing policies of the Court. At no time shall any of the Parties or their counsel
9 seek to solicit or otherwise encourage Settlement Class Members to file or serve written
10 objections to the Settlement or appeal from the Final Judgment. Class Counsel shall not
11 represent any Settlement Class Members with respect to any such objections.

12 3.17. Plaintiffs' Participation. By executing this Settlement, Plaintiff hereby stipulates
13 he will not object to or exclude himself from the Settlement in anyway.
14

15 3.18. No Solicitation of Settlement Objections or Exclusions. The Parties and their
16 counsel agree to use their best efforts to carry out the terms of this Settlement. At no time shall
17 any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class
18 Members to submit either written objections to the Settlement or Requests for Exclusion from
19 the Settlement, or to appeal from the Court's Final Judgment.

20 3.19. Funding of the Gross Settlement. This is a non-reversionary Settlement in which
21 Defendant is required to pay the entire Gross Settlement Amount. No portion of the Gross
22 Settlement Amount will revert to Defendant. Defendant shall fully fund the Settlement up to
23 twenty-one (21) days after the Final Approval Date. No payments from the Gross Settlement
24 Amount shall be made before the Gross Settlement Amount is fully funded. No release in this
25 Settlement shall be effective until the Gross Settlement Amount is fully funded. If Defendant
26 defaults, Plaintiff and all Participating Class Members will be able to pursue all claims, and the
27 Settlement becomes null and void.

28 3.20. No more than five (5) business days after the Gross Settlement Amount is fully

1 funded, the Claims Administrator will provide the Parties with an accounting of all anticipated
2 payments from the Gross Settlement Amount. The Net Settlement Amount shall be calculated
3 by deducting from the Gross Settlement Amount payments for (1) Class Representative
4 Enhancement Awards, as specified in this Settlement and approved by the Court; (2) Class
5 Counsel Award, as specified in this Settlement and approved by the Court; (3) Class Counsel
6 Costs, as specified in this Settlement and approved by the Court; (4) Claims Administration
7 Costs, as specified in this Settlement and approved by the Court; and (5) the LWDA PAGA
8 Allocation, as specified in this Settlement and approved by the Court. The Net Settlement
9 Amount shall be distributed in Individual Settlement Payments in accordance with Paragraphs
10 3Pr.21.

11 3.21. Individual Settlement Payments. Each Participating Class Member shall be
12 eligible to receive an Individual Settlement Payment, which is a share of the Net Settlement
13 Amount, based on the number of weeks worked by the Participating Class Member during the
14 Class Period, as a proportion of all weeks worked by all Participating Class Members during the
15 Class Period. Individual Settlement Payments shall be paid pursuant to the formula set forth in
16 Paragraph 3.22 below. Individual Settlement Payments shall be mailed by regular First-Class
17 U.S. Mail to Participating Class Members’ last known mailing address no later than fifteen (15)
18 calendar days after the Gross Settlement Amount is fully funded. Individual Settlement
19 Payments will specifically indicate that they are void if not negotiated within one hundred eight
20 (180) days of their issuance. Individual Settlement Payments reflect settlement of a dispute
21 regarding wages, interest, and penalties. Individual Settlement Payments will be allocated as
22 follows: twenty percent (20%) as wages; and eighty percent (80%) as interest and penalties. The
23 “wage” portion of each Individual Settlement Payment will be reduced by Employee Taxes.
24 The Claims Administrator shall issue the appropriate tax documents associated with the
25 Individual Settlement Payments, including an IRS Form W-2 for the amounts allocated as
26 “wages” and an IRS Form 1099 for the amounts allocated as “interest” or “penalties.”
27

28 3.22. Individual Settlement Payment Formula. After deducting the Class Counsel

1 Award and Class Counsel Costs, the LWDA PAGA Allocation, Class Representative
2 Enhancement Awards, and Claims Administration Costs, the remaining funds (the “Net
3 Settlement Amount”), will be distributed as follows: The Claims Administrator shall divide the
4 Net Settlement Amount by the total number of workweeks Participating Class Members worked
5 during the Class Period in order to determine the amount each Participating Class Member is
6 entitled to for each workweek he or she was employed by Defendant (the “Weekly Amount”).
7 The Claims Administrator will multiply the Weekly Amount by the estimated total number of
8 workweeks that each Participating Class Member worked during the Class Period. The product
9 of each calculation represents the gross Individual Settlement Payment for the respective
10 Participating Class Member. The Claims Administrator will then deduct Employee Taxes
11 attributable to wages to arrive at the net Individual Settlement Payment for each respective Class
12 Member.

13
14 3.23. Each Participating and Non-Participating Class Member shall be eligible to
15 receive an Individual PAGA Settlement Payment, which is a share of the Net Settlement Amount
16 (“PAGA Allocation”), based on the number of weeks worked by the Settlement Class Member
17 during the PAGA Period, as a proportion of all weeks worked by all eligible Settlement Class
18 Members during the PAGA Period. Individual PAGA Settlement Payments reflect settlement
19 of a dispute regarding civil penalties. The Individual PAGA Settlement Payments are not
20 subject to taxes.

21 3.24. Within twenty-one (21) calendar days after Preliminary Approval, Defendant,
22 shall provide the Claims Administrator with any information reasonably necessary to perform
23 the calculation of number of workweeks for each Settlement Class Member, and any other
24 reasonably required information the Claims Administrator requests to perform the calculations
25 required under this Settlement. Defendant shall have no responsibility for deciding the validity
26 of any Individual Settlement Payment or any other payments made pursuant to this Settlement,
27 shall have no involvement in or responsibility for the determination or payment of Employee
28 Taxes, and shall have no liability for any errors made with respect to such Employee Taxes.

1 3.25. Settlement Class Members are not eligible to receive any compensation other than
2 the Individual Settlement Payment, and they may only receive an Individual Settlement Payment
3 if they do not submit a valid and timely Request for Exclusion to opt out of the Settlement.
4 Plaintiffs, however, is also eligible to receive a Class Representative Enhancement Award.

5 3.26. No benefit, including but not limited to pension benefits, shall increase or accrue
6 as a result of any payment made pursuant to this Settlement.

7 3.27. If a check for an Individual Settlement Payment is returned to the Claims
8 Administrator as undeliverable, the Claims Administrator shall promptly attempt to obtain a
9 valid mailing address by performing a skip trace search. If another address is identified, the
10 Claims Administrator shall mail the check to the newly identified address. If an Individual
11 Settlement Payment check is returned to the Claims Administrator a second time as
12 undeliverable, the Claims Administrator shall not attempt any further re-mailing of that check.
13 Any settlement checks that remain uncashed one hundred eighty (180) or more calendar days
14 after issuance shall be voided. The Claims Administrator shall forward all voided settlement
15 checks to the California State Controller's Office's Unclaimed Property Division. The Claims
16 Administrator shall also compile a list of the Participating Class Members for whom their funds
17 were deposited with the California State Controller's Office's Unclaimed Property Division. In
18 such event, the Participating Class Member shall nevertheless remain bound by the Settlement.
19 The Parties agree that good cause exists for the Court to approve this distribution because the
20 unclaimed funds are unclaimed wages of employees that will be held by the State of California
21 for the benefit of these employees, who may request receipt of payment from the California
22 State Controller's Office's Unclaimed Property Division.
23

24 3.28. Class Representative Enhancement Award. Defendant agrees not to oppose or
25 object to any application or motion by Plaintiff for a Class Representative Enhancement Award,
26 not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for Plaintiff Faustino
27 Arciniega, as consideration for Plaintiff's time and effort in bringing and prosecuting this matter.
28 The Class Representative Enhancement Award shall be paid to Plaintiff from the Gross

1 Settlement Amount no later than fifteen (15) calendar days after the Gross Settlement Amount
2 is fully funded. The Claims Administrator shall issue an IRS Form 1099 — MISC to Plaintiff
3 for his Class Representative Enhancement Award. Plaintiff shall be solely and legally
4 responsible for payment of all applicable taxes on their Class Representative Enhancement
5 Award and shall hold Defendant harmless from any claim or liability for taxes, penalties, or
6 interest arising as a result of the Class Representative Enhancement Award. The Class
7 Representative Enhancement Award shall be in addition to Plaintiff’s Individual Settlement
8 Payment as a Participating Class Member. In the event that the Court awards lesser amounts
9 than the Class Representative Enhancement Awards requested, then any portion of the requested
10 amounts not awarded to Plaintiff shall be added to the Net Settlement Amount. Plaintiff shall
11 not have the right to revoke their agreement to the Settlement on the grounds the Court did not
12 approve any or all of his request for a Class Representative Enhancement Award.

13
14 3.29. Class Counsel Award and Costs. Defendant agrees not to oppose or object to any
15 application or motion by Class Counsel for a Class Counsel Award not to exceed One hundred
16 Seventy-Five Thousand Dollars (\$175,000.00) and Class Counsel Costs not to exceed Twenty
17 Thousand Dollars (\$20,000.00) from the Gross Settlement Amount. The Class Counsel Award
18 and Class Counsel Costs shall be paid no later than fifteen (15) calendar days after the Gross
19 Settlement Amount is fully funded. Class Counsel shall be solely and legally responsible to pay
20 all applicable taxes on the payments made pursuant to this paragraph. The Claims Administrator
21 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this
22 paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any
23 particular amount in attorneys’ fees and costs. Any amount requested by Class Counsel for the
24 Class Counsel Award and Class Counsel Costs and not granted by the Court shall be part of the
25 Net Settlement Amount.

26 3.30. PAGA Settlement Allocation. Subject to Court approval, the Parties shall allocate
27 a total of Ten Thousand Dollars (\$10,000.00) from the Gross Settlement Amount for the
28 compromise of claims for civil penalties brought under the PAGA (the “PAGA Allocation”).

1 Per California Labor Code section 2699(i), Seven Thousand Five Hundred Dollars (\$7,500.00),
2 representing seventy-five percent (75%) of the PAGA Allocation, will be paid to California's
3 Labor Workforce Development Agency. The remaining Two Thousand Five Hundred Dollars
4 (\$2,500.00), representing twenty-five percent (25%) of the PAGA Allocation, shall be part of
5 the Net Settlement Amount to be distributed to Participating and Non-Participating Class
6 Members.

7 3.31. LWDA PAGA Allocation. The LWDA PAGA Allocation shall be Seven
8 Thousand Five Hundred Dollars (\$7,500.00), representing seventy-five percent (75%) of the
9 PAGA Allocation, and shall be paid to California's Labor Workforce Development Agency
10 from the Gross Settlement Amount by the Claims Administrator no later than fifteen (15)
11 calendar days after the Gross Settlement Amount is fully funded. The remaining Two Thousand
12 Five Hundred Dollars (\$2,500.00), representing twenty-five percent (25%) of the PAGA
13 Allocation, shall be part of the Net Settlement Amount for distribution to Participating and Non-
14 Participating Class Members.

15 3.32. Defendant's Option to Terminate Settlement. If, after the Response Deadline and
16 before the Final Approval Hearing, five percent (5%) or more of the number of Settlement Class
17 Members submit timely and valid Requests for Exclusion from the Settlement, Defendant shall
18 have, in its sole discretion, the option to terminate this Settlement. Defendant shall exercise its
19 option to terminate, if it wishes, prior to the Final Approval Hearing. If Defendant decides to
20 void the Settlement, then the Settlement and conditional class certification shall be considered
21 void, and neither the Settlement, conditional class certification, nor any of the related
22 negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the
23 same position, without prejudice, as if this Settlement had been neither entered into nor filed
24 with the Court. Should Defendant void the Settlement under this paragraph, it shall be
25 responsible for all Claims Administration Costs.

26 3.33. Claims Administration Costs. The Claims Administrator shall be paid for the costs
27 of administration of the Settlement from the Gross Settlement Amount. Such costs of
28

1 administration are not to exceed Twenty Thousand Dollars (\$20,000.00), unless the court
2 approves a higher amount. No fewer than twenty (20) days prior to the Final Approval Hearing,
3 the Claims Administrator shall provide the Parties with a statement detailing the costs of
4 administration. The Claims Administrator, on Defendant's behalf, shall have the authority and
5 obligation to make payments, credits and disbursements, including payments and credits in the
6 manner set forth in this Settlement, to Participating Class Members, calculated in accordance
7 with the methodology set out in this Settlement and orders of the Court. The Parties agree to
8 cooperate in the administration of the Settlement and to make all reasonable efforts to control
9 and minimize the costs and expenses incurred in administration of the Settlement. The Parties
10 each represent they do not have any financial interest in the Claims Administrator or otherwise
11 have a relationship with the Claims Administrator that could create a conflict of interest. The
12 Claims Administrator shall be responsible for: processing and mailing all court-approved
13 payments to the Plaintiffs, Class Counsel, Participating Class Members, and the LWDA;
14 printing and mailing the Notice Packets to the Settlement Class Members as called for in this
15 Settlement and ordered by the Court; receiving and reporting Notice of Objections and Requests
16 for Exclusion submitted by Settlement Class Members; providing declaration(s) as necessary in
17 support of preliminary and/or final approval of this Settlement; and other tasks as the Parties
18 mutually agree or the Court orders the Claims Administrator to perform. The Claims
19 Administrator shall keep the Parties timely apprised of the performance of all Claims
20 Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other
21 tax documents required by administration of this Settlement shall be prepared by the Claims
22 Administrator. Any expenses incurred in connection with such preparation shall be Claims
23 Administration Costs. The Claims Administrator shall be paid the Claims Administration Costs
24 from the Gross Settlement Amount no later than fifteen (15) calendar days after the Gross
25 Settlement Amount is fully funded.
26

27 3.34. Final Approval Hearing. At a reasonable time following the Response Deadline,
28 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and

1 the Court shall determine amounts properly payable for (i) the Class Counsel Award, (ii) the
2 Class Counsel Costs, (iii) the Class Representative Enhancement Awards, (iv) the LWDA
3 PAGA Allocation; and (v) the Claims Administration Costs.

4 3.35. Entry of Final Judgment. If the Court approves this Settlement at the Final
5 Approval Hearing, the Parties shall request that the Court enter the Final Judgment after the
6 Gross Settlement Amount has been fully funded, with the Court retaining jurisdiction over the
7 Parties to enforce the terms of the judgment. If the Court grants final approval to the Settlement,
8 notice of Final Approval shall be posted on the Settlement Administrator's website, at
9 www.phoenixclassaction.com.

10 3.36. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Participating
11 Class Members pursuant to this Settlement will not count as earnings or compensation for
12 purposes of any benefits (e.g., pensions or retirement plans) sponsored by Defendant. It is
13 expressly understood and agreed that the receipt of Individual Settlement Amount shall not
14 entitle any Participating Class Member to additional compensation or benefits under any
15 collective bargaining agreement or under any bonus, contest or other compensation or benefit
16 plan or agreement in place during the period covered by the Settlement, nor shall it entitle any
17 Participating Class Member to any increased pension and/or retirement, or other deferred
18 compensation benefits. It is the intent of the Parties that Individual Settlement Amounts
19 provided for in this Stipulation are the sole payments to be made by Defendant to Participating
20 Class Members in connection with this Settlement, with the exception of Plaintiffs, and that the
21 Participating Class Members are not entitled to any new or additional compensation or benefits
22 as a result of having received the Individual Settlement Awards. Furthermore, the receipt of
23 Individual Settlement Amounts by Participating Class Members shall not, and does not, by itself
24 establish any general, special, or joint employment relationship between and among the
25 Participating Class Member(s) and Defendant.

26 3.37. Nullification of Settlement. In the event: (i) the Court does not enter the
27 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of
28

1 the Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided
 2 herein; or (iv) the Settlement does not become final for any other reason, this Settlement shall
 3 be null and void and any order or judgment entered by the Court in furtherance of this Settlement
 4 shall be treated as void from the beginning. In such a case, the Parties and any funds to be
 5 awarded under this Settlement shall be returned to their respective statuses as of the date and
 6 time immediately prior to the execution of this Settlement, and the Parties shall proceed in all
 7 respects as if this Settlement had not been executed, except that any costs and fees already
 8 incurred by the Claims Administrator shall be paid jointly by the Parties. In the event an appeal
 9 is filed from the Court’s Final Judgment, or any other appellate review is sought, administration
 10 of the Settlement shall be stayed pending final resolution of the appeal or other appellate review,
 11 and any other payments required hereunder by Defendant will not be paid pending the
 12 completion and final resolution of the appeal, and any payment thereafter will: (1) occur only if
 13 the Order Granting Final Approval is upheld after all appeals; and (2) be in a manner that is
 14 provided for in the Settlement and in the Order Granting Final Approval.

15
 16 3.38. No Admission by the Parties. Defendant denies any and all claims alleged in this
 17 Action and deny all wrongdoing whatsoever. This Settlement is not a concession or admission,
 18 and shall not be used against Defendant as an admission or indication, with respect to any claim,
 19 of any fault, concession, or omission by Defendant. Neither this Settlement, nor any of its terms
 20 and conditions, nor any of the negotiations connected with it, is a concession or admission, and
 21 none shall be used against Defendant as an admission or indication with respect to any claim of
 22 any fault, concession, or omission by Defendant or that class certification is proper under the
 23 standard applied to contested certification motions. The Parties stipulate and agree to the
 24 certification of the proposed class for settlement purposes only. The Parties further agree that
 25 this Settlement will not be admissible in this or any other proceeding as evidence that either: (i)
 26 a class action should be certified or (ii) Defendant or the Released Parties are liable to Plaintiff
 27 or any Class Member, other than according to the terms of this Settlement.

28 3.39. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning

1 the interpretation, calculation or payment of settlement claims, or other disputes regarding
2 compliance with this Settlement shall be resolved as follows:

3 3.40. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
4 Members, or Defendant, at any time believe that the other Party or Parties have breached or
5 acted contrary to the Settlement, that Party shall notify the other Party or Parties in writing of
6 the alleged violation. Upon receiving notice of the alleged violation or dispute, the responding
7 Party shall have ten (10) days to correct the alleged violation and/or respond to the initiating
8 Party with the reasons why the Party disputes all or part of the allegation.

9 3.40.1. If the response does not address the alleged violation to the initiating
10 Party's satisfaction, the Parties shall negotiate in good faith for up to ten
11 (10) days to resolve their differences.

12 3.40.2. If thereafter, the Parties still cannot resolve the dispute, the Parties shall
13 utilize the services of Hon. Peter Lichtman (Mediator) in a good-faith
14 attempt to mediate and resolve the dispute.

15 3.40.3. If the Parties are unable to resolve their differences after twenty (20)
16 days, either Party may file an appropriate motion for enforcement with
17 the Court.
18

19 3.41. Exhibits and Headings. The terms of this Settlement include the terms set forth in
20 Exhibits A and B, which are attached to this Settlement and incorporated by this reference as
21 though fully set forth in this paragraph. Any Exhibits to this Settlement are an integral part of
22 the Settlement. The descriptive headings of any paragraphs or sections of this Settlement are
23 inserted for convenience of reference only and do not constitute a part of this Settlement.

24 3.42. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
25 Action and thereafter implement and complete the Settlement.

26 3.43. Amendment or Modification. This Settlement may be amended or modified only
27 by a written instrument signed by all the Parties and counsel for all Parties or their successors-
28 in-interest.

1 3.44. Entire Settlement. This Settlement and any attached Exhibits constitute the entire
2 agreement among these Parties, and no oral or written representations, warranties or
3 inducements have been made to any Party concerning this Settlement or its exhibits, other than
4 the representations, warranties and covenants contained and memorialized in the Settlement and
5 its exhibits. No other prior or contemporaneous written or oral agreements may be deemed
6 binding on the Parties.

7 3.45. Authorization to Enter into Settlement. Counsel for all Parties warrant and
8 represent they are expressly authorized by the Parties whom they represent to negotiate this
9 Settlement and to take all appropriate actions required or permitted to be taken by such Parties
10 pursuant to this Settlement to effectuate its terms, and to execute any other documents required
11 to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each
12 other and use their best efforts to affect the implementation of the Settlement. In the event the
13 Parties are unable to reach agreement on the form or content of any document needed to
14 implement the Settlement, or on any supplemental provisions that may become necessary to
15 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
16 such disagreement. The person signing this Settlement on behalf of Defendant Protective
17 Industries, Inc. dba CAPLUGS represents and warrants that he or she is authorized to sign this
18 Settlement on behalf of Defendant Protective Industries Inc. dba CAPLUGS. Plaintiff Faustino
19 Arciniega represents and warrants that he is authorized to sign this Settlement and that he has
20 not assigned any claim, or part of a claim, covered by this Settlement to a third-party.
21

22 3.46. Binding on Successors and Assigns. This Settlement shall be binding upon, and
23 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

24 3.47. No Prior Assignments. The Parties and their counsel represent, covenant, and
25 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
26 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
27 demand, action, cause of action or right herein released and discharged.

28 3.48. California Law Governs. All terms of this Settlement and the exhibits hereto shall

1 be governed by and interpreted according to the laws of the State of California.

2 3.49. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
3 Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
4 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
5 present and potential.

6 3.50. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h),
7 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,
8 implementation, and enforcement of the terms of this Settlement and all orders and judgments
9 entered in connection therewith, and the Parties and their counsel hereto submit to the
10 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this
11 Settlement and all orders and judgments entered in connection therewith.

12 3.51. Invalidity of Any Provision. Before declaring any provision of this Settlement
13 invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent
14 possible, consistent with applicable precedents.

15 3.52. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
16 class certification for purposes of this Settlement only.

17 3.53. Cooperation. The Parties agree to cooperate fully with one another to accomplish
18 and implement the terms of this Settlement. Such cooperation shall include, but not be limited
19 to, execution of such other documents and the taking of such other action as may be reasonably
20 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their
21 best efforts, including all efforts contemplated by this Settlement and any other efforts that may
22 become necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

23 3.54. Publicity. Plaintiff and Class Counsel agree that they will not issue any press
24 releases, initiate any contact with the press, respond to any press inquiry, or have any
25 communication with the press about the Action and/or the fact, amount, or terms of the
26 Settlement. However, for marketing purposes, Class Counsel may refer to the settlement amount
27 and the nature of the case without identifying any of the Parties directly or indirectly. Before the
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1 date of the filing of the motion for preliminary approval of the Settlement, Plaintiff and Class
2 Counsel will not initiate any contact with Settlement Class Members about the Settlement,
3 except that: (a) Class Counsel, if contacted by a Settlement Class Member, may respond that a
4 settlement has been reached and that the details will be communicated in a forthcoming Court-
5 approved notice; and (b) Plaintiff, if contacted by a Settlement Class Member, may respond only
6 that the Settlement Class Member should contact Class Counsel. Neither Plaintiff nor Class
7 Counsel shall hold a press conference or otherwise seek to affirmatively contact the media about
8 the Settlement. If contacted by the media regarding the Settlement, Class Counsel shall state, "It
9 is a fair settlement, and we are happy with the results." Additionally, no Party or their counsel
10 shall disparage the Settlement. Nothing in this paragraph shall prevent Class Counsel from
11 carrying out their duties.

12 3.55. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
13 and conditions of this Settlement. Accordingly, this Settlement will not be construed more
14 strictly against one party than another merely by virtue of the fact that it may have been prepared
15 by counsel for one of the Parties, it being recognized that, because of the arm's-length
16 negotiations between the Parties, all Parties have contributed to the preparation of this
17 Settlement.

18 3.56. Representation by Counsel. The Parties acknowledge that they have been
19 represented by counsel throughout all negotiations that preceded the execution of this
20 Settlement, and that this Settlement has been executed with the consent and advice of counsel,
21 and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are
22 no liens on the Settlement Agreement.

23 3.57. All Terms Subject to Final Court Approval. All amounts and procedures described
24 in this Stipulation are subject to final Court approval.

25 3.58. Notices. Unless otherwise specifically provided, all notices, demands or other
26 communications in connection with this Settlement shall be: (1) in writing; (2) deemed given
27 on the third business day after mailing; and (3) sent via United States registered or certified mail,
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return receipt requested, addressed as follows:

To Plaintiffs:

To Defendant:

Kevin Mahoney, Esq.
kmahoney@mahoney-law.net
MAHONEY LAW GROUP, APC
249 East Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Troy A. Valdez, Esq.
tvaldez@cobentzlaw.com
COBLENTZ PATCH DUFFY & BASS LLP
1 Montgomery St #3000
San Francisco, CA 94104
Telephone: (415) 391-4800
Facsimile: (415) 989-1663

3.59. Execution by Settlement Class Members. It is agreed that it is impossible or impractical to have each Settlement Class Member execute this Settlement. The Notice of Settlement will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if each Settlement Class Member executed this Settlement.

3.60. Execution by Plaintiff and Defendant. Plaintiff and Defendant, by signing this Settlement, are bound by the terms herein.

3.61. Fair, Adequate and Reasonable Settlement. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement.

3.62. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

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3.63. Counterparts. This Settlement shall become effective upon its execution by all of the undersigned. Plaintiff, Class Counsel, Defendant, and Defense Counsel may execute this Settlement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Copies of the executed Settlement shall be effective for all purposes as though the signatures contained therein were original signatures.

Dated: August 03, 2021

By: 
11D2B0DA816E408
Faustino Arciniega

Dated: August _____, 2021

By: _____
Defendant Protective Industries, Inc. dba
CAPPLUGS

1 Settlement, are bound by the terms herein.

2 3.61. Fair, Adequate and Reasonable Settlement. The Parties hereto agree that the
3 terms and conditions of this Settlement are the result of lengthy, intensive, arms-length
4 negotiations between the Parties and that this Settlement shall not be construed in favor of or
5 against any of the Parties by reason of their participation in the drafting of this Settlement.

6 3.62. Binding Agreement. The Parties warrant that they understand and have full
7 authority to enter into this Settlement, and further intend that this Settlement will be fully
8 enforceable and binding on all Parties, and agree that it will be admissible and subject to
9 disclosure in any proceeding to enforce its terms, notwithstanding any mediation
10 confidentiality provisions that otherwise might apply under federal or state law.

11 ///

12
13
14 3.63. Counterparts. This Settlement shall become effective upon its execution by all
15 of the undersigned. Plaintiff, Class Counsel, Defendant, and Defense Counsel may execute
16 this Settlement in counterparts, and execution of counterparts shall have the same force and
17 effect as if each had signed the same instrument. Copies of the executed Settlement shall be
18 effective for all purposes as though the signatures contained therein were original signatures.

19
20 Dated: August _____, 2021

By: _____
Faustino Arciniega

21
22
23 Dated: August 4th, 2021

By: 
Defendant Protective Industries, Inc. dba
CAPLUGS