

**FILED**  
Superior Court of California  
County of Los Angeles

06/02/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Fregoso Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

**SPRING STREET COURTHOUSE**

NEJDEH VARTANIAN, individually and on  
behalf of others similarly situated, and as a  
private attorney general,

Plaintiff,

v.

FORREST MACHINING, INC., a California  
corporation; JOANNE BUTLER, an  
individual; ROBERT BUTLER, an individual;  
STEVE WOOTEN, an individual; KENNETH  
MCPHERSON, an individual; and DOES 1  
through 50, inclusive,

Defendants.

CARLOS AGUILAR, JR., an individual, on  
behalf of himself and on behalf of all persons  
similarly situated,

Plaintiff,

v.

FORREST MACHINING INC, a California  
Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

**CLASS ACTION**

Lead Case No. 20STCV28138 (*Vartanian*)

Related Case No. 20STCV45450 (*Aguilar*)

Assigned for All Purposes to the Honorable  
Elihu M. Berle (Dept. 6)

**[amended proposed] JUDGMENT  
PURSUANT TO CLASS ACTION  
SETTLEMENT**

Hearing Date: May 24, 2022

Hearing Time: 9:00 a.m.

Location: Dept. 6

1           WHEREAS, on January 21, 2022, upon this Court’s review of the Second Amended Joint  
2 Stipulation and Settlement Agreement (a copy of which is attached hereto as **Exhibit 1** and  
3 incorporated herein by this reference; “Settlement” or “Agreement”) entered into between  
4 Plaintiffs Nejdeh Vartanian and Carlos Aguilar, Jr. (collectively hereinafter the “Plaintiffs”) on  
5 the one hand, and Defendants FORREST MACHINING, INC.; JOANNE BUTLER; ROBERT  
6 BUTLER; STEVE WOOTEN; and KENNETH MCPHERSON (collectively hereinafter the  
7 “Defendants” or “FMI”) on the other hand, this Court granted preliminary approval of the class  
8 action settlement;

9           WHEREAS, on May 24, 2022, this Court granted the Motion for Final Approval of Class  
10 Action Settlement, finding the settlement to be fair, reasonable, and adequate with respect to the  
11 Settlement Class, about which Class Members were provided notice and the opportunity to  
12 attend the hearing;

13           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

14           1. All defined terms contained herein shall have the same meanings as set forth in  
15 the Agreement.

16           2. The Notice of Proposed Class Action Settlement (“Class Notice”) was sent to  
17 each Class Member by U.S. Mail. The Class Notice informed Class Members of the terms of the  
18 Settlement, the process available to obtain monetary relief, the right to opt out and pursue their  
19 own remedies, the opportunity to file written objections and the right to appear in person or by  
20 counsel at the fairness hearing and be heard regarding the approval of the Settlement. Adequate  
21 periods of time were provided by each of these procedures.

22           3. No Class Members objected, and no one opted-out.

23           4. The Court finds and determines that these procedures afforded adequate  
24 protections to Class Members and provide the basis for the Court to make an informed decision  
25 regarding approval of the Settlement based on the Class Members’ responses thereto. The Court  
26 finds and determines that the Class Notice provided in this case was the best notice practicable,  
27 which satisfied the requirements of California *Civil Code* section 1781(e), California Rules of  
28 Court, Rule 3.769, and due process.

1           5.       The Agreement is clearly fair, adequate, and reasonable, in the best interests of  
2 the Class as a whole, and represents an excellent outcome in light of the risks and costs of further  
3 litigation and defenses raised. The Agreement is the product of arms-length, serious, informed,  
4 non-collusive, and non-overreaching negotiations.

5           6.       Pursuant to California law, the Court hereby grants final approval to the  
6 Agreement, which is expressly incorporated by reference into this Judgment and which shall  
7 have the full force and effect of a Judgment of the Court, and hereby directs that the Agreement  
8 be consummated in accordance with its terms and conditions, including the following:

- 9                   a. Pursuant to the terms of the Settlement, the Effective Date of this Judgment  
10                   is the date this judgment is signed and entered.
- 11                   b. Defendants are ordered to deposit into the Qualified Settlement Fund the  
12                   Class Settlement Amount of \$3,500,000.00, plus the Employer-side Taxes,  
13                   consistent with the deadlines set forth in the Agreement.
- 14                   c. Phoenix Settlement Administrators (hereinafter “PSA”) is ordered to post on  
15                   its website the notice of the final judgment for 120 days following the  
16                   Effective Date of this Judgment.
- 17                   d. The Court orders and determines that \$8,500 be paid to PSA from the Class  
18                   Settlement Amount for all of its agreed work done and to be done until the  
19                   completion of this matter and is appropriate.
- 20                   e. Nejdeh Vartanian and Carlos Aguilar, Jr. are hereby approved as Class  
21                   Representatives and are hereby approved to receive a Service Payment in the  
22                   sum of \$7,500 each, with no deductions.
- 23                   f. Attorneys’ fees in the amount of \$1,166,666.66 is approved for all the work  
24                   done and to be done until the completion of this matter, of which \$670,833.33  
25                   shall be paid to Counsel for Plaintiff Nejdeh Vartanian (Law Offices of Eric  
26                   A. Boyajian, APC) and \$495,833.33 shall be paid to Counsel for Plaintiff  
27                   Carlos Aguilar, Jr. (Dychter Law Offices, APC and United Employees Law  
28                   Group, PC), and PSA is ordered to pay said amounts from the Class

- 1 Settlement Amount to Class Counsel consistent with the deadlines set forth in  
2 the Agreement.
- 3 g. Attorneys' costs in the amount of \$22,511.41 to Class Counsel is approved for  
4 all the work done and to be done until the completion of this matter, of which  
5 \$16,592.10 shall be paid to Counsel for Plaintiff Nejdeh Vartanian (Law  
6 Offices of Eric A. Boyajian, APC) and \$5,919.31 shall be paid to Counsel for  
7 Plaintiff Carlos Aguilar, Jr. (Dychter Law Offices, APC and United  
8 Employees Law Group, PC), and PSA is ordered to pay said amounts to Class  
9 Counsel consistent with the deadlines set forth in the Agreement.
- 10 h. PSA is ordered to distribute the Net Settlement Amount ("NSA") of  
11 \$2,087,321.93 to the Participating Class Members consistent with the  
12 deadlines set forth in the Agreement.
- 13 i. If, after 180 days from the date of PSA's mailing of the settlement payments  
14 to the Participating Class, there remains uncashed checks, PSA is ordered to  
15 void all such uncashed checks. PSA is ordered to then immediately pay any  
16 monies remaining in the distribution account to the Controller of the State of  
17 California, which shall be held pursuant to the Unclaimed Property Law,  
18 California *Civil Code* § 1500 *et seq.*, for the benefit of those Participating  
19 Class Members who did not cash their checks until such time that they claim  
20 their property.
- 21 j. In accordance with its duty under California Labor Code § 2699.3(b)(4), in  
22 reviewing and approving of this Settlement, the Court directs PSA to make  
23 payment of \$150,000.00 be sent to the State of California Labor and  
24 Workforce Development Agency ("LWDA"), pursuant to the Private  
25 Attorneys General Act ("PAGA").

26 7. The Court retains jurisdiction of all matters relating to the interpretation,  
27 administration, implementation and effectuation of this Order and the Settlement.

28 ///

1           8.       Upon satisfaction of all payment and obligations under the Settlement and under  
2 this Order, all Participating Class Members are barred from prosecuting against the Released  
3 Parties (as defined in the Settlement) any released claims (as defined in the Settlement).

4           9.       An OSC Re Settlement Compliance and Final Accounting is set for January 19,  
5 2023 at 8:30 a.m. in Dept. 6 of this Court regarding whether payments ordered hereunder were  
6 made.

7           **IT IS SO ORDERED.**

8                               JUDGE OF THE SUPERIOR COURT

9  
10 DATED: \_\_\_\_\_

11           ~~1~~ ~~EGG~~



12                               **Elihu M. Berle**

13                               Hon. Elihu M. Berle

14                               Elihu M. Berle / Judge  
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# **EXHIBIT 1**

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**LAW OFFICES OF ERIC A. BOYAJIAN, APC**  
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Attorneys for Plaintiff Nejdeh Vartanian  
*[Counsel for Plaintiff Aguilar, Jr. on the following page]*

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Attorneys for Defendants Forrest Machining, Inc.,  
Joanne Butler; Robert Butler; Steve Wooten; Kenneth McPherson

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

NEJDEH VARTANIAN, individually and on  
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WOOTEN, an individual; KENNETH  
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Defendants.

Lead Case No. 20STCV28138

**CLASS ACTION**

Assigned for all Purposes to the Hon.  
Elihu M. Berle (Dept. 6)

**SECOND AMENDED JOINT  
STIPULATION AND SETTLEMENT  
AGREEMENT**

*Vartanian* Complaint Filed: July 27, 2020  
*Vartanian* FAC Filed: October 5, 2020

*Aguilar, Jr.* Complaint Filed: Nov. 30, 2020  
*Aguilar, Jr.* FAC Filed: Mar. 29, 2021

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*Attorneys for Plaintiff Carlos Aguilar, Jr.*



## **SECOND AMENDED JOINT STIPULATION AND SETTLEMENT AGREEMENT**

Subject to its terms and conditions and the approval of the Court, this Second Amended Joint Stipulation and Settlement Agreement (hereinafter the “Settlement Agreement” or “Agreement”) is made and entered into by and among Plaintiffs Nejdeh Vartanian and Carlos Aguilar, Jr. (hereinafter the “Plaintiffs”), individually and on behalf of the Settlement Class, as defined herein, and Defendants Forrest Machining, Inc., Joanne Butler, Robert Butler, Steve Wooten, and Kenneth McPherson (hereinafter the “Defendants” or “FMI”). Plaintiffs and Defendants are jointly referred to in this Settlement Agreement as the “Parties,” and each of them as a “Party.”

### **1. DEFINITIONS**

1.1 The term “**Agreement**” means this Settlement Agreement.

1.2 The term “**Aggrieved Employees**” means those Class Members who were employed with FMI during the PAGA Period (as defined below).

1.3 The term “**Attorneys’ Fees and Costs**” means the amount of attorneys’ fees and costs and expenses to be requested by Class Counsel, subject to Court approval, in accordance with Subsection 4.4 of this Agreement.

1.4 The term “**Claimant**” and “**Settlement Class Member**” means any Class Member who does not opt-out of the Settlement.

1.5 The term “**Claims Administrator**” means Phoenix Settlement Administrators (hereinafter “PSA”), the entity agreed to by the Parties, subject to Court approval, which will perform the duties of, among other things: (i) translating the Notice into Spanish; (ii) mailing the Notice in English and Spanish to Class Members; (iii) performing an NCOA search and skip-tracing; (iv) tracking and addressing Opt-Out Letters, Objections, workweek disputes, LC 203 subclass eligibility; (v) reporting to Class Counsel and Defense Counsel regarding the administration of the Settlement consistent with this Agreement; (vi) issuing payments consistent with this Agreement; and, (vii) determining any appropriate tax withholdings from the wage portion of payments to Settlement Class Members, making the appropriate payments based on withholdings and the employer’s share of payroll taxes, and issuing any

required tax paperwork.

1.6 “***Class Notice Report***” means the report that the Claims Administrator must provide to Class Counsel and Defense Counsel regarding the administration of the Notice, which shall occur no later than 7 calendar days after the Claims Deadline, and which shall include, but not be limited to, the number of opt-outs and objections, and copies thereof.

1.7 The term “***Claims Period***” means the sixty (60) day time-period for Settlement Class members to submit an Opt-Out Letter, an Objection to the Settlement, or to dispute the workweeks/LC 203 Subclass eligibility listed on the Class Notice.

1.8 The term “***Claims Deadline***” is the last day of the Claims Period, but as discussed in paragraph 5.3 below, there is an extension available in the event of a re-mailed Notice.

1.9 The term “***Complaints***” or “***Operative Complaints***” means the First Amended Complaint (“FAC”) filed on October 5, 2020, styled as *Nejdeh Vartanian v. Forrest Machining, Inc.; Joanne Butler; Robert Butler; Steve Wooten; Kenneth McPherson* (Case No. 20STCV28138) in the Superior Court of the State of California, County of Los Angeles and the FAC filed on March 29, 2021, styled as *Carlos Aguilar, Jr. v. Forrest Machining, Inc.* (Case No. 20STCV45450) in the Superior Court of the State of California, County of Los Angeles.

1.10 The term “***Class Counsel***” means the following counsel who, subject to Court approval, shall act as counsel for the Settlement Class: Law Offices of Eric A. Boyajian, APC; Dychter Law Offices, APC; and United Employees Law Group, PC.

1.11 The term “***Class***” or “***Class Member***” means all current and former non-exempt employees of FMI in California at any time during the Settlement Class Period, *excluding* Mr. Vigen Zadourian who has his own pending individual action against FMI and is represented by separate counsel from the instant Class Counsel.

a. “***LC 203 Subclass***” means Class Members who separated their employment from FMI anytime between July 27, 2017 *through* September 30, 2021.

1.12 The term “***Class Settlement Amount***” means the gross sum of Three Million Five Hundred

Thousand Dollars (\$3,500,000.00), which shall be the sum paid by Defendants to settle this Litigation. The combined total of any Attorneys' Fees and Costs approved by the Court, any Service Enhancement approved by the Court to the named Plaintiffs, Settlement Administration Costs approved by the Court, PAGA Civil Penalties, and the amounts paid to Settlement Class Members shall all come out of the Class Settlement Amount and shall not exceed the Class Settlement Amount. The corporate payroll tax obligation on the "wage" portion of the settlement to Settlement Class Members shall be paid by Defendants *separate and apart* from the Class Settlement Amount and is not included in the Class Settlement Amount.

1.13 **"Class Settlement Share"** means the payment that a Claimant is entitled to receive from the Net Settlement Amount pursuant to the Settlement. The term does *not* include Aggrieved Employees and his/her share of the PAGA Bounty.

1.14 The term **"Court"** means the Superior Court of the State of California, County of Los Angeles, and any appellate court which may review any orders entered by the Court related to this Settlement.

1.15 **"Defense Counsel"** means Daniel P. Hoffer, Esq. and Kyle P. Klein, Esq. from the law firm of Venable LLP.

1.16 The term **"Execution"** refers to the signing of this Agreement by all signatories hereto.

1.17 The term **"Final Judgment"** refers to the final judgment entered by the Court.

1.18 **"Final Approval Hearing"** means a hearing for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Settlement Agreement, including but not limited to with respect to allocations for attorneys' fees and costs, pursuant to class action procedures and requirements; (ii) determining the good faith of the Settlement Agreement; and (iii) entering Judgment. This hearing is intended to be the final approval hearing required under California Rule of Court 3.769(a).

1.19 The term **"Litigation"** means *Nejdeh Vartanian v. Forrest Machining, Inc.*; *Joanne Butler; Robert Butler; Steve Wooten; Kenneth McPherson* (Case No. 20STCV28138) and the "related" action of *Carlos Aguilar, Jr. v. Forrest Machining, Inc.* (Case No. 20STCV45450)

which are both pending in the Superior Court of the State of California, County of Los Angeles.

1.20 “**LWDA**” means the Labor and Workforce Development Agency of the State of California.

1.21 The term “**LWDA Payment**” means seventy-five percent (75%) of the PAGA Civil Penalties, which amounts to \$150,000, which will be payable to the LWDA.

1.22 The term “**Named Plaintiffs**” means the named plaintiffs in the Litigation, Mr. Nejdeh Vartanian and Mr. Carlos Aguilar, Jr. The Named Plaintiffs will seek to be designated as Settlement Class Representatives for the Settlement Class.

1.23 The term “**Net Settlement Amount**” means the Class Settlement Amount minus the combined total of any attorneys’ fees and costs approved by the Court, the amount for settlement administration costs approved by the Court, the Service Enhancements approved by the Court, and the PAGA Civil Penalties. The employer’s share of corporate payroll tax obligations on the “wage” portion of the settlement to the Settlement Class Members shall be paid *separate and apart* by Defendant.

1.24 The term “**Notice**” means a document which has been agreed to by the Parties and subject to the Court’s approval and which the Claims Administrator will mail to each Settlement Class Member, in both English and Spanish, explaining the terms of the Settlement, their respective weeks worked during the Class Period, their eligibility status regarding being an LC 203 Subclass Class Member and Aggrieved Employee, their estimated Class Settlement Share, their estimated share of the PAGA Bounty, the opt-out procedure, the objection procedure, and the procedure related to disputing the stated number of eligible workweeks/LC 203 Subclass eligibility during the Class Period.

1.25 The term “**Notice and Administration Costs**” or “**Settlement Administration Costs**” means all costs incurred by the Claims Administrator, including but not limited to the cost to: compare the class list against the National Change of Address (“NCOA”) database maintained by the United States Postal Service; typeset, translate into Spanish, print, and mail the Notice to all Class Members in both English and Spanish; perform skip-tracing of

1 returned mailings; calculating, tabulating, and mailing out payments to Class Members;  
2 payment of postage required to comply with this Agreement; responding to Class Member  
3 inquiries and addressing any challenges to the number of workweeks or LC 203 Subclass;  
4 and all other expenses, including tax reporting and fees to be paid by the Claims  
5 Administrator, necessary to administer the Settlement in accordance with this Agreement.  
6 Settlement Administration Costs shall not exceed \$9,000.

7 1.26 The term “**Opt-Out Letter**” refers to a written request to “opt-out” or “exclude” oneself  
8 from the portion of the Settlement pertaining to the Class Action Claims and from the Class  
9 Release. A Class Member must submit an opt-out letter to the Claims Administrator to  
10 exclude himself or herself. Those who submit a valid and timely Opt-Out Letter will not  
11 be considered part of the Settlement Class after their valid and timely Opt-Out Letter is  
12 received by the Claims Administrator and will have no standing to object to the Settlement.

13 1.27 The term does not apply to Aggrieved Employees. Aggrieved Employees are not able to  
14 opt-out from receiving their share of the PAGA Bounty or being bound by the PAGA  
15 Release.

16 1.28 “**Order Granting Final Approval of Class Action Settlement**” shall mean the order and  
17 judgment to be entered by the Court titled “Order Granting Motion for Final Approval of  
18 Class Action Settlement” and “Judgment.” The “Judgment,” shall constitute approval  
19 pursuant to California Rule of Court 3.769(a).

20 1.29 The term “**Parties**” means the Named Plaintiffs and Defendants.

21 1.30 The term “**PAGA**” means the California Labor Code Private Attorneys General Act  
22 (California Labor Code §§ 2698, *et seq.*).

23 1.31 The term “**PAGA Bounty**” means twenty-five percent (25%) of the PAGA Civil Penalties,  
24 which amounts to \$50,000, which will be payable to Aggrieved Employees.

25 1.32 The term “**PAGA Civil Penalties**” means the \$200,000 of the Class Settlement Amount  
26 that has been set aside by the Parties as civil penalties pursuant to PAGA.

27 1.33 The term “**PAGA Period**” means the time period of August 2, 2019 *through* September 30,  
28 2021.

- 1.34 ***“Released Parties”*** means Defendants, their shareholders, officers, directors, agents, current and former employees, partners, attorneys, insurers, ERISA plan administrators, subsidiaries, affiliates, and their respective predecessors, successors, and assigns.
- 1.35 ***“Released Class Claims”*** are the class action claims released by Claimants as defined in paragraph 7.1, below.
- 1.36 ***“Released PAGA Claims”*** are the PAGA claims being released by the LWDA and Aggrieved Employees as defined in paragraph 7.2, below.
- 1.37 The term ***“Service Enhancement”*** means the amount of money to be requested by Class Counsel on behalf of Named Plaintiffs Nejdeh Vartanian and Carlos Aguilar, Jr., subject to Court approval, to compensate Named Plaintiffs for the efforts and risks they undertook on behalf of the Settlement Class.
- 1.38 The term ***“Settlement”*** means the compromise and settlement of the Litigation, as contemplated by this Agreement.
- 1.39 The term ***“Settlement Class”*** means all Claimants.
- 1.40 The term ***“Settlement Class Period”*** means the period of time from July 27, 2016 *through* September 30, 2021.
- 1.41 The term ***“Settlement Class Representatives”*** means Nejdeh Vartanian and Carlos Aguilar, Jr., who Class Counsel shall request be appointed by the Court as Class Representatives for purposes of the Settlement Class.
- 1.42 The term ***“Settlement Disbursement Payment”*** means the disbursements made by the Claims Administrator to Settlement Class Members, Aggrieved Employees, Class Counsel, the Settlement Class Representatives, the Claims Administrator, and the LWDA, pursuant to the Settlement, as specified in Section 6.3, below.
- 1.43 ***“Final Effective Date”*** or ***“Effective Date”*** refers to the date by which the following has occurred: (1) if no objections have been filed, the date of the Final Approval Order and Judgement; or (2) if objections are filed and overruled, and no appeal is taken, the Effective Date will be 65 calendar days after the entry of Judgment; or (3) in the event of an appeal from the Court’s overruling of objections to the settlement, then the Effective Date will be

20 calendar days after the appeal is dismissed or after an appellate decision affirming the Judgment become final and non-appealable. For purposes of determining the Final Effective Date, the Parties agree that only California Courts have jurisdiction over any such appeals, except for any appellate procedure over which the United States Supreme Court may exercise jurisdiction.

2. **RECITALS**

2.1 On November 30, 2020, Plaintiff Carlos Aguilar, Jr. filed suit in the Superior Court of the State of California, County of Los Angeles, against Defendant Forrest Machining, Inc. (*Case No. 20STCV45450*) on behalf of a proposed class of all non-exempt hourly employees working in the State of California at any time since November 30, 2016, for multiple wage and hour claims, including but not limited to, failure to pay all straight-time and overtime wages for all work performed; failure to provide compliant duty-free meal breaks; failure to provide compliant duty-free rest periods; failure to reimburse all incurred business expenses; and, derivative claims for the failure to provide accurate itemized wage statements and failure to pay all wages upon separation of employment; and claims under the Business & Professions Code § 17200, *et seq.* (“UCL”). On November 30, 2020, Plaintiff Aguilar, Jr. submitted a notice of new claim to the Labor and Workforce Development Agency (“LWDA”) in order to pursue a claim under the Private Attorneys General Act (“PAGA”) based on the same claims. On March 29, 2021, Plaintiff Aguilar, Jr. filed a First Amended Complaint (“FAC”) to include his PAGA claim. This case was originally assigned to the Honorable Daniel J. Buckley (Dept. 1). Counsel for Plaintiff Aguilar, Jr. and Counsel for Defendant Forrest Machining, Inc. appeared on March 23, 2021, for the Initial Status Conference before Judge Buckley. Thereafter, and based on the earlier filed *Vartanian* action, this matter was transferred to the Honorable Elihu Berle (Dept. 6) and was designated a “related” action.

On July 27, 2020, Plaintiff Nejdeh Vartanian filed suit in the Superior Court of the State of California, County of Los Angeles, against Defendants Forrest Machining, Inc.; Joanne Butler; Robert Butler; Steve Wooten; and Kenneth McPherson (*Case No.*

1 20STCV28138) on behalf of a proposed class of all current and former non-exempt  
2 employees of Defendants who were employed by Defendants in the State of California  
3 during the Class Period, for multiple wage and hour claims, including but not limited to,  
4 failure to provide compliant duty-free meal breaks; failure to pay all overtime wages;  
5 failure to provide accurate itemized paystubs and failure to pay all wages upon separation  
6 of employment; and claims under the Business & Professions Code § 17200, *et*  
7 *seq.*(“UCL”). On July 29, 2020, Plaintiff submitted a notice of new claim to the Labor  
8 and Workforce Development Agency (“LWDA”) in order to pursue a claim under the  
9 Private Attorneys General Act (“PAGA”) based on the same claims. On October 5,  
10 2020, Plaintiff Vartanian filed a First Amended Complaint (“FAC”) to include his PAGA  
11 claim and to exclude Vigen Zadourian.

12 Plaintiff Vartanian initiated formal discovery in October 2020, following the  
13 lifting of the plenary stay on his case. In response to Vartanian’s Counsel’s formal  
14 discovery requests, Defendants,’ through prior defense counsel, produced the Class List  
15 and some responsive documents. Vartanian’s Counsel then interviewed several Class  
16 Members and continued to seek responsive documents from Defendants. In February  
17 2020, Defendants and Vartanian then agreed to mediate the case with mediator Steven  
18 Rottman, Esq. and Defendants agreed to produce more documents in advance of  
19 mediation.

20 On July 15, 2021, after an exchange and analysis of documents and data, the  
21 Parties attended a private mediation before a well-respected and experienced wage and  
22 hour class action mediator, Steven Rottman, Esq. After a full-day mediation the parties  
23 were able to reach an agreement on the principal terms and executed a Memorandum of  
24 Understanding which called for an “all-in” non-reversionary settlement amount of Three  
25 Million Five Hundred Thousand Dollars (\$3,500,000.00), with the corporate payroll tax  
26 obligation on the "wage" portion of the settlement to the Settlement Class Members to be  
27 paid separate and apart by Defendants.

28 2.2 Named Plaintiffs and their counsel believe this Litigation is meritorious based on



1 applicable law or an extension thereof. Class Counsel represents that they have conducted  
2 a thorough investigation into the facts of this case and have diligently pursued an  
3 investigation of the claims against Defendants. Based on their own independent  
4 investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair,  
5 reasonable, and adequate and is in the best interest of the Class Members in light of all  
6 known facts and circumstances, including the risk of significant delay, the defenses  
7 asserted by Defendant, class certification risk, trial risk, and appellate risk.

8 2.3 Defendants have also actively investigated the facts surrounding the claims brought by  
9 Plaintiffs on behalf of the putative class and have actively and aggressively defended  
10 themselves from said claims. Defendants deny any liability or wrongdoing of any kind  
11 associated with the claims alleged. Defendants further assert that they have complied with  
12 all applicable provisions of California statutory, regulatory, and common law and had a  
13 good faith belief based on existing law that its practices were and are in compliance.  
14 Defendants also have denied and continue to deny, *inter alia*, the allegations that the Class  
15 Members have suffered damage; that Defendants in any way failed to pay Class Members  
16 for all hours worked and at the lawful rate of pay; that Defendants violated any laws  
17 regarding compensation; that Defendants failed to timely pay Class Members all wages  
18 owed upon termination/resignation or otherwise when due; that Defendants failed to  
19 comply with the law with respect to itemized wage statements; that Defendants violated  
20 the law regarding meal breaks and rest periods; that Defendants failed to reimburse all  
21 incurred business expenses; that Defendants engaged in any unlawful, unfair or fraudulent  
22 business practices; that Defendants engaged in any wrongful conduct as alleged in the  
23 Litigation; or that Class Members were harmed by the conduct alleged in the Litigation.  
24 Neither this Agreement, nor any document referred to or contemplated herein, nor any  
25 action taken to carry out this Agreement, is, may be construed as, or may be used as an  
26 admission, concession or indication by or against Defendants of any fault, wrongdoing or  
27 liability whatsoever.

28 2.4 The entry of Final Judgment in this Litigation shall resolve all claims that were alleged in

1 the operative First Amended Complaints filed in the Litigation, or which could have been  
2 alleged based upon the facts set forth in the operative First Amended Complaints, with the  
3 exception of any claims which might be retained by Settlement Class Members who  
4 exclude themselves from the Settlement. The Parties agree to cooperate and take all steps  
5 necessary and appropriate to obtain preliminary and final approval of this Settlement, and  
6 to effectuate its terms.

7 2.5 Each of the forgoing Recitals is incorporated into this Agreement as if fully set forth in the  
8 body of the Agreement.

9 **3. CERTIFICATION OF SETTLEMENT CLASS**

10 3.1 The Settlement Class shall consist of *all current and former non-exempt employees of*  
11 *FMI in California during the Settlement Class Period.*

12 3.2 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class  
13 is a conditional certification for settlement purposes only, and that if, for any reason, the  
14 Court does not grant final approval of the Settlement, or if final approval is not given  
15 following the appeal of any order by the Court, or if for any reason the Settlement Effective  
16 Date does not occur, the certification of the Settlement Class for settlement purposes shall  
17 be deemed null and void without further action by the Court or any of the Parties, each  
18 Party shall retain all of their respective rights and shall be returned to their relative legal  
19 positions as they existed prior to execution of this Agreement, and neither this Agreement,  
20 nor any of its accompanying exhibits or any orders entered by the Court in connection with  
21 this Agreement shall be admissible or used for any purpose in this Litigation or any other  
22 legal proceeding, except for the enforcement of same.

23 3.3 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class  
24 for settlement purposes is in no way an admission by Defendants that class certification is  
25 proper in any other wage and hour litigation, or any other litigation, against Defendants.

26 **4. TERMS OF SETTLEMENT**

27 4.1 Subject to the other terms and conditions contained in this Agreement, and in consideration  
28 of the contemplated pleadings, releases and dismissals set forth in this Agreement, and

1 subject to Court approval, Defendants agree that the Class Settlement Amount shall be  
2 Three Million Five Hundred Thousand Dollars (\$3,500,000.00).

3 4.1.1 Defendants will provide the Claims Administrator with all names, last known home  
4 mailing addresses, social security numbers, and hire and separation dates for each  
5 Class Member within five (5) business days of the Court granting Preliminary  
6 Approval of the settlement, so the Claims Administrator can determine the number  
7 of workweeks for each Class Member during the Class Period, as well as their LC  
8 203 Subclass and PAGA Bounty eligibility.

9 4.2 Each Aggrieved Employee shall receive a pro-rata share of the PAGA Bounty based upon  
10 a percentage equal to the number of his/her pay periods worked (rounded up to the next  
11 whole number) during the PAGA Period divided by the total aggregate of all Aggrieved  
12 Employees' pay periods worked during the PAGA Period. Each Aggrieved Employee will  
13 be issued a check for his/her pro-rata share of the PAGA Bounty regardless of whether  
14 he/she opts-out of the Settlement. Except for those Class Members who opt-out of the  
15 Settlement, all Settlement Class Members shall recover a share of the Net Settlement  
16 Amount. The Net Settlement Amount shall be allocated as set forth below:

17 4.2.1 Each Settlement Class Share shall be a pro-rata share based upon a  
18 percentage equal to the number of each Claimant's weeks worked  
19 (rounded up to the next whole number) during the Class Period divided  
20 by the total aggregate of all Settlement Class Members' weeks worked  
21 during the Class Period. Each Settlement Class Share shall be calculated  
22 by multiplying the Net Settlement Amount, less all amounts to be paid to  
23 the LC 203 Subclass, as addressed in Subsection 4.2.2 below, by a  
24 fraction, the numerator of which is the Claimant's weeks worked during  
25 the Class Period, and the denominator of which is the total of all aggregate  
26 weeks worked during the Settlement Class Period by all Settlement Class  
27 Members during the Settlement Class Period. The resulting number shall  
28 be the amount that each Claimant is eligible to receive, notwithstanding

any additional amount as a Member of the LC 203 Subclass.

4.2.2 The Parties agree to allocate the sum of Five Hundred Dollars (\$500.00) to each Settlement Class Member who is also an LC 203 Subclass Member for purposes of California Labor Code Section 203 penalties (the “Section 203 Settlement Amount”), which shall be deducted before the Net Settlement Amount is allocated across Settlement Class Members based on the number of weeks worked, in Paragraph 4.2.1. In the event the Court determines that the Section 203 Settlement Amount needs to be modified in some manner, the Parties mutually agree to cooperate to make said revision and reallocation within the Net Settlement Amount, without the necessity for a revised Settlement Agreement.

4.2.3 The anticipated share of each Class Member who elects to “opt-out” of the Settlement shall be distributed on a *pro rata* basis to all Settlement Class Members. Likewise, the anticipated share of each respective LC 203 Subclass Member who elects to “opt-out” of the Settlement shall be included in the Net Settlement Amount and distributed on a *pro rata* basis to all Settlement Class Members.

4.3 Class Counsel may request, subject to Court approval, that the Settlement Class Representatives be paid a maximum Service Enhancement of up to Twelve Thousand Five Hundred Dollars (\$12,500.00) each, which shall be paid from the Class Settlement Amount. This request shall not be opposed by Defendants. In the event the Court does not award the full requested Service Enhancements, the remainder shall be re-distributed on a *pro rata* basis to all participating Settlement Class Members. The Service Enhancements shall be paid to Plaintiff Nejdeh Vartanian and Plaintiff Carlos Aguilar, Jr. in addition to their *pro rata* shares of the Net Settlement.

4.4 Class Counsel shall apply to the Court for an award of Attorneys’ Fees and Costs, which shall be paid from the Class Settlement Amount. Defendants will not oppose Class Counsel’s application for an award of Attorneys’ Fees in an amount up to thirty-five

1 (35.00%) of the Class Settlement Amount comprising One Million Two Hundred Twenty-  
2 Five Thousand Dollars (\$1,225,000), plus Costs not to exceed Thirty Thousand Dollars  
3 (\$30,000.00). In the event the Court does not award the full requested Attorneys' Fees or  
4 Costs, the remainder(s) shall be re-distributed on a *pro rata* basis to all participating  
5 Settlement Class Members.

6 4.4.1 The Parties agree that the Court's approval or denial of any request for  
7 Attorneys' Fees and Costs or the Named Plaintiffs' Service Enhancements  
8 are not conditions to this Agreement and are to be considered by the Court  
9 separately from the fairness, reasonableness, adequacy, and good faith of  
10 the settlement. Any order or proceeding relating to the application by Class  
11 Counsel of an award for Attorneys' Fees and Costs or for Service  
12 Enhancement shall not operate to terminate or cancel this Agreement.

13 4.4.2 Class Counsel agree that they are responsible for allocating the Attorneys'  
14 Fees and Costs approved by the Court among themselves and any other  
15 counsel that may have any other agreement with them. If a lien is asserted,  
16 the Claims Administrator will tender the Attorneys' Fees and Cost award to  
17 the Court and shall thereafter be released from any claim related to those  
18 payments. Class Counsel warrants and represents that there are no liens on  
19 the amounts to be paid pursuant to the terms of this Agreement and that no  
20 assignments of the claims to be released or the Attorneys' Fees and Costs  
21 to be paid pursuant to this Agreement have been made or attempted. Class  
22 Counsel agrees to defend, indemnify and hold harmless Defendants from  
23 any liability resulting from a breach of these representations and/or any lien  
24 or assignment.

25 4.5 The Parties agree that, subject to Court approval, payment to the Claims Administrator  
26 shall not exceed Nine Thousand Dollars (\$9,000.00). The Claims Administration Costs  
27 shall be paid from the Class Settlement Amount. In the event the Settlement Effective Date  
28 does not occur, any portion of the Settlement Administration Costs already incurred by the

1 Claims Administrator shall be allocated so that Class Counsel and Defendants will each be  
2 responsible for one-half of said expenses. Any dispute relating to the Claims  
3 Administrator's ability and need to perform its duties shall be referred to the Court if it  
4 cannot be resolved by the Parties. The Claims Administrator shall regularly and accurately  
5 report to the Parties, in written form when requested, on the substance of the work  
6 performed. To the extent that the Claims Administrator Costs ultimately exceed \$9,000.00  
7 and are approved by the Court, any additional amount will be deducted from the Class  
8 Settlement Amount.

9 4.6 The Parties agree that Claims paid to Claimants shall be correctly and appropriately  
10 allocated as follows:

11 4.6.1 The entirety of the Section 203 Settlement Amount shall be allocated as "penalties"  
12 and characterized as 1099 income. The entirety of the PAGA Bounty paid to the  
13 Aggrieved Employees shall be allocated as "penalties" and characterized as 1099  
14 income.

15 4.6.2 Of the Net Settlement Amount remaining and to be distributed *pro rata* based on  
16 workweeks, 20% shall be allocated to "wages," and 80% shall be allocated to  
17 "penalties and interest," such that 1/5 shall be characterized as W-2 income and 4/5  
18 shall be characterized as 1099 income. Defendants share of any employer-side  
19 payroll taxes allocated to the payment of "wages" will be calculated based on the  
20 portion allocated to the payment of wages and paid by Defendants separate and  
21 apart from the Class Settlement Amount. The Claims Administrator will be  
22 responsible for calculating and paying the payroll taxes and withholdings owed,  
23 after informing Defendants of the specific amount required to be paid for the  
24 corporate payroll tax obligation.

25 4.6.3. Tax Liability. Defendants make no representation as to the tax treatment or legal  
26 effect of the payments called for hereunder, and Settlement Class Representatives  
27 are not relying on any statement or representation by Defendants in this regard.  
28 Settlement Class Representatives understand and agree that Class Members will be

solely responsible for the sufficiency of the payment of employee's taxes predicated on the payments described herein, with the understanding that the Claims Administrator is distributing the payroll tax withholdings and employers' share of the wage portion of the payments, but making any tax payment for the penalties / interest.

4.7 The Parties agree to allocate a total of Two Hundred Thousand Dollars (\$200,000.00) towards PAGA Civil Penalties. The Claims Administrator shall issue and mail a check to the LWDA for the LWDA Payment in the amount of One Hundred Fifty Thousand Dollars (\$150,000) (*i.e.* 75% share). The allocated PAGA Civil Penalties shall be paid from the Class Settlement Amount. Should the Court at the Preliminary Approval hearing, or the LWDA, deem that additional PAGA Civil Penalties need to be allocated, the Parties agree to revise the allocated PAGA Civil Penalties amount as deemed necessary without the need for a revised Settlement Agreement, the funds of which shall be paid from the Class Settlement Amount.

4.8 The payments made to Claimants pursuant to this Agreement are not being made for any other purpose and shall not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation, and no benefit, including but not limited to pension and/or 401(k), shall increase or accrue as a result of any payment made as a result of this Settlement or Agreement.

4.9 Checks issued to Claimants pursuant to this Agreement shall remain negotiable for a period of one-hundred eighty (180) days from the date of mailing by the Claims Administrator. Thereafter, the Claims Administrator shall cancel any uncashed checks and the corresponding amount shall be sent in the Claimant's name to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure §§ 1500, *et seq.*, in the name of the Claimant and for the benefit of the Claimant until the Claimant claims his or her property. The Parties agree that this disposition results in no "unpaid residue or unclaimed or abandoned class member funds" as discussed in California Code of Civil Procedure section 384, subd.(b). The Parties agree and

1 acknowledge that such uncashed funds shall be in a non-interest bearing Qualified  
2 Settlement Fund Account created pursuant to Internal Revenue Code Section 1.468B-1 up  
3 until the time of disbursement to the Controller of the State of California. No interest will  
4 have accrued prior to disbursement because the account has to be a checking account (non-  
5 interest bearing) in order to disburse. The Parties understand and agree that because no  
6 interest will have accrued on the uncashed funds prior to disbursement there will be no  
7 obligation on the part of Defendant, the Claims Administrator, or any other person to pay  
8 any interest upon disbursement of the uncashed funds to the Controller of the State of  
9 California under California Code of Civil Procedure Section 384.

10 **5. NOTICE OF THE SETTLEMENT**

11 5.1 Within five (5) business days after the Court grants preliminary approval of this Settlement,  
12 Defendants shall provide to the Claims Administrator a listing of all Class Members,  
13 including the following information/data, in a Microsoft Excel spreadsheet: 1) full name;  
14 2) last known home mailing address; 3) telephone number (*if available*); 4) Social Security  
15 Number; and 5) dates of employment as a Class Member (including all separations and re-  
16 hires during the Class Period); in order for the Claims Administrator to be able to calculate  
17 the workweeks/payperiods (rounded-up to the next whole number), LC 203 Subclass  
18 Eligibility, PAGA Bounty eligibility, and each Class Member's anticipated share of the  
19 Net Settlement Amount and the PAGA Bounty (hereinafter the "*Class List*"). The "*Class*  
20 *List*" shall be based on the data kept in the ordinary course of business in Defendants'  
21 business records. The Parties agree that the contents of the Class List are confidential and  
22 shall not be shared with third parties other than the Claims Administrator, who shall also  
23 agree to maintain the confidentiality of the Class List and agree the Class List shall not be  
24 used for any purpose other than to administer the Class Settlement.

25 5.2 Subject to Court approval, the "Notice" shall be sent by the Claims Administrator to all  
26 Class Members, in both English and Spanish, by first class mail within five (5) business  
27 days of receipt of the Class List, except that the Notices relating to Named Plaintiffs shall  
28 be emailed to Class Counsel.



5.3 Prior to mailing the Notice, the Claims Administrator shall process the Class List against the National Change of Address (“NCOA”) Database maintained by the United States Postal Service (“USPS”). It shall be conclusively presumed that if the Notice is not returned as “undeliverable,” the Settlement Class Member received the Notice Packet. With respect to Notice Packets that are returned as “undeliverable,” if a forwarding address is provided by the USPS, the Claims Administrator shall re-mail the Notice within three (3) business days. If a Notice is “undeliverable” and no forwarding address is provided, the Claims Administrator shall employ a more substantive skip-tracing procedure in order to obtain updated address information and shall re-mail the Notice to those Settlement Class Members for whom a new address is located. All such re-mailing shall occur within (7) days of the Administrator’s receipt of the returned notice and no later than the last day of the Claims Period. In the case of such re-mailing, the Claims Deadline shall be the later of (i) the original deadline, or (ii) fourteen (14) calendar days from the date of re-mailing. If the Notice is returned after skip-tracing and re-mailing occurs, there shall be no further skip-tracing but the Settlement Class Member shall still be bound by the release set forth in Paragraph 7.1 and all other terms of this Settlement.

**6. OPT-OUT, OBJECTION, AND DISTRIBUTION PROCESS**

6.1 The Notice shall set a date of sixty (60) calendar days from the original mailing date as the deadline by which members of the Class may submit their Opt-Out Letter, objection to the Settlement, or dispute related to the stated weeks worked during the Settlement Class Period and/or LC 203 Subclass eligibility. No opt-out requests or objections will be honored if postmarked after the Claims Deadline. All written Opt-Out Letters shall be sent to the Claims Administrator only. All written Objections shall be sent to the Claims Administrator only. If a claimant mistakenly sends a written Opt-Out Letter or written Objection to Class Counsel, or to Defense Counsel, the respective party will forward the documents, including the mailing envelope evidencing the postmark date, to the Claims Administrator as soon as possible.

6.2 Each Class Member who does not opt-out of the Settlement shall automatically be entitled

1 to their respective share of the Settlement. The amount that each Settlement Class Member  
2 is eligible to receive under this Settlement shall be determined in accordance with the  
3 formula set forth in Subsection 4.2.

4 6.3 Defendants will provide the Claims Administrator with sufficient funds via wire transfer  
5 to pay the Class Settlement Amount within thirty (30) calendar days of the Final Effective  
6 Date. No later than seven (7) calendar days after Defendants provide the Claims  
7 Administrator with sufficient funds via wire transfer to pay the Class Settlement Amount,  
8 the Claims Administrator shall disburse the Settlement Disbursement Payments, as  
9 specified in this Agreement and approved by the Court.

10 6.4 Three (3) calendar days before the Settlement Disbursement Payment, Class Counsel shall  
11 deliver to the Claims Administrator written instructions signed by Class Counsel that  
12 describe the manner and mode of payment of such attorneys' fees and costs (and, in the  
13 absence of such instructions, such attorneys' fees and costs shall be sent by U.S. Mail), and  
14 a fully-executed Form W-9 with respect to each entity to whom the attorney's fees and  
15 costs shall be paid. The Claims Administrator will issue to Class Counsel an IRS Form  
16 1099 for such amounts paid for attorneys' fees under this Settlement.

17 6.5 Opt-Out Letters.

18 6.5.1 A Class Member who wishes to opt-out from this Settlement, and from the release  
19 of claims pursuant to this Settlement, shall submit a signed, written "Opt-Out  
20 Letter" directly to the Claims Administrator. The Opt-Out Letter must include the  
21 Settlement Class Member's full legal name, home address, telephone number, and  
22 last four digits of their social security number (*for identity verification purposes*)  
23 and must state in substance: "I have read the Notice and I wish to opt out of the  
24 Settlement reached in the Vartanian and Aguilar, Jr. cases against FMI (Lead Case  
25 No. 20STCV28138)." The Parties to this Agreement and their counsel agree that  
26 they will not solicit or encourage Class Members to opt-out or to object to this  
27 Settlement Agreement. No later than 7 calendar days after the Claims Deadline,  
28 the Claims Administrator shall promptly send a copy/scan of any Opt-Out Letter

(including a copy/scan of the mailing envelope) to Class Counsel and Defense Counsel. For an Opt-Out Letter to be accepted it must be timely and valid. To be timely it must be postmarked by the Claims Deadline.

6.5.2 A Settlement Class Member who submits an Opt-Out Letter is not eligible to recover a share of the Net Settlement Amount. Further, a Settlement Class Member who submits an Opt-Out Letter shall have no standing to object to the Settlement, or to appear at the Final Approval Hearing.

6.5.3 The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Class Counsel and Defense Counsel promptly upon request. The Claims Administrator shall retain the originals of all Opt-Out Letters (including the envelopes with the postmarks) received and shall make copies or the originals available to Class Counsel or Defendants Counsel upon request.

6.6 Objection to Settlement. A Settlement Class Member who has not opted-out of the Settlement who wishes to object to the Settlement must notify the Claims Administrator of their objection, in writing, on or before the Claims Deadline. The objection must state the Settlement Class Member's: (i) full legal name, home address, telephone number, last four digits of their social security number (*for identity verification purposes*); (ii) the words "Notice of Objection" or "Formal Objection"; (iii) in clear and concise terms the legal and factual arguments supporting the objection; (iv) a list identifying the witness(es) the objector may call to testify at the Final Approval Hearing; and (v) true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing. Any Settlement Class Member who fails to make a written objection may still appear at the Final Approval Hearing to make a verbal objection. Any Settlement Class Member who fails to make an objection at the Final Approval Hearing shall be deemed to have waived his or her right to object to the Settlement. Any Settlement Class Member whose objection is overruled will be deemed to be subject to the terms of this Settlement and the Court's Order of Final Approval. Any Class Member who "opts-out" of the Settlement shall not

1 have standing to “object” to the Settlement, or to appear at the Final Approval hearing.

2 6.7 All Class Members who do not timely request exclusion from the Settlement will  
3 automatically receive payment under this Settlement as described above in Subsection 4.2,  
4 which will be in the form of a Settlement Payment check and shall be bound by the release  
5 set forth in Paragraph 7.1 and all other pertinent terms of the Settlement.

6 6.8 In the event that Final Approval of this Settlement Agreement is not granted by the Court,  
7 neither the Settlement Agreement, nor any documents related to this Settlement or  
8 negotiations leading to the Settlement may be used as evidence for any purpose, and  
9 Defendants shall retain the right to challenge all claims and allegations in the Litigation,  
10 including but not limited to challenging class certification for any purpose other than  
11 settlement, and to assert all applicable defenses.

12 6.9 Should the Court decline to approve this Agreement in any material respect (except for  
13 approval of the award of Class Counsel’s Attorneys’ Fees and Costs or the class  
14 representative’s Service Enhancements, or the PAGA Civil Penalties), Defendants shall  
15 have no obligation to make any payment under this Agreement, and in the event that  
16 Defendants have made any such payment, such monies shall be returned promptly by the  
17 Claims Administrator to Defendants (minus Defendants’ one-half share of any  
18 Administration Costs already reasonably incurred by the Claims Administrator; the other  
19 one-half share of any Administration Costs to be paid by Class Counsel).

20 7. **COMPREHENSIVE WAIVER AND RELEASE**

21 7.1 **Released Class Claims.** Upon full payment by Defendants of the Class Settlement  
22 Amount (plus employer-side taxes) to the Claims Administrator, and in exchange for the  
23 consideration provided herein, the Settlement Class Members hereby forever and  
24 completely release and discharge the Released Parties from the following claims:

25 7.1.1. Claimants shall release the Released Parties from any and all claims, rights,  
26 demands, damages, debts, accounts, duties, costs including attorneys’ fees (other  
27 than those costs and fees required to be paid pursuant to this Settlement  
28 Agreement), liens, charges, complaints, causes of action, obligations, liabilities,

1 penalties, interest, or causes of action arising during the Settlement Class Period  
2 that were alleged in the operative First Amended Complaints (collectively the  
3 “FAC”) in either the *Nejdeh Vartanian Action* (Case No. 20STCV28138) or the  
4 *Carlos Aguilar, Jr. Action* (Case No. 20STCV45450) or that could have been  
5 alleged or otherwise raised based on the factual allegations pled in the operative  
6 pleading in the Lawsuits, including claims that have been or could have been pled  
7 as wage and hour violations under California law based on the factual allegations  
8 set forth in the operative pleadings in the Lawsuit, including without limitation: (i)  
9 any and all claims involving any alleged failure to pay minimum, straight-time  
10 and/or overtime wages for work performed at the lawful rate of pay; (ii) any and all  
11 claims involving any alleged failure to authorize and permit legally compliant rest  
12 periods, or to pay premiums for non-compliant rest periods, or to pay such  
13 premiums at the regular rate of compensation; (iii) any alleged claims involving  
14 any alleged failure to provide legally compliant meal breaks, or to pay premiums  
15 for non-compliant meal periods, or to pay such premiums at the regular rate of  
16 compensation; (iv) any and all claims involving any alleged failure to pay all owed  
17 wages each and every pay period; (v) any and all claims involving any allegation  
18 that Defendants allowed or required employees to bear any of the costs associated  
19 with the operation of Defendants business, including but not limited to any claims  
20 arising under California Labor Code §§ 2800 and 2802; (vi) any and all claims  
21 involving any alleged failure to timely pay wages, including but not limited to any  
22 claim that Defendants violated California Labor Code §§ 201 or 202, and any claim  
23 for waiting time penalties under California Labor Code § 203; (vii) any and all  
24 claims involving any alleged failure to keep accurate records or to issue proper  
25 wage statements to employees, including but not limited to any claim that  
26 Defendants wage statements do not comply with California Labor Code § 226;  
27 (viii) any and all claims for failure to comply with the Unfair Competition Law  
28 (Business and Professions Code § 17200 *et seq.*); and (ix) all damages, penalties,

1 interest, costs (including attorneys' fees) and other amounts recoverable under said  
2 claims or causes of action as to the facts and/or legal theories alleged or which could  
3 have been pled as wage and hour violations under California law based on the  
4 factual allegations set forth in the operative Complaint (collectively, the "**Released**  
5 **Class Claims**"). The Released Class Claims also covers all claims for interest,  
6 attorneys' fees and costs related to the Class Action and all claims for failure to  
7 timely pay final wages to all separated Class Members who are members of the LC  
8 203 Subclass. The Settlement Class Members will be deemed to have specifically  
9 acknowledged that this Release reflects a compromise of disputed claims. The  
10 Settlement Class Members also waive and release all claims for attorneys' fees and  
11 costs incurred by Settlement Class Members or by Class Counsel in connection  
12 with the Litigation and the Settlement of the Litigation.

13 7.2 **Released PAGA Claims.** Upon full payment by Defendants of the Class Settlement  
14 Amount (plus employer-side taxes) to the Claims Administrator, it is understood and  
15 agreed that Aggrieved Employees and Named Plaintiffs, both individually and on behalf  
16 of the LWDA, release the Released Parties from any and all claims for civil penalties that  
17 arose during the PAGA Period, as outlined in Named Plaintiffs' PAGA Notices dated July  
18 29, 2020 ("Vartanian") and November 30, 2020 ("Aguilar, Jr.") and attached as Exhibit 1  
19 to their respective First Amended Complaints, including claims for civil penalties relating  
20 to allegations of (collectively, the "**Released PAGA Claims**"): (1) unpaid minimum wages  
21 (Cal. Lab. Code § 2699); (2) unpaid overtime wages (Cal. Lab. Code § 2699); (3) failure  
22 to provide lawful meal periods (Cal. Lab. Code § 2699); (4) failure to provide lawful rest  
23 periods (Cal. Lab. Code § 2699); (5) penalties for not providing lawful wage statements  
24 (Cal. Lab. Code § 226.3); (6) untimely payment of wages (Cal. Lab. Code § 210); and (7)  
25 unreimbursed business expenses (Cal. Lab. Code § 2699).

26 7.3 **Release by Named Plaintiffs.** Upon full payment by Defendants of the Class Settlement  
27 Amount (plus employer-side taxes) to the Claims Administrator, Named Plaintiffs, in their  
28 individual capacities and with respect to their individual claims only, hereby agree to

1 release the Released Parties from all claims, demands, rights, liabilities and causes of action  
2 of any and every nature and description whatsoever, known or unknown, asserted or that  
3 might have been asserted, whether in tort, contract, or for violation of any state or federal  
4 statute, rule or regulation arising out of, relating to, or in connection with any act or  
5 omission by or on the part of any of the Released Parties committed or omitted prior to the  
6 execution hereof, including a waiver of California Civil Code § 1542.

7 7.3.1. This General Release includes any unknown claims that Named Plaintiffs do not  
8 know or suspect to exist in their favor at the time of the General Release, which, if  
9 known by them, might have affected their Settlement with, and release of, the  
10 Released Parties or might have affected their decision not to object to this  
11 Settlement or the General Release.

12 7.3.2. With respect to the General Release, Named Plaintiffs stipulate and agree that, upon  
13 the execution of this Agreement, they shall be deemed to have, and by operation of  
14 the Final Judgment shall have, expressly waived and relinquished, to the fullest  
15 extent permitted by law, the provisions, rights and benefits of Section 1542 of the  
16 California Civil Code, or any other similar provision under state or federal law as  
17 to the generally released claims. Section 1542 provides as follows:

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

24 **8. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL**

25 8.1 Upon execution of this Agreement, Class Counsel shall apply to the Court for the entry of  
26 an order granting Preliminary Approval of the Settlement substantially in the following  
27 form:  
28

8.1.1 Scheduling a Final Approval hearing on the question of whether the proposed

Settlement should be finally approved as fair, reasonable, and adequate as to the proposed Settlement Class;

8.1.2 Approving as to form and content the proposed Class “Notice;”

8.1.3 Directing the mailing of the Notice by first class mail, in English and Spanish, to the Settlement Class Members;

8.1.4 Preliminarily approving the Settlement; and

8.1.5 Approving Law Offices of Eric A. Boyajian, APC, Dychter Law Offices, APC, and United Employees Law Group, PC as Class Counsel, approving Mr. Nejdeh Vartanian and Mr. Carlos Aguilar, Jr. as Settlement Class Representatives, and approving Phoenix Settlement Administrators as the Claims Administrator.

8.2 Defendants and their counsel shall cooperate with Class Counsel as necessary to obtain Preliminary Approval and Final Approval of this Settlement.

8.3 In addition, concurrent with applying to the Court for the entry of an order granting Preliminary Approval of the Settlement, Class Counsel shall take all necessary steps to inform the LWDA of the Settlement Agreement in accordance with Labor Code section 2699(1)(2).

**9. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

9.1 Following Preliminary Approval by the Court of the Settlement, Class Counsel will submit a proposed Final Judgment. The proposed Final Judgment shall:

9.1.1 Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate and directing consummation of its terms and provisions;

9.1.2 Approve an award of attorneys’ fees and reimbursement of costs to Class Counsel;

9.1.3 Approve any Service Enhancement to the Settlement Class Representatives;

9.1.4 Certify the Settlement Class for settlement purposes only in accordance with Section 3 of this Agreement; and,

9.1.5 Permanently bar the Settlement Class Representatives and all Releasing Settlement Class Members from further prosecuting any of the Released Claims against



Defendants. Named Plaintiffs Nejdeh Vartanian and Carlos Aguilar, Jr. shall have been deemed to have executed a full and final release, pursuant to Civil Code Section 1542, and shall not be permitted to submit an opt-out or objection to the Settlement.

9.1.6 The Judgment will be published on the Administrator's website for one hundred twenty (120) days following the Effective Date

9.2 Defendants and their Counsel shall cooperate with Class Counsel as necessary to obtain Final Approval and the Court's final judgment.

9.3 Within ten (10) calendar days after either (1) Final Approval, if the Settlement is approved or (2) entry of order denying the Settlement, if the Court does not approve the Settlement, Plaintiff's Counsel will provide a copy of the Court's judgment or order to the LWDA pursuant to Labor Code section 2699(1)(3).

#### 10. **MUTUAL FULL COOPERATION**

10.1 The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to, execution of all necessary documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Agreement Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the Court's Final Judgment.

10.2 If a Party cannot reasonably comply with an obligation under this Agreement by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not be unreasonably withheld by the other Party.

#### 11. **STATEMENT OF NO ADMISSION**

11.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Defendants and Defendants deny

liability therefor. Nor shall this Agreement constitute an admission by Defendants as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation or the propriety of class certification for any purpose other than settlement. Likewise, nothing in this Agreement shall be construed or deemed an admission with regards to the validity of any of Defendants defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

11.2 This Agreement, and all related documents, and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement are settlement documents and shall be inadmissible in evidence and shall not be used for any purpose in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, including any wage and hour or other litigation against Defendants, for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement, and except as required by Court Order.

11.3 The Notice, Opt-Out Letters, and any other evidence produced or created by any Settlement Class Member in connection with the claims procedures pursuant to this Settlement, and any actions taken by Defendants in response to such Opt-Out Letters, the calculations by the Claims Administrator, or other evidence, do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Defendants of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

11.4 In the event that this Agreement is not approved by the Court, any appellate court, or otherwise fails to become effective and enforceable, or is terminated, Defendants will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Litigation.

## 12. VOIDING THE AGREEMENT

12.1 In the event that this Settlement is not approved, or if for any reason the Settlement

Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any wage and hour, or other litigation against Defendants.

12.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel are reduced, that finding shall not be a basis for rendering the entire Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs.

12.3 If more than ten percent (10%) of the Class Members submit valid and timely Opt-Out Letters, then Defendants, at their sole option, may withdraw from this Settlement by giving notice to Class Counsel and the Claims Administrator within three (3) business days of receipt by Defendants' Counsel of the final report of the number of opt-outs from the Claims Administrator after the Opt-Out Submission Deadline. If Defendants exercise such option, they will be solely responsible for all settlement administration costs.

### 13. **PARTIES' AUTHORITY**

13.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

### 14. **NO PRIOR ASSIGNMENTS**

14.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

### 15. **NOTICES**

15.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of: (i) the date given, if given by hand delivery; (ii) within one business day, if

sent by overnight delivery services such as Federal Express or similar courier; or (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given under this Agreement shall be addressed as follows:

**15.1.1 To the Class:**

Eric A. Boyajian, Esq.  
**Law Offices of Eric A. Boyajian, APC**  
450 N. Brand Blvd., Suite 600  
Glendale, CA 91203  
Telephone: (818) 839-5969  
Facsimile: (818) 296-9230  
E-Mail: eric@loeab.com

Alexander I. Dychter, Esq.  
**Dychter Law Offices, APC**  
180 Broadway, Suite 1835  
San Diego, CA 92101  
Telephone: (619) 487-0777  
Facsimile: (619) 330-1827  
E-Mail: alex@dychterlaw.com

Walter L. Haines, Esq.  
**United Employees Law Group, PC**  
5500 Bolsa Ave., Suite 201  
Huntington Beach, CA 92649  
Telephone: (562) 256-1047  
Facsimile: (562) 256-1006  
E-Mail: admin@uelglaw.com

**15.1.2 To Defendant:**

Daniel P. Hoffer, Esq.  
**VENABLE LLP**  
2049 Century Park East, Suite 2300  
Los Angeles, CA 90067  
Telephone: (310) 229-9900  
Facsimile: (310) 229-9901  
E-Mail: dphoffer@venable.com

**16. CONFIDENTIALITY**

16.1 Named Plaintiffs and Class Counsel agree that prior to the filing of the Motion for Preliminary Approval, they will keep the terms of this Settlement confidential except for purposes of communicating with Defendants or the Court. Except as set forth in Paragraph 16.2 below, any confidentiality associated with the terms of this Settlement shall expire upon the filing by Class Counsel of the Motion for Preliminary Approval with the Court, except that the negotiations and discussions preceding submission of the Settlement to the Court for preliminary approval shall remain strictly confidential, unless otherwise agreed to by the Parties or unless otherwise ordered by the Court.

16.2 Plaintiffs and Class Counsel agree not to issue a press release, or post on a website or any form of social media, or to advertise the terms of the settlement with Defendants.

1 Plaintiffs and Class Counsel further agree that if contacted by the press regarding this  
2 case, they will only state that the lawsuit exists and has been resolved.

3 17. **MISCELLANEOUS PROVISIONS**

4 17.1 Construction. The Parties agree that the terms and conditions of this Agreement are the  
5 result of lengthy, intensive arms-length negotiations between the Parties and that this  
6 Agreement shall not be construed in favor of or against any party by reason of the extent  
7 to which any party or her or his counsel participated in the drafting of this Agreement.

8 17.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are  
9 a matter of convenience and for reference, and in no way define, limit, extend, or describe  
10 the scope of this Settlement or any provision. Each term of this Agreement is contractual  
11 and not merely a recital.

12 17.3 Modification. This Settlement may not be changed, altered, or modified, except in a  
13 writing signed by the Parties, and approved by the Court. Notwithstanding the forgoing,  
14 the Parties agree that any dates contained in this Agreement may be modified by  
15 agreement of the Parties without Court approval if the Parties agree and cause exists for  
16 such modification. This Settlement may not be discharged except by performance in  
17 accordance with its terms or by a writing signed by the Parties.

18 17.4 Integration Clause. This Agreement and any other documents delivered pursuant hereto  
19 contain the entire agreement between the Parties relating to the resolution of the Litigation,  
20 and all prior or contemporaneous agreements, understandings, representations, and  
21 statements, whether oral or written and whether by a Party or such Party's legal counsel,  
22 are merged in this Agreement. No rights under this Settlement may be waived except in  
23 writing and signed by the Party against whom such waiver is to be enforced.

24 17.5 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of,  
25 the Parties and their respective heirs, trustees, executors, administrators, successors, and  
26 assigns.

27 17.6 Class Counsel and Settlement Class Representative Signatories. It is agreed that because  
28 the Settlement Class Members are so numerous, it is impossible or impractical to have

1 each Settlement Class Member execute this Settlement. The Notice will provide all  
2 Settlement Class Members with a summary of the Settlement and will advise all  
3 Settlement Class Members of the binding nature of the release. The Notice shall have the  
4 same force and effect as if this Settlement were executed by each Settlement Class  
5 Member.

6 17.7 Counterparts and Electronic Signatures. This Agreement may be executed by facsimile  
7 signature, *pdf* signature, or signature in compliance with the Uniform Electronic  
8 Transaction Act, and in any number of counterparts, and when each party has signed and  
9 delivered at least one such counterpart, each counterpart shall be deemed an original, and,  
10 when taken together with other signed counterparts, shall constitute one and the same  
11 Agreement, which shall be binding upon and effective as to all Parties.

12 17.8 Applicable Law. This Agreement shall be governed by California law without regard to  
13 its choice of law or conflicts of law principles or provisions.

14 17.9 Enforcement of the Settlement Agreement. In the event that one or more of the Parties to  
15 this Settlement Agreement institutes any legal action, arbitration, or other proceeding  
16 against any other party or Parties to enforce the provisions of this Settlement Agreement  
17 or to declare rights and/or obligations under this Settlement Agreement, the successful  
18 Party or Parties shall be entitled to recover from the unsuccessful Party or Parties  
19 reasonable attorneys' fees and costs, including expert witness fees incurred in connection  
20 with any enforcement actions.

21 17.10 Retention of Jurisdiction by the Court. Following approval of the Settlement and the  
22 Court's entry of the Order of Final Approval, the Court shall retain jurisdiction for the  
23 purpose of addressing any issues which may arise with respect to the administration of the  
24 Settlement or the enforcement of the Settlement's terms pursuant to California Code of  
25 Civil Procedure section 664.6.

26 ***[Signature Pages Follow]***

1 **IT IS SO STIPULATED.**

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**Individually and on behalf of the Class**

3

4 Dated: \_\_\_\_\_

\_\_\_\_\_  
Nejdeh Vartanian

5

6

**Individually and on behalf of the Class**

7

8 Dated: \_\_\_\_\_

\_\_\_\_\_  
Carlos Aguilar, Jr.

9

10 Dated: \_\_\_\_\_

**Defendant Forrest Machining, Inc.**

11

12

By: \_\_\_\_\_  
Kenneth McPherson  
Sr. Director Business  
Applications & IT

13

14 Dated: \_\_\_\_\_

**Defendant Kenneth McPherson**

15

16

By: \_\_\_\_\_  
Kenneth McPherson

17

18 Dated: 12/16/21

**Defendant Robert Butler**

19

20

By: Robert F. Butler  
Robert Butler

21

22 Dated: 12/16/21

**Defendant Joanne Butler**

23

24

By: Joanne Butler  
Joanne Butler

25

26 Dated: \_\_\_\_\_

**Defendant Steve Wooten**

27

28

By: \_\_\_\_\_  
Steve Wooten

1 **IT IS SO STIPULATED.**

2 **Individually and on behalf of the Class**

3  
4 Dated: \_\_\_\_\_

\_\_\_\_\_  
Nejdeh Vartanian


6 **Individually and on behalf of the Class**

7  
8 Dated: \_\_\_\_\_

\_\_\_\_\_  
Carlos Aguilar, Jr.

9  
10 Dated: 12/14/2021

**Defendant Forrest Machining, Inc.**

11  
12 By:   
Kenneth McPherson  
Sr. Director Business  
Applications & IT

13  
14 Dated: 12/14/2021

**Defendant Kenneth McPherson**

15  
16 By:   
Kenneth McPherson

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18 Dated: \_\_\_\_\_

**Defendant Robert Butler**

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20 By: \_\_\_\_\_  
Robert Butler

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22 Dated: \_\_\_\_\_

**Defendant Joanne Butler**

23  
24 By: \_\_\_\_\_  
Joanne Butler

25 Dated: 12/16/2021

**Defendant Steve Wooten**

26  
27 By: Steve Wooten  
Steve Wooten



1 ***APPROVED AS TO FORM AND CONTENT:***

2 **On Behalf of Plaintiffs and the Class**

3 Dated: \_\_\_\_\_

**Law Offices of Eric A. Boyajian, APC**

4  
5 By: \_\_\_\_\_  
Eric A. Boyajian, Esq.

6  
7 Dated: \_\_\_\_\_

**DYCHTER LAW OFFICES, APC**

8  
9 By: \_\_\_\_\_  
Alexander I. Dychter, Esq.

10  
11 Dated: \_\_\_\_\_

**United Employees Law Group, PC**

12  
13 By: \_\_\_\_\_  
Walter L. Haines, Esq.

14 **On Behalf of Defendants**

15  
16 Dated: 12/14/2021

**VENABLE LLP**

17 By: Kyle Klein  
18 Kyle P. Klein, Esq.  
19 Counsel for Defendants  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **IT IS SO STIPULATED.**

2 **Individually and on behalf of the Class**

3  
4 Dated: 12-14-2021



Nejdeh Vartanian

6 **Individually and on behalf of the Class**

7  
8 Dated: \_\_\_\_\_

Carlos Aguilar, Jr.

9  
10 Dated: \_\_\_\_\_

**Defendant Forrest Machining, Inc.**

11  
12 By: \_\_\_\_\_  
Kenneth McPherson  
Sr. Director Business  
Applications & IT

13  
14 Dated: \_\_\_\_\_

**Defendant Kenneth McPherson**

15  
16 By: \_\_\_\_\_  
Kenneth McPherson

17  
18 Dated: \_\_\_\_\_

**Defendant Robert Butler**

19  
20 By: \_\_\_\_\_  
Robert Butler

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22 Dated: \_\_\_\_\_

**Defendant Joanne Butler**

23  
24 By: \_\_\_\_\_  
Joanne Butler

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26 Dated: \_\_\_\_\_

**Defendant Steve Wooten**

27  
28 By: \_\_\_\_\_  
Steve Wooten

1 **IT IS SO STIPULATED.**

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**Individually and on behalf of the Class**

\_\_\_\_\_  
Nejdeh Vartanian

**Individually and on behalf of the Class**

  
\_\_\_\_\_  
Carlos Jr Aguilar (Dec 14, 2021 17:50 PST)

Carlos Aguilar, Jr.

**Defendant Forrest Machining, Inc.**

By: \_\_\_\_\_  
Kenneth McPherson  
Sr. Director Business  
Applications & IT

**Defendant Kenneth McPherson**

By: \_\_\_\_\_  
Kenneth McPherson

**Defendant Robert Butler**

By: \_\_\_\_\_  
Robert Butler

**Defendant Joanne Butler**

By: \_\_\_\_\_  
Joanne Butler

**Defendant Steve Wooten**

By: \_\_\_\_\_  
Steve Wooten

1 **APPROVED AS TO FORM AND CONTENT:**

2 **On Behalf of Plaintiffs and the Class**

3 Dated: 12-14-2021

**Law Offices of Eric A. Boyajian, APC**

4  
5 By:   
Eric A. Boyajian, Esq.


6  
7 Dated: 12/14/2021

**DYCHTER LAW OFFICES, APC**

8  
9 By:   
Alexander I. Dychter, Esq.

10  
11 Dated: December 14, 2021

**United Employees Law Group, PC**

12  
13 By:   
Walter L. Haines, Esq.

14 **On Behalf of Defendants**

15  
16 Dated: \_\_\_\_\_

**VENABLE LLP**

17  
18 By: \_\_\_\_\_  
19 Kyle P. Klein, Esq.  
20 Counsel for Defendants  
21  
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