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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 17 **FOR THE COUNTY OF SAN DIEGO**

19 MARTIN ORTIZ, individually, and on  
 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 TARA MATERIALS, INC., a Georgia  
 23 corporation; and DOES 1 through 10,  
 inclusive,

24 Defendants.

CASE NO.: 37-2021-00001473-CU-OE-CTL  
*[Unlimited Jurisdiction]*

*Assigned for all purposes to the  
 Honorable Eddie C. Sturgeon, Dept. C-67*

**JOINT STIPULATION AND  
 SETTLEMENT AGREEMENT OF CLASS  
 ACTION AND PAGA REPRESENTATIVE  
 CLAIMS**

Complaint Filed: January 13, 2021  
 Trial Date: Not Set

1 This Stipulation is made by the Class Representative on behalf of himself and each of the  
2 other Class Members, on the one hand, and Defendant, on the other hand, in this Action, and is  
3 subject to the approval of the Superior Court.

4 **1. DEFINED TERMS**

5 1.1 “Action” means the civil action being resolved by this settlement entitled *Martin*  
6 *Ortiz v. Tara Materials, Inc.* (San Diego County Superior Court Case No. 37-2021-00001473-  
7 CU-OE-CTL).

8 1.2 “Agreement,” “Settlement,” or “Stipulation” means this Joint Stipulation and  
9 Settlement Agreement of Non-PAGA Class Claims and the PAGA Claim.

10 1.3 “Non-PAGA Class Claims” means any and all claims asserted in the Action, with  
11 the exception of the PAGA claim, or any other claims that could have been asserted in the  
12 Action based on the facts alleged. This includes, but is not limited to, any and all claims  
13 concerning: meal and rest breaks; unpaid regular wages, minimum wages, overtime and double  
14 time wages; wage statement violations; record keeping violations; expense reimbursement; and  
15 separation pay violations.

16 1.4 “PAGA Claim” means all claims for civil penalties and attorneys’ costs and fees  
17 available under the PAGA, only, for the PAGA Period, that were alleged in the letters submitted  
18 to the Labor & Workforce Development Agency (“LWDA”) by Plaintiff, or reasonably could  
19 have been alleged based on the facts and legal theories contained in the LWDA letter that Plaintiff  
20 submitted, including, but not limited to, alleged violations of Labor Code Sections 201, 202, 203,  
21 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1182.12, 1194.2, 1197, 1198 and 2802, and any  
22 applicable Wage Orders.

23 1.5 “Class” or “Class Members” means the following class: All current and former  
24 non-exempt employees who worked for Defendant within the State of California from January  
25 13, 2017 to March 15, 2022.

26 1.6 “PAGA” means the Private Attorneys General Act of 2004, California Labor  
27 Code §§ 2698, et seq.

28 1.7 “PAGA Group Members” means all current and/or former non-exempt

1 employees who worked for Defendant during the PAGA Period. A PAGA Group Member may  
2 not request exclusion from the PAGA Payment.

3 1.8 “Class Counsel” means Justin F. Marquez, Benjamin H. Haber, and Arrash T.  
4 Fattahi of Wilshire Law Firm.

5 1.9 “Class Period” means the period from January 13, 2017 to March 15, 2022.

6 1.10 “PAGA Period” means the period from January 19, 2020 to March 15, 2022.

7 1.11 “Class Notice” means the Court-approved Notice of Proposed Class Action  
8 Settlement, substantially in the form attached hereto as **Exhibit A** and incorporated by reference  
9 herein, which will notify Class Members of, among other things, the following: Preliminary  
10 Approval of the Settlement, the basic terms of the Settlement, the calculation of the Settlement  
11 Award, the procedures for disputing and objecting to the Settlement, and requesting exclusion  
12 from the Settlement Class, and the scheduling of the Final Approval Hearing. Following the  
13 Court’s Preliminary Approval of the Settlement, the Settlement Administrator shall mail the  
14 Class Notice to all Class Members.

15 1.12 “Class Representative” means plaintiff Martin Ortiz.

16 1.13 “Complaint” means the operative Complaint filed in the Action.

17 1.14 “Costs Award” means the amount of litigation expenses Class Counsel has  
18 incurred in prosecuting the Action and awarded by the Court.

19 1.15 “Court” means the Superior Court for the State of California, for the County of  
20 San Diego, which is the Court that the Parties will be submitting this Settlement to for purposes  
21 of obtaining court approval.

22 1.16 “Database Report” means a confidential list of Class Members that Defendant will  
23 diligently and in good faith compile from their records and provide to the Settlement  
24 Administrator only. The Database Report shall be in computer-readable format, and shall include  
25 each Class Member’s full name; dates of employment during which he or she worked in a class  
26 position for Defendant in California; last known home address; and Social Security number.  
27 Class Counsel shall receive a redacted Database Report that shall only disclose an identification  
28 number attributed to each Class Member and the number of workweeks each Class Member

1 worked during the Class Period.

2 1.17 “Defendant” means Tara Materials, Inc.

3 1.18 “Defendant’s Counsel” means Danielle Hultenius Moore, Esq., Bret Martin, Esq.,  
4 and Benjamin P. Carney, Esq. of Fisher & Phillips, LLP.

5 1.19 “Effective Date” means the date by which all of the following events have  
6 occurred (i) this Stipulation has been executed by all Parties and by Class Counsel and  
7 Defendant’s Counsel; (ii) the Court has given and entered preliminary approval of the Settlement;  
8 (iii) the Class Notice has been given to the Settlement Class, providing them with an opportunity  
9 to object or to opt-out of the Settlement; (iv) the Court has held a Final Approval Hearing and  
10 entered an order of Final Approval and a judgment certifying the Settlement Class and finally  
11 approving this Stipulation and its terms; and (v) in the event there are written objections filed  
12 prior to the Final Approval Hearing which are not later withdrawn, the later of the following  
13 events: when the period for filing any appeal, writ or other appellate proceeding opposing the  
14 Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed;  
15 or any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed  
16 finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ or  
17 other appellate proceeding has upheld the Court’s final order with no right to pursue further  
18 remedies or relief (no more appeals). In this regard, it is the intention of the Parties that the  
19 Settlement shall not become Effective until the Court’s entry of an order approving the Settlement  
20 as completely final, and there is no further recourse by a Class Member, an appellant or objector  
21 who seeks to contest the Settlement.

22 1.20 “Fees and Costs Award” means the aggregate total of the Fees Award and the  
23 Costs Award to Class Counsel approved by the Court.

24 1.21 “Fees Award” means the fee amount authorized by the Court to be paid to Class  
25 Counsel for the services they have rendered in prosecuting the Action, in an amount not to exceed  
26 one third of the Total Settlement Amount, i.e., the Fees Award shall not exceed Forty-Six  
27 Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$46,666.67).

28 1.22 “Final Approval” and/or “Final Approval Order” means the Court’s order

1 granting final approval of the Settlement and “Final Approval Date” means the date that the Court  
2 signs the Final Approval Order.

3 1.23 “Final Approval Hearing” means the hearing at which the Court considers  
4 whether to issue an order granting final approval to the Settlement.

5 1.24 “Net Settlement Fund” means the funds available to pay the Settlement Awards  
6 to all Participating Settlement Class Members. The Net Settlement Fund shall constitute the  
7 Total Settlement Amount minus the sum of the (1) Fees and Cost Award, (2) the Service Award,  
8 (3) the Settlement Administration Costs, and (4) the PAGA Payment made to the LWDA.

9 1.25 “Non-Participating Class Member” means a Class Member who submits a timely  
10 and valid Request for Exclusion.

11 1.26 “Objection/Exclusion Deadline” means the date, no later than forty-five (45)  
12 calendar days after the date the Notice is mailed (judged by the postmark date) by the Settlement  
13 Administrator, prior to which a Class Member may validly submit a Notice of Objection, or a  
14 Class Member may submit a Request for Exclusion.

15 1.27 “PAGA Payment” shall constitute Five Thousand Dollars and Zero Cents  
16 (\$5,000.00) which, pursuant to Labor Code Section 2699(i), will be distributed as follows: 25%  
17 to the applicable Participating Settlement Class Members and 75% to the LWDA. The 25%  
18 portion of the PAGA Payment that shall be paid to the Participating Settlement Class Members  
19 shall remain within the Net Settlement Fund so that it is available to be included within the  
20 calculation of the Participating Settlement Class Members’ Settlement Awards. If it should later  
21 be determined by the Court that an additional amount is needed to effectuate a full and complete  
22 release of the PAGA Claim, that amount shall be deducted from the Total Settlement Amount.  
23 PAGA Group Member may not request exclusion from the PAGA Payment and will receive their  
24 share of the PAGA Payment regardless of opting out of the Settlement Class.

25 1.28 “Individual PAGA Share” means the pro rata amount payable from the \$1,250.00  
26 amount, or other amount approved by the Court that is 25% of the PAGA Payment, to each  
27 PAGA Group Member.

28 1.29 “Participating Settlement Class Member” means any Class Members who did not

1 submit a timely and valid Request for Exclusion.

2 1.30 “Parties” means Defendant and the Class Representative.

3 1.31 “Preliminary Approval Order” means the Order issued by the Court preliminarily  
4 approving the terms of the Settlement set forth in this Stipulation, in a form to be agreed upon by  
5 the Parties prior to the hearing on the Motion for Preliminary Approval and “Preliminary  
6 Approval Date” means the date that the Court signs the Preliminary Approval Order.

7 1.32 “Qualifying Workweek” means a workweek where a Participating Settlement  
8 Class Member worked at least one day during that work week and was not on a leave of absence  
9 or vacation. The Qualifying Workweek will be calculated by using Defendant’s payroll data  
10 during the Class Period. Workweeks of Non-Participating Class Members will be excluded from  
11 the total number of Workweeks that are reported to the Settlement Administrator.

12 1.33 “Qualified Settlement Fund” or “QSF” means the account set up by the Settlement  
13 Administrator and from which the individual Settlement Awards to Participating Settlement  
14 Class Members shall be made. The QSF shall be an interest-bearing account within the meaning  
15 of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section  
16 1.468B-1, et seq., at a federally-insured bank that is mutually acceptable to the Parties and the  
17 Settlement Administrator. The Settlement Administrator shall serve as a Trustee of the QSF and  
18 shall act as a fiduciary with handling of all tax-related issues, reporting and payments. The  
19 Settlement Administrator shall act in a manner necessary to qualify and maintain the QSF as a  
20 Qualified Settlement Fund and the Parties shall cooperate to ensure such treatment and shall not  
21 take a position in any filing or before any tax authority inconsistent with such treatment. The  
22 Parties agree that the QSF shall be a non-reversionary fund and that under no circumstance will  
23 there be any reversion to Defendant of any of the funds from the QSF or the Total Settlement  
24 Amount.

25 1.34 “Released Non-PAGA Claims” means all claims asserted under any applicable  
26 laws and/or regulations relating to any and all facts and claims asserted in the Action or any other  
27 claims, with the exception of all claims under the California Labor Code Private Attorneys  
28 General Act of 2004 (“PAGA”) (Labor Code Section 2698, et seq.), that could have been asserted

1 in the Action based on the facts alleged, including without limitation claims related to minimum  
2 wages, overtime and double time wages (including, but not limited to, any claims for additional  
3 wages owed due to “rounding” or “off the clock” work); meal and rest breaks; failure to maintain  
4 accurate employment records; wage statement violations; separation pay violations; failure to  
5 reimburse business expenses; and unfair business practices arising during the Class Period. As  
6 of the Effective Date of Settlement, each Class Member who has not filed a valid Request for  
7 Exclusion shall be deemed to have fully, finally, and forever released, relinquished, and  
8 discharged all Released Non-PAGA Claims. This waiver and release of claims shall be binding  
9 on the Class Representative and all members of the Class who have not timely submitted a valid  
10 Request for Exclusion, including each of their respective attorneys, agents, spouses, executors,  
11 representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit  
12 of the Released Parties.

13 1.35 “Released PAGA Claim” means all claims for civil penalties and attorneys’ costs  
14 and fees available under the PAGA, only, for the PAGA Period, that were alleged in the letters  
15 submitted to the LWDA by Plaintiff, or reasonably could have been alleged based on the facts  
16 and legal theories contained in the LWDA letter that Plaintiff submitted, including, but not  
17 limited to, alleged violations of Labor Code Sections 201, 202, 203, 204, 226, 226.2, 226.7, 512,  
18 1174, 1194, 1182.12, 1194.2, 1197, 1198 and 2802, and any applicable Wage Orders.

19 1.36 “Request for Exclusion” means a letter or written request to be excluded from the  
20 Settlement Class submitted by a Class Member to the Settlement Administrator and postmarked  
21 by the Objection/Request for Exclusion Deadline. In order to be valid, the Request for Exclusion  
22 must include the Class Member’s name, address, telephone number, last four digits of the Social  
23 Security number, years of his or her employment, and signature, and contain a statement to the  
24 effect of: “I wish to be excluded from the Settlement Class.”

25 1.37 “Released Parties” means Defendant, and each of its former or present parents,  
26 subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or  
27 successors, and all agents, employees, officers, directors, shareholders, partners, members,  
28 managers, holding companies, insurers, and attorneys thereof.

1           1.38   “Settlement Administrator” means Phoenix Settlement Administrators, or any  
2 other provider that is mutually agreed to by the Parties and approved by the Court.

3           1.39   “Settlement Administration Costs” means the amount that will be paid to the  
4 Settlement Administrator for actual and direct fees and expenses reasonably incurred by the  
5 Settlement Administrator in administering the Settlement. Settlement Administration Costs will  
6 include, but are not limited to, fees and costs payable to the Settlement Administrator for printing,  
7 distributing (including with appropriate postage), and tracking documents for this Settlement,  
8 any searches to locate any Class Members, calculating estimated amounts per Class Member, tax  
9 reporting, distributing the individual Settlement Awards, the Class Representative’s Service  
10 Award, Class Counsel Fees and Costs, payment to the LWDA, and providing necessary  
11 certification of completion of notice, reports and declarations, establishing and administering a  
12 QSF account, required tax reporting and withholding on the individual Settlement Awards, the  
13 issuing of 1099 and W-2 IRS forms, as well as determining the validity of any disputes (and  
14 communicating the determination of those disputes to the disputing Class Member, Class  
15 Counsel and Defendant’s Counsel) and opt-outs, calculating all amounts to be paid from the Total  
16 Settlement Amount, and such other responsibilities and duties as reasonably and customarily  
17 performed by third-party settlement administrators or as requested by the Parties.

18           1.40   “Service Award” means the amount that the Court authorizes to be paid to the  
19 Class Representative in the Action over and above his Settlement Award, in recognition of his  
20 efforts in assisting with the prosecution of the Action on behalf of the Class Members. This  
21 amount is not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

22           1.41   “Settlement Award” means the total portion of the Net Settlement Award payable  
23 to each member of the Settlement Class after deduction of the employee’s portion of all state and  
24 federal employment withholding taxes, FICA and FUTA contributions and any other applicable  
25 payroll deductions required by law.

26           1.42   “Settlement Class” means the Class Members who have not submitted a timely  
27 and valid Request for Exclusion and are therefore entitled to receive his or her individual portion  
28 of the Settlement Award.

1           1.43   “Total Settlement Amount” means the total amount that Defendant will be  
2 required by this Stipulation to pay to: Participating Settlement Class Members (which includes  
3 the employee payroll taxes withheld from the Wage Component of each Participating Settlement  
4 Class Member’s Settlement Award); the Class Representative; Class Counsel; the Settlement  
5 Administrator; and the LWDA (i.e., the PAGA Payment). The Total Settlement Amount is One  
6 Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00). The Total Settlement Amount  
7 is non-reversionary, meaning that, if the settlement is approved and becomes effective, no part  
8 of this amount shall be returned to Defendant.

9           **2.       BACKGROUND AND PRELIMINARY REPRESENTATIONS**

10           2.1    Certification. This Court has not yet Certified the Class. The Parties intend for  
11 the Class to be certified through the preliminary approval process for settlement purposes only.  
12 If the Court should for any reason fail to approve the Settlement, this Agreement shall be  
13 considered null and void, the Class will not be certified, and Defendant shall retain all defenses  
14 to class certification. The Parties agree that Defendant has not waived the right to compel  
15 arbitration of any Class Members’ claims by entering into this Agreement.

16           2.2    Investigation. The Parties have conducted significant investigation of the facts  
17 and law. Such discovery and investigation included interviews with the Class Representative  
18 and other percipient witnesses as well as the review of documents and data necessary to calculate  
19 potential damages. Counsel for the Parties investigated the law as applied to the facts discovered  
20 regarding the alleged claims of the Class Members and potential defenses thereto, and the  
21 damages claimed by the Class Members.

22           2.3    Defendant’s Reasons for Settlement. Defendant concluded that any further  
23 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts  
24 of time, energy and resources of Defendant have been and, unless this Settlement is made, will  
25 continue to be devoted to the defense of the claims asserted by the Class Representative.  
26 Defendant has also taken into account the risks of further litigation in reaching their decision to  
27 enter into this Settlement. Defendant has, therefore, agreed to settle in the manner and upon the  
28 terms set forth in this Agreement to put to rest the Claims as set forth in the Action.

1           2.4     Defendant's Denials of Wrongdoing. Defendant has denied and continues to deny  
2 each of the claims and contentions alleged by Class Members in the Action. Defendant has  
3 repeatedly asserted, and continues to assert, defenses thereto, and has expressly denied and  
4 continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct  
5 alleged in the Action. Defendant also has denied and continues to deny, inter alia, the allegations  
6 that the Class Members have suffered damage; that Defendant violated any laws; that Defendant  
7 engaged in any wrongful conduct as alleged in the Action; or that Class Members were harmed  
8 by the conduct alleged in the Action. Neither this Agreement, nor any document referred to or  
9 contemplated herein, nor any action taken to carry out this Agreement, is, may be construed as,  
10 or may be used as an admission, concession or indication by or against Defendant of any fault,  
11 wrongdoing or liability whatsoever.

12           2.5     Plaintiff's Claims. The Class Representative has claimed and continues to claim  
13 that the Released Claims have merit and give rise to liability on the part of Defendant. This  
14 Agreement is a compromise of disputed claims, and Plaintiff's Agreement takes into account  
15 Defendant's defenses to liability. Nothing contained in this Agreement and no documents  
16 referred to herein and no action taken to carry out this Agreement may be construed or used as  
17 an admission by or against the Class Representative or Class Counsel as to the merits or lack  
18 thereof of the claims asserted.

19           2.6     It is the desire of the Parties to fully, finally and forever settle, compromise and  
20 discharge all disputes and claims against the Released Parties arising from or related to this  
21 Action, and that this Settlement Agreement shall constitute a full and complete settlement and  
22 release of all the Released Parties from all of the claims asserted in this Action.

### 23     **3.     CLASS AND PAGA SETTLEMENT AGREEMENT**

24           3.1     Settlement Components. The Settlement shall have six components: (1) the  
25 Participating Settlement Class Members' Settlement Awards; (2) the Class Representative's  
26 Service Award; (3) Class Counsel's Fees and Cost Award; (4) the Settlement Administration  
27 Costs; and (5) the PAGA Payment. All of these components are included in the Total Settlement  
28 Amount.

1           3.2     Creation of the Settlement Fund. Within thirty (30) calendar days after the  
2 Effective Date, Defendant shall deliver the Total Settlement Amount to the Settlement  
3 Administrator to create the Settlement Fund, including the employer-side payroll taxes on the  
4 wage portion of the Settlement Awards. All payments that Defendant is required to make  
5 pursuant to the Settlement Agreement shall be made from the Fund by the Settlement  
6 Administrator. Defendant will retain exclusive authority over, and responsibility for, those funds  
7 until required to deliver them to the Settlement Administrator in accordance with this paragraph.

8           3.3     Calculation of Participating Settlement Class Members' Settlement Awards. The  
9 Settlement Administrator shall have the authority and obligation to calculate the amounts of  
10 individual Settlement Awards in accordance with the methodology set forth in this Stipulation of  
11 Settlement and any Orders of the Court. The Parties agree that the formula for the individual  
12 Settlement Awards to Participating Settlement Class Members provided herein is reasonable and  
13 that the payments provided herein are designed to provide a fair settlement to such persons, in  
14 light of the uncertainties of the damages and penalties alleged to be owed to the Class and the  
15 calculation of such amounts.

16           3.3.1   The Parties agree that Class Members will not have to submit a claim form in  
17 order to participate in the Settlement. Each Class Member who does not submit a Request for  
18 Exclusion will be mailed a check representing their individual Settlement Award. Therefore, the  
19 individual Settlement Awards will be paid from the Net Settlement Fund to all Class Members  
20 unless the Class Member submits a valid and timely written Request for Exclusion from the  
21 Settlement Class. Note, any Class Member who worked during the PAGA Period will receive a  
22 check representing their portion of the PAGA Payment regardless of whether they request  
23 exclusion from the Class.

24           3.3.2   After deducting (i) the Court-approved Class Representative's Service Award,  
25 (ii) the Court-approved Fees and Costs Award, (iii) the Settlement Administration Costs, and  
26 (iv) the PAGA Payment to the LWDA, then the remainder of the Total Settlement Amount, or  
27 the Net Settlement Fund, will be distributed to the Participating Settlement Class Members.  
28 Relying on the Database Report, the Settlement Administrator will calculate the number of

1 Qualifying Workweeks for each Participating Settlement Class Member of the Class. Each  
2 Participating Settlement Class Member shall be entitled to receive a pro-rata portion based upon  
3 their respective number of Qualifying Workweeks in the Class and PAGA Periods. Thus, each  
4 Class Member that does not request exclusion from the Settlement shall be entitled to a pro-rata  
5 share of the Net Settlement Fund based on the ratio of the number of Qualifying Workweeks that  
6 he or she worked to the total number of Qualifying Workweeks that all Participating Settlement  
7 Class Members worked during the Class Period.

8 3.3.3 Class Members will have the opportunity, should they disagree with Defendant's  
9 records regarding the number of Qualifying Workweeks as presented on the Notice, to provide  
10 documentation and/or an explanation to show contrary employment dates. Class Members must  
11 notify the Settlement Administrator of the dispute and submit documentation to support their  
12 dispute (such as, without limitation, offer letters, payroll or time keeping records, paycheck stubs)  
13 prior to the Objection/Exclusion Deadline. Moreover, an individual can only dispute his/her  
14 number of Qualifying Workweeks if he/she does not exclude himself/herself from the Settlement  
15 Class. Absent evidence rebutting Defendant's records, Defendant's records will be presumed  
16 determinative. However, if there are no corresponding records, or the Class Member produces  
17 evidence contrary to Defendant's records, the Settlement Administrator will evaluate the  
18 evidence and will make the final decision as to the number of eligible Qualifying Workweeks  
19 that should be applied.

20 3.3.4 Each Participating Settlement Class Member will have one hundred eighty (180)  
21 calendar days from the date of the mailing of the individual Settlement Award check to cash the  
22 check sent to the Participating Settlement Class Member. Upon the 180-day deadline, the checks  
23 will automatically be cancelled by the Settlement Administrator if not deposited, cashed, or  
24 otherwise negotiated by the Class Member beforehand. Funds associated with such cancelled  
25 checks will be remitted to the Controller of the State of California pursuant to the Unclaimed  
26 Property Law, California Civil Code § 1500, et seq., to be held in trust for those Settlement Class  
27 Members who did not timely cash their checks, until such time as they claim their property.

28 3.3.5 The checks will state they are void if not cashed within 180 calendar days of

1 mailing.

2           3.3.6 The Parties recognize that the individual Settlement Awards to be paid to  
3 Participating Settlement Class Members reflect in part a settlement of a dispute over claimed  
4 wages, interest, and penalties. The individual Settlement Awards to Participating Settlement  
5 Class Members shall be allocated as follows: Twenty percent (20%) of each Participating  
6 Settlement Class Member's Settlement Award shall be considered wages ("Wage Component")  
7 and eighty percent (80%) shall be considered penalties and interest (the "Non-Wage  
8 Component"). The Wage Component shall be reported on a W-2 Form and will be provided to  
9 each Participating Settlement Class Member. From each Class Member's Wage Component, the  
10 employee's portion of employment taxes shall be made, including payroll deductions for state  
11 and federal withholding taxes, and any other applicable payroll deductions, owed by the  
12 Participating Settlement Class Member as a result of the payment, resulting in a "Net Wage  
13 Component." No withholding shall be made on the Non-Wage Component of the settlement.  
14 The Non-Wage Component shall be reported on a 1099 Form and will be provided to each  
15 Participating Settlement Class Member. The Net Wage Component shall be added to the Non-  
16 Wage Component resulting in each Participating Settlement Class Member's Settlement Award.

17           3.4 Class Representative's Service Award. Subject to Court approval and the  
18 execution of the general release by the Class Representative, the Parties agree to a payment from  
19 the Total Settlement Amount to the Class Representative for the Class Representative's Service  
20 Award in an amount not to exceed two thousand five hundred dollars (\$2,500.00). The Parties  
21 agree that a decision by the Court to award the Class Representative an amount less than two  
22 thousand five hundred dollars (\$2,500.00) each shall not be a basis for the Class Representative  
23 or Class Counsel to void this Stipulation. Defendant agrees not to oppose the Class  
24 Representative's Service Award request if consistent with this Agreement. Defendant, via the  
25 Administrator, shall issue the Class Representative a Form 1099 for their Service Award. The  
26 Class Representative shall be solely and legally responsible to pay his applicable taxes on this  
27 payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or  
28 interest owed by the Class Representative as a result of this payment. The Service Award shall

1 be in addition to the Class Representative's individual Settlement Awards. If the Court approves  
2 Service Award to the Class Representative that is less than the amount sought, the remainder will  
3 be retained in the Net Settlement Fund for distribution to Participating Settlement Class  
4 Members.

5 3.4.1 Class Representative's Service Award is for the Class Representative's services  
6 and assistance to the Class and additionally, in recognition for his willingness to provide a full  
7 and separate general release individually of any and all claims against Defendant regardless of  
8 whether such claims have been alleged against Defendant, including without limitation known  
9 or unknown claims, whether for economic damages, non-economic damages, punitive damages,  
10 restitution, tort, contract, penalties, injunctive or declaratory relief, attorney's fees, costs, or other  
11 monies or remedies. This release by the Class Representative includes all federal and state  
12 statutory claims, and federal and state common law claims (including but not limited to those for  
13 contract, tort, and equity), including, without limitation, the Americans with Disabilities Act,  
14 Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended),  
15 42 U.S.C. §1981, 42 U.S.C. § 1983, the Fair Labor Standards Act, the Employee Retirement  
16 Security Income Act of 1974, the California Constitution, the California Fair Employment and  
17 Housing Act, the California Unfair Competition Act (California Business and Professions Code  
18 section 17200 et seq.), the California Labor Code, and claims for additional compensation  
19 relating to stock options.

20 3.4.2 General Release by Class Representative Only. In addition to the releases made  
21 by the Participating Settlement Class Members set forth in 4.1 below and in consideration for the  
22 Service Award, the Class Representative, as of the Effective Date, in his individual capacity for  
23 himself, his heirs, executors, administrators, successors and assigns and with respect to his  
24 individual claims only, agrees to release the Released Parties from all claims, demands, rights,  
25 liabilities and causes of action of every nature and description whatsoever, known or unknown,  
26 asserted or that might have been asserted, whether in tort, contract, or for violation of any state  
27 or federal statute, rule or regulation arising out of, relating to, or in connection with their  
28 employment by and termination from Released Parties and any act or omission by or on the part

1 of any of the Released Parties committed or omitted prior to the Effective Date of this Agreement  
2 (the “General Release”). This total release includes, but is not limited to, all claims arising  
3 directly or indirectly from Class Representative’s employment with Released Parties and the  
4 termination of that employment; claims or demands related to wages, bonuses, vacation pay,  
5 benefits and expense reimbursements pursuant to any federal, state or local law or cause of action,  
6 including, but not limited to, breach of contract, breach of the implied covenant of good faith and  
7 fair dealing, infliction of emotional harm, wrongful discharge, violation of public policy,  
8 defamation and impairment of economic opportunity; violation of the California Fair  
9 Employment and Housing Act, the California Labor Code, the California Constitution; and any  
10 claims for violation of the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964,  
11 the Americans With Disabilities Act of 1990 and any action under the California Business &  
12 Professions Code §17200.

13           3.4.3 The General Release includes any unknown claims that the Class Representative  
14 does not know or suspect to exist in his favor at the time of the General Release, which, if known  
15 by him, might have affected his settlement with, and release of, the Released Parties or might  
16 have affected his decision not to object to this Settlement or the General Release. With respect  
17 to the General Release, the Class Representative stipulates and agrees that, upon the Effective  
18 Date, he shall be deemed to have, and by operation of the Court’s Final Approval Order, shall  
19 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,  
20 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision  
21 under federal or state law, which provides:

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

26           3.4.4 The Class Representative may hereafter discover facts in addition to or different  
27 from those they now know or believe to be true with respect to the subject matter of the General  
28 Release, but upon the Effective Date, shall be deemed to have, and by operation of the Court’s

1 Final Approval Order, shall have, fully, finally, and forever settled and released any and all of  
2 the claims released pursuant to the General Release whether known or unknown, suspected or  
3 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any  
4 theory of law or equity now existing or coming into existence in the future, including, but not  
5 limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty,  
6 law or rule, without regard to the subsequent discovery or existence of such different or additional  
7 facts.

8 3.4.5 Notwithstanding the above, the scope of the General Release provided to the  
9 Released Parties by the Class Representative does not include any claims for state disability  
10 benefits, workers compensation benefits, or unemployment benefits, or any claims that cannot  
11 be released as a matter of law.

12 3.5 Class Counsel's Fees and Costs Award. Defendant agrees not to oppose or  
13 impede any application or motion by Class Counsel for attorneys' fees not to exceed one third of  
14 the Total Settlement Amount (i.e., \$46,666.67) and actual litigation costs not to exceed fifteen  
15 thousand dollars and zero cents (\$15,000.00). The Parties agree that a decision by the Court to  
16 award Class Counsel an amount less than \$46,666.67 shall not be a basis for the Class  
17 Representative or Class Counsel to void this Agreement. The aggregate attorneys' fees and costs  
18 awarded by the Court shall be the "Fees and Costs Award." Class Counsel shall be solely and  
19 legally responsible to pay their applicable taxes on the payment made pursuant to this Paragraph.  
20 Class Counsel further agrees that Class Counsel shall be solely responsible for any allocation of  
21 the Fees and Costs Award as between or among attorneys who have claims for such fees. Forms  
22 1099 shall be provided to Class Counsel for the payments made pursuant to this Paragraph. If  
23 the amount awarded to Class Counsel for attorneys' fees is less than the amount sought, the  
24 remainder will be retained in the Net Settlement Fund for distribution to Participating Settlement  
25 Class Members.

26 3.6 Settlement Administration Costs. The Settlement Administrator shall be paid for  
27 the costs of administration of the settlement from the Settlement Fund. The costs of  
28 administration for the disbursement of the Total Settlement Amount shall not exceed the amount

1 quoted (and ultimately billed), approximately \$10,000.00, by the Settlement Administrator. The  
2 Settlement Administration Costs include all tasks required of the Settlement Administrator by  
3 this Agreement including performing a skip trace as well as basic searches on the National  
4 Change of Address Database in order to obtain the best possible address for Class Members prior  
5 to mailing the Class Notice to Class Members, the issuance of the Notice, the required tax  
6 reporting on the settlement amounts, the issuance of checks, including the issuing of W2 and  
7 1099 forms (if any), the handling of Class Member questions and disputes, as well as calculation  
8 of employee withholding taxes and the employer payroll taxes for Defendant to be remitted to  
9 the tax authorities. At least fourteen (14) calendar days prior to the Final Approval Hearing, the  
10 Settlement Administrator shall provide the Court and all counsel for the Parties with a statement  
11 detailing the due diligence the Settlement Administrator has undertaken with regard to the  
12 mailing of the Class Notice, including any attempts to obtain valid mailing addresses for and re-  
13 mailing of any returned Class Notices, the final costs of administration, and reporting on the  
14 number of objections and exclusions submitted by Non-Participating Class Members, as well as  
15 any disputes (and explain the status of the disputes).

16 3.7 Payment to the LWDA. Subject to Court approval, Five Thousand Dollars  
17 (\$5,000.00) will be allocated to cover any and all claims for civil penalties associated with the  
18 Released Claims that were, or could have been, brought in the Action under PAGA; 75% of  
19 which is Three Thousand Seven Hundred and Fifty Dollars (\$3,750.00) that will be paid directly  
20 to the LWDA, and the remaining 25% of which is One Thousand Two Hundred and Fifty Dollars  
21 (\$1,250.00), which will be retained in the Net Settlement Fund for distribution to the PAGA  
22 Group as penalties.

23 3.8 Tax Liability. Defendant makes no representations as to the tax treatment or legal  
24 effect of the payments called for hereunder, and the Class Representative is not relying on any  
25 statement or representation by Defendant in this regard. The Class Representative understands  
26 and agrees that Participating Settlement Class Members will be solely responsible for the  
27 payment of employee taxes and penalties predicated on the payments described herein. The Class  
28 Representative shall hold harmless Released Parties from and against any claims resulting from

1 treatment of such payments as non-taxable damages, including the treatment of such payment as  
2 not subject to withholding or deduction for payroll and employment taxes.

3           3.9     Circular 230 Disclaimer.  EACH PARTY TO THIS AGREEMENT (FOR  
4 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY  
5 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER  
6 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS  
7 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN  
8 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR  
9 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR  
10 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX  
11 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT  
12 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY  
13 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL  
14 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION  
15 WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED  
16 UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR  
17 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY  
18 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY  
19 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
20 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER  
21 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY  
22 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF  
23 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
24 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
25 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
26 AGREEMENT.

27 **4.     RELEASE BY THE CLASS MEMBERS**

28           4.1     Release as To All Participating Settlement Class Members.  As of the Effective

1 Date, all Participating Settlement Class Members, including the Class Representative, release the  
2 Released Parties from the Released Non-PAGA Claims. The Participating Settlement Class  
3 Members agree not to make, participate, encourage or support any action asserting or alleging  
4 any of the Released Claims against any of the Released Parties.

5 4.2 PAGA Group Members' Release of Claims. As of the Effective Date, and only  
6 after Defendant has fully funded the Settlement, in exchange for the consideration set forth in  
7 this Agreement, each PAGA Group Member shall release the Released Parties from the PAGA  
8 Claim, only, for the PAGA Period. Other than for Plaintiff, claims of Class Members, if any, for  
9 vested benefits, wrongful termination, unemployment insurance, disability benefits, social  
10 security, workers' compensation, claims while classified as exempt, and claims outside of the  
11 PAGA Period are not encompassed within the definition of "Released PAGA Claim."

## 12 **5. PRELIMINARY APPROVAL**

13 5.1 As part of this Settlement, the Parties agree to the following procedures for  
14 obtaining preliminary Superior Court approval of the Settlement, notifying Class Members,  
15 obtaining final Superior Court approval of the Settlement, and processing the Settlement Awards:

16 5.1.1 Preliminary Settlement Hearing. The Class Representative shall seek preliminary  
17 approval of the Settlement before the Superior Court and to request the entry of the Preliminary  
18 Approval Order. In conjunction with this hearing, the Class Representative will submit this  
19 Agreement, which sets forth the terms of this Settlement, and will include the proposed Class  
20 Notice.

21 5.1.2 Order Granting Preliminary Approval of Proposed Settlement. Simultaneous with  
22 the filing of the Stipulation of Settlement and solely for purposes of this Settlement, the Class  
23 Representative will request that the Court enter an order preliminarily approving the proposed  
24 Settlement and setting a date for a Final Approval Hearing. The Order shall be in a form to be  
25 agreed upon by the Parties prior to the hearing on the Motion for Preliminary Approval and  
26 provide for Notice of the Settlement to be sent to Class Members as specified herein.

27 5.1.3 Statement of Non-Opposition: The Defendant may file a statement of non-  
28 opposition to the motion for preliminary approval.

1     **6.     NOTICE PROCESS**

2             6.1     Notice Process. Notice of the Settlement shall be provided to Class Members,  
3 and Class Members shall submit objections to the Settlement and/or requests for exclusion from  
4 the Settlement Class, using the following procedures:

5             6.1.1   The Defendant shall provide the Settlement Administrator and Class Counsel with  
6 the Database Report within fourteen (14) calendar days after receipt of the Preliminary Approval  
7 Order.

8             6.1.2   Within fourteen (14) calendar days of receiving the Database Report, the  
9 Settlement Administrator shall mail a copy of the Notice to each Class Member via First Class  
10 regular U.S. mail.

11            6.1.3   Prior to mailing, the Settlement Administrator shall check all addresses on the  
12 Database Report against the National Change of Address (NCOA) database. Additionally, the  
13 Settlement Administrator shall undertake reasonable address verification using Accurint, or a  
14 substantially similar skip tracing to ascertain the accuracy of the last known addresses and to  
15 obtain the best possible address for the Class Members before mailing the notices. To the extent  
16 these processes yield an updated or better address, that updated address shall replace the last  
17 known address and be treated as the new last known address for purposes of this Settlement  
18 Agreement.

19            6.1.4   Procedure for Undeliverable Notices. Any Notices returned to the Settlement  
20 Administrator as non-delivered shall be promptly re-sent to the forwarding address affixed  
21 thereto. If no forwarding address is provided, then the Settlement Administrator shall promptly  
22 attempt to determine a correct address using a single skip-trace, computer or other search using  
23 the name, address and/or Social Security number of the individual involved and shall then  
24 perform a single re-mailing. The deadline for Class Members who receive a re-mailed Notice to  
25 object to the Class Action Settlement or request an Exclusion from the Settlement Class is ten  
26 (10) calendar days from the date of re-mailing if that date is beyond the original deadline. When  
27 re-mailing any Notices, the Settlement Administrator should include a brief letter stating that the  
28 recipient of the Class Notice has until the original deadline set forth on the Notice or ten (10)

1 calendar days after the date of re-mailing of the Class Notice (whichever is later) to object or  
2 submit a Request for Exclusion. In the event the procedures in this Paragraph are followed and  
3 the intended recipient of a Notice still does not receive the Notice, the intended recipient shall be  
4 a Participating Settlement Class Member and will be bound by all terms of the Settlement and  
5 any Final Approval Order entered by the Superior Court if the Settlement is approved by the  
6 Superior Court. If any Class Notice is returned from any mailing and/or re-mailed, the Settlement  
7 Administrator will note for its own records and notify the Parties' Counsel of the date of such re-  
8 mailings as part of a weekly status report provided to the Parties.

9           6.1.5 The Notice shall provide that Class Members who wish to exclude themselves  
10 from the Settlement Class must submit a Request for Exclusion postmarked by the  
11 Objection/Exclusion Deadline. The Objection/Exclusion Deadline is forty-five (45) calendar  
12 days following the initial mailing of the Notice. Any Class Member who properly requests  
13 exclusion using this procedure will not receive any payment from the Settlement and will not be  
14 bound by the Stipulation of Settlement or have any right to object, appeal or comment thereon.  
15 Class Members who do not submit a valid and timely Request for Exclusion shall be bound by  
16 all terms of the Stipulation of Settlement and any judgment entered in the Action once the  
17 Settlement is approved by the Court. Class Members shall have no right to opt-out of the PAGA  
18 Settlement.

19           6.1.6 Procedure for Objecting. The Notice shall provide that Class Members who wish  
20 to object to the settlement must mail a written statement of objection ("Notice of Objection") to  
21 the Settlement Administrator no later than the Objection/Exclusion Deadline Date. Only Class  
22 Members (i.e., not Non-Participating Class Members) may submit objections and have the  
23 objections heard. The postmark date of the mailing shall be deemed the exclusive means for  
24 determining that a Notice of Objection is timely. The Notice of Objection must state the basis  
25 for the objection. Class Members who fail to make objections in the manner specified above  
26 shall be deemed to have waived any objections and shall be foreclosed from making any  
27 objection (whether by appeal or otherwise) to the Settlement Agreement and/or from appealing  
28 any order by the Court approving the Settlement. No later than fourteen (14) calendar days before

1 the Final Approval Hearing, the Settlement Administrator shall provide counsel for the Parties  
2 with complete copies of all objections received, including the postmark dates for each objection.  
3 Class Members who submit a timely Notice of Objection will have a right to appear at the Final  
4 Approval Hearing in order to have their objections heard by the Court. At no time shall any of  
5 the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit  
6 written objections to the settlement or to appeal from any order of the Court approving the  
7 settlement. Class Counsel shall not represent any Class Member with respect to any such  
8 objection.

9           6.1.7 Procedure for Requesting Exclusion. The Notice shall provide that Class  
10 Members who wish to exclude themselves from the Settlement Class and, in so doing, become a  
11 Non-Participating Class Member, must submit a written request to be excluded from the  
12 Settlement Class on or before the Objection/Exclusion Deadline Date. Such request for  
13 exclusion: (1) must contain the name, address, telephone number, the last four digits of the Social  
14 Security number of the person requesting exclusion, the location and years of his or her  
15 employment by Defendant, signature, and contain a statement to the effect of: "I wish to be  
16 excluded from the Settlement Class."; (2) must be returned by mail to the Settlement  
17 Administrator at the specified address; (3) and must be postmarked on or before the  
18 Objection/Exclusion Deadline Date. The date of the postmark shall be the exclusive means used  
19 to determine whether a request for exclusion has been timely submitted. Any Class Member who  
20 requests an exclusion from the Settlement Class will not be entitled to submit objections to the  
21 Settlement, will not be entitled to any recovery under the Settlement, and will not be bound by  
22 the Settlement or have any right to object, appeal or comment thereon. Class Members who fail  
23 to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline  
24 Date shall be Participating Settlement Class Members and shall be bound by all terms of the  
25 Settlement, if the Settlement is approved by the Court. No Class Member that excludes  
26 themselves from the Settlement shall be permitted to oppose the Settlement. No later than  
27 fourteen (14) calendar days before the Final Approval Hearing, the Settlement Administrator  
28 shall provide counsel for the Parties with a complete list of all Non-Participating Class Members

1 who have timely requested exclusion from the Settlement. At no time shall any of the Parties or  
2 their counsel seek to solicit or otherwise encourage Class Members to submit requests for  
3 exclusion from the Settlement Class. The Class Representative may not exclude himself from  
4 the Settlement.

5 6.1.8 Claims Deemed Waived. Any Class Member who does not request exclusion as  
6 set forth above is deemed to have released all Released Claims against Released Parties as set  
7 forth herein.

## 8 **7. SETTLEMENT ADMINISTRATION**

9 7.1 The Parties agree to cooperate in the settlement administration process and to  
10 make all reasonable efforts to control and minimize the costs and expenses incurred in  
11 administration of the Settlement.

12 7.2 The Settlement Administrator shall be responsible for: printing and mailing the  
13 Notices to the Class Members as directed by the Superior Court; receiving and reporting the  
14 requests for exclusion submitted by Non-Participating Class Members; issuing and mailing  
15 Settlement Awards to Class Members; remitting all amounts due to the appropriate federal, state,  
16 and local tax authorities, and other tasks as the Parties mutually agree or the Superior Court orders  
17 the Settlement Administrator to perform. The Settlement Administrator shall keep Defendant's  
18 Counsel and Class Counsel timely apprised of the performance of all Settlement Administrator  
19 responsibilities. The Settlement Administrator shall provide the Parties' Counsel with a weekly  
20 report showing: (1) the number of Class Notices mailed to Class Members; (2) the number of  
21 Class Notices returned as undeliverable; (3) the number of re-mailed Class Notices; (4) the  
22 number of Non-Participating Class Members who have submitted Requests for Exclusion; (5) the  
23 number of Class Members who have submitted objections; and (6) the number of Class Members  
24 who have disputed the number of Qualifying Workweeks being credited to that Class Member.  
25 Additionally, the Settlement Administrator shall provide to the Parties' Counsel any updated  
26 reports regarding the administration of the Settlement as needed or requested.

27 7.3 The Settlement Administrator, on Defendant's and Class Counsel's collective  
28 behalf, shall have the authority and obligation to calculate the amounts of the Settlement Awards,

1 make payments, credits and disbursements, including payments and credits in the manner set  
2 forth herein, to Class Members calculated in accordance with the methodology set out in this  
3 Agreement and orders of the Court.

4 7.4 No person shall have any claim against Defendant, Defendant’s Counsel, the  
5 Class Representative of the Class, Class Counsel, or the Settlement Administrator based on any  
6 errors or omissions in the distributions and payments that are required to be made in accordance  
7 with the terms of this Agreement.

8 7.5 Any tax return filing required by this Agreement shall be made by the Settlement  
9 Administrator. Any expenses incurred in connection with such filing shall be a cost of  
10 administration of the Settlement.

11 **8. PROCEDURE FOR FUNDING OF SETTLEMENT**

12 8.1 Defendant shall fund the Settlement via one lump sum payment equaling the Total  
13 Settlement Amount (i.e., the payment shall be \$140,000.00) plus an amount to cover the  
14 employer-side payroll taxes on the wage portion of the Settlement Awards as calculated by the  
15 Settlement Administrator, within thirty (30) calendar days of the Effective Date.

16 8.2 The Total Settlement Amount was calculated with, and is premised on, the  
17 understanding that there are approximately 5,869 workweeks for the period of January 13, 2017  
18 to January 31, 2022. If the final accounting of the number of weeks worked during the Class  
19 Period increases by more than ten percent (10%) due to a reason other than the passage of time,  
20 Defendant will increase the Total Settlement Amount by a proportional amount over the 10%  
21 grace amount. For example, if the total number of workweeks in the Class Period increases by  
22 eleven percent (11%) at the time of preliminary approval for a reason other than due to the  
23 passage of time, then Defendant agrees to increase the Total Settlement Amount by one percent  
24 (1%).

25 **9. PROCEDURE FOR PAYMENT OF SETTLEMENT AWARDS**

26 9.1 Distributions of funds and Settlement Payments to Participating Settlement Class  
27 Members shall occur no later than fifteen (15) calendar days after the funding, as follows: 100%  
28 of the Fees and Costs Award; 100% of the Service Award; 100% of the Settlement

1 Administration Costs; 100% of the portion of the PAGA Payment to be paid to the LWDA; 100%  
2 of the PAGA Payment to be paid to the PAGA Group; and the remainder of the funds to be  
3 distributed pro rata in the amount of 100% to the Settlement Payments to Participating Settlement  
4 Class Members.

5 9.2 To ensure that they receive their Settlement Payment checks for each distribution,  
6 Class Members must notify the Settlement Administrator if they change their mailing address.

7 9.3 Except for Non-Participating Class Members, all Class Members will become  
8 eligible to receive Settlement Payments from Defendant, distributed through the Settlement  
9 Administrator. PAGA Group members may not request exclusion from the PAGA Payment and  
10 will receive their share of the PAGA Payment regardless of opting out of the Settlement Class.

11 9.4 Should any question arise regarding the determination of eligibility for, or the  
12 amounts of, any Settlement Payments under the terms of this Agreement, Class Counsel and  
13 Defendant's Counsel shall meet and confer in an attempt to reach agreement. Absent evidence  
14 rebutting Defendant's records, Defendant's records will be presumed determinative. However,  
15 if there are no corresponding records, or the Class Member produces evidence contrary to  
16 Defendant's records, the Settlement Administrator will evaluate the evidence and will make the  
17 final decision as to the eligibility for, or the amounts of, any Settlement Payments under the terms  
18 of this Agreement.

19 9.5 Certification by Settlement Administrator. Upon completion of administration of  
20 the distributions, the Settlement Administrator shall provide written certification of such  
21 completion to the Court and counsel for all Parties.

22 **10. FINAL SETTLEMENT APPROVAL HEARING**

23 10.1 Upon expiration of the Objection/Exclusion Deadline Date, with the Court's  
24 permission, a Final Approval Hearing shall be conducted to determine final approval of the  
25 Settlement along with the amount properly payable for (i) reasonable attorneys' fees and costs,  
26 (ii) the Class Representative's Service Award, (iii) the PAGA Payment to the LWDA; and (iv)  
27 cost of administration. The Final Approval Hearing shall not be held earlier than thirty (30)  
28 calendar days after the Objection/Exclusion Deadline Date. After entry of an order finally

1 approving the settlement, the Court shall have continuing jurisdiction for purposes of addressing:  
2 (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration  
3 matters and (iii) such other matters as may be appropriate under court rules or as set forth in this  
4 Agreement.

## 5 **11. VOIDING THE SETTLEMENT**

6 11.1 Defendant's Option to Terminate Settlement. If the number of Class Members  
7 who have submitted timely requests for exclusion from the Settlement Class exceeds ten percent  
8 of the Class Members or more of the Class under this Settlement, then Defendant shall have, in  
9 its sole discretion, the option to terminate this Settlement within five (5) court days prior to Final  
10 Approval, provided the Settlement Administrator has provided Defendant the number and  
11 percentage of valid and timely Requests for Exclusion. In the event that Defendant terminates  
12 the agreement pursuant to this provision, then Defendant shall be solely responsible for payment  
13 of all costs incurred by the Settlement Administrator through the date that Defendant notifies the  
14 Settlement Administrator in writing (with a copy to Class Counsel) that they are exercising this  
15 Option.

16 11.2 Nullification of Settlement Agreement. In the event: (i) the Court does not enter  
17 the Order specified herein; (ii) the Court does not issue an order finally approving the Settlement,  
18 as provided herein, or said order does not become final as a result of the occurrence of the  
19 Effective Date; (iii) Defendant or the Class Representative elect to terminate the Settlement as  
20 set forth herein; or (iv) the Settlement does not become final for any other reason, this Settlement  
21 Agreement shall be null and void and any order entered by the Court in furtherance of this  
22 Settlement shall be treated as void from the beginning. In such a case, the Parties shall be  
23 returned to their respective statuses as of the date and time immediately prior to the execution of  
24 this Agreement. In the event appellate review is sought prior to the Effective Date, administration  
25 of the Settlement shall be stayed pending final resolution of the appeal.

## 26 **12. NO EFFECT ON EMPLOYEE BENEFITS**

27 12.1 The Settlement Awards paid to the Class Representative or other Participating  
28 Settlement Class Members shall not have any effect on the eligibility for, or calculation of, any

1 of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Class  
2 Representative or Participating Settlement Class Members. The Parties agree that any Settlement  
3 Awards to Participating Settlement Class Members under the terms of this Agreement do not  
4 represent any modification of Participating Settlement Class Members' previously credited hours  
5 of service or other eligibility criteria under any employee pension benefit plan or employee  
6 welfare benefit plan sponsored by Defendant. Further, any Settlement Awards or Service Award  
7 hereunder shall not be considered "compensation" in any year for purposes of determining  
8 eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare  
9 benefit plan, or incentive compensation plan sponsored by Defendant.

### 10 **13. PUBLICITY**

11 13.1 The Class Representative and Class Counsel agree that they have not and will not  
12 publish the resolution of this case. In response to any inquiries, Class Representative and Class  
13 Counsel will state that "the case was resolved and any court documents can be accessed through  
14 the Court's website." Class Counsel shall not report the resolution of this case in any medium or  
15 in any publication, shall not post or report anything regarding the claims of Class Representative  
16 or the Class Members or the resolution of this case on their website, and shall not contact any  
17 reporters or media regarding the resolution of this case. However, Class Counsel are authorized  
18 to make a limited disclosure to the Court and the LWDA for the purposes of obtaining the  
19 approval of the settlement and may discuss the settlement with the Class Members. This  
20 disclosure is limited to court filings and neither Class Representative nor their counsel or  
21 representatives are permitted to disseminate, publish, or distribute the information provided to  
22 the Court in those filings outside the filings themselves and any hearing held on those filings,  
23 unless ordered otherwise by the Court.

### 24 **14. EXHIBIT(S) AND HEADINGS**

25 14.1 The terms of this Agreement include the terms set forth in any attached Exhibit(s),  
26 which are incorporated by this reference as though fully set forth herein. Any Exhibit(s) to this  
27 Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or  
28 sections of this Agreement are inserted for convenience of reference only and do not constitute a

1 part of this Agreement.

2 **15. INTERIM STAY OF PROCEEDINGS**

3 15.1 The Parties agree to hold all proceedings and deadlines in the Action, except such  
4 proceedings necessary to implement and complete the Settlement, in abeyance pending the  
5 Preliminary and Final Approval Hearings to be conducted by the Superior Court. Said stay shall  
6 terminate if and when (1) the Court permanently denies approval (preliminary or final) of the  
7 Settlement or, (2) the Court issues an Order terminating the stay.

8 **16. AMENDMENT OR MODIFICATION**

9 16.1 This Agreement may be amended or modified only by a written instrument signed  
10 by counsel for all Parties or their successors-in-interest.

11 **17. ENTIRE AGREEMENT**

12 17.1 This Agreement and any attached Exhibit(s) constitute the entire agreement  
13 among these Parties, and no oral or written representations, warranties or inducements have been  
14 made to any Party concerning this Agreement or its Exhibit(s) other than the representations,  
15 warranties and covenants contained and memorialized in such documents.

16 **18. AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT**

17 18.1 Counsel for all Parties warrant and represent they are expressly authorized by the  
18 Parties whom they represent to negotiate this Agreement and to take all appropriate action  
19 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its  
20 terms, and to execute any other documents required to effectuate the terms of this Agreement.  
21 The Parties and their counsel will cooperate with each other and use their best efforts to effect  
22 the implementation of the Settlement. In the event the Parties are unable to reach agreement on  
23 the form or content of any document needed to implement the Settlement, or on any supplemental  
24 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may  
25 seek the assistance of the Superior Court to resolve such disagreement. The persons signing this  
26 Agreement on behalf of Defendant represent and warrant that they are authorized to sign this  
27 Agreement on behalf of Defendant.  
28

1 **19. BINDING ON SUCCESSORS AND ASSIGNS**

2 19.1 This Agreement shall be binding upon, and inure to the benefit of, the successors  
3 or assigns of the Parties hereto, as previously defined.

4 **20. CALIFORNIA LAW GOVERNS**

5 20.1 All terms of this Agreement and the Exhibit(s) hereto shall be governed by and  
6 interpreted according to the laws of the State of California.

7 **21. COUNTERPARTS**

8 21.1 This Agreement may be executed in one or more counterparts. All executed  
9 counterparts and each of them shall be deemed to be one and the same instrument provided that  
10 counsel for the Parties to this Agreement shall exchange among themselves original signed  
11 counterparts.

12 **22. THIS SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

13 22.1 The Parties believe this Settlement is a fair, adequate and reasonable settlement  
14 of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking  
15 into account all relevant factors, present and potential.

16 **23. JURISDICTION OF THE COURT**

17 23.1 The Court shall retain jurisdiction with respect to the interpretation,  
18 implementation and enforcement of the terms of this Agreement and all orders entered in  
19 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the  
20 Court for purposes of interpreting, implementing and enforcing the settlement embodied in this  
21 Agreement and all orders entered in connection therewith.

22 **24. COOPERATION AND DRAFTING**

23 24.1 Each of the Parties has cooperated in the drafting and preparation of this  
24 Agreement. Hence, in any construction made to this Agreement, the same shall not be construed  
25 against any of the Parties. The Parties agree to take all necessary measures to effectuate this  
26 Agreement according to its terms and scope.

27 **25. INVALIDITY OF ANY PROVISION**

28 25.1 Before declaring any provision of this Agreement invalid, the Court shall first

1 attempt to construe the provisions valid to the fullest extent possibly consistent with applicable  
2 precedents so as to define all provisions of this Agreement valid and enforceable.

3 **26. CLASS REPRESENTATIVE’S WAIVER OF RIGHT TO BE EXCLUDED AND**  
4 **OBJECT**

5 26.1 The Class Representative agrees to sign this Agreement and by signing this  
6 Agreement is bound by the terms herein stated and further agrees not to request to be excluded  
7 from the Settlement Class and agrees not to object to any of the terms of this Agreement. Non-  
8 compliance by the Class Representative with this Paragraph shall be void and of no force or  
9 effect. Any such requests for exclusion or objections shall therefore be void and of no force or  
10 effect.

11 **27. FAX/ELECTRONIC SIGNATURES**

12 27.1 A fax or electronic signature, such as DocuSign, on this Agreement shall be as  
13 valid as an original signature.

14  
15 DATE: 8/14/2022 \_\_\_\_\_

DocuSigned by:  
  
0B8880870004FE0...  
Plaintiff  
Martin Ortiz

16  
17  
18 DATE: \_\_\_\_\_

Defendant  
Tara Materials, Inc.

19  
20 By: \_\_\_\_\_

21  
22 Its: \_\_\_\_\_

23 **APPROVED AS TO FORM:**

24  
25 DATE: August \_\_\_\_, 2022

**FISHER & PHILLIPS LLP**

26  
27 By: \_\_\_\_\_  
Danielle Hultenius Moore  
Bret Martin  
Benjamin P. Carney

1 attempt to construe the provisions valid to the fullest extent possibly consistent with applicable  
2 precedents so as to define all provisions of this Agreement valid and enforceable.

3 **26. CLASS REPRESENTATIVE’S WAIVER OF RIGHT TO BE EXCLUDED AND**  
4 **OBJECT**

5 26.1 The Class Representative agrees to sign this Agreement and by signing this  
6 Agreement is bound by the terms herein stated and further agrees not to request to be excluded  
7 from the Settlement Class and agrees not to object to any of the terms of this Agreement. Non-  
8 compliance by the Class Representative with this Paragraph shall be void and of no force or  
9 effect. Any such requests for exclusion or objections shall therefore be void and of no force or  
10 effect.

11 **27. FAX/ELECTRONIC SIGNATURES**

12 27.1 A fax or electronic signature, such as DocuSign, on this Agreement shall be as  
13 valid as an original signature.

14  
15 DATE: \_\_\_\_\_

\_\_\_\_\_  
16 Plaintiff  
Martin Ortiz

17  
18 DATE: 8/05/2022

J. Michael Benator  
19 Defendant  
Tara Materials, Inc.

20  
21 By: J. MICHAEL BENATOR

22 Its: CEO

23 **APPROVED AS TO FORM:**

24  
25 DATE: August 9, 2022

**FISHER & PHILLIPS LLP**

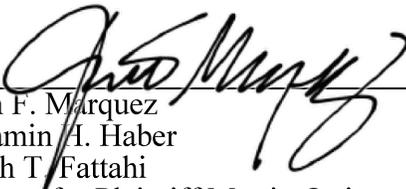
26  
27 By: Bret Martin  
Danielle Hultenius Moore  
Bret Martin  
Benjamin P. Carney

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Attorneys for Tara Materials, Inc.

DATE: August 14, 2022

**WILSHIRE LAW FIRM**

By:   
Justin F. Marquez  
Benjamin H. Haber  
Arrash T. Fattahi  
Attorney for Plaintiff Martin Ortiz

# Exhibit A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO  
*Martin Ortiz v. Tara Materials, Inc.*  
Case No. 37-2021-00001473-CU-OE-CTL

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.**

**TARA MATERIALS, INC. WILL NOT RETALIATE AGAINST YOU FOR PARTICIPATING IN THIS SETTLEMENT.**

**THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

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

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the San Diego County Superior Court has been reached by Tara Materials, Inc. (“Tara Materials”) and Martin Ortiz (“Plaintiff”), an individual, on behalf of himself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The San Diego County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class Member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

- Tara Materials has agreed to settle a lawsuit brought on behalf of all persons who worked for Tara Materials in California as an hourly-paid or non-exempt employee during the period from January 13, 2017 through March 15, 2022 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of Tara Materials: minimum wage, straight time wage, overtime and/or double time wage, failure to pay for all hours worked, meal and rest breaks and any premiums thereon, wage statement violations, waiting time penalties, failure to indemnify for expenditures, and other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of Tara Materials. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Tara Materials from liability for these claims.
- The Parties in the lawsuit disagree on whether Tara Materials is liable for the allegations raised in this case and how much money could have been won if the employees won at trial.
- **Your legal rights may be affected. Read this notice carefully.**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

<b>Get a Payment</b>	If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you do not exclude yourself, you will receive a payment and will give up certain rights as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
<b>Exclude Yourself</b>	Get no payment. Send a letter to the Settlement Administrator as provided below. This is the only option that allows you to bring your own claim against Tara Materials about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion. Note that even if you exclude yourself, if the Court approves the Settlement, you will still release your claims under the PAGA only and will receive a settlement payment as to the PAGA only.
<b>Object</b>	Write to the Court about why you do not like the settlement. Directions are provided below.

**WHY DID YOU RECEIVE THIS NOTICE?**

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

**WHAT IS THIS LAWSUIT ABOUT?**

Plaintiff filed this lawsuit in San Diego County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid all minimum, straight time, and overtime wages, were not paid for or properly provided meal and rest breaks, were not paid all wages due at termination and/or resignation, were not issued accurate wage statements, were not provided reimbursements for all necessary business-related expenses, and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

Tara Materials denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Tara Materials contends, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Tara Materials further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

**SUMMARY OF THE SETTLEMENT**

**A. Why is there a Settlement?**

The Court did **not** decide in favor of the Plaintiff or Tara Materials. Plaintiff thinks he would have prevailed on his claims at a trial. Tara Materials does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the

costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

**B. Who is in the Class?**

The Settlement Class consists of all persons who worked for Tara Materials in California as an hourly-paid or non-exempt employee during the Settlement Period.

**C. What does the Settlement provide?**

1. Settlement Amount.

Tara Materials will pay a total of One Hundred and Forty Thousand Dollars and Zero Cents (\$140,000.00) (the "Settlement Amount") to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys' Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$46,666.67), Litigation Expenses not to exceed \$15,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$10,000.00, the PAGA Settlement Payment in the amount of \$5,000.00, and an enhancement payment to the Named Plaintiff not to exceed \$2,500.00. Any and all Employer Taxes which Tara Materials normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by Tara Materials separate and apart from the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys' Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class Members.

2. Net Settlement Amount.

"Net Settlement Amount" means the Settlement Amount minus the Attorneys' Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor & Workforce Development Agency ("LWDA"), and the enhancement payment to the Named Plaintiff.

3. Your Individual Payment Amount.

The Claims Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant Tara Materials during the Settlement Period ("Total Workweeks"). The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not "opt out" (as defined on page 5 below) during the Settlement Period ("Workweek Point Value").

An "Individual Settlement Payment" for each Class Member will then be determined by multiplying a Class Member's workweeks ("Eligible Workweeks") by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

In addition, all persons who worked for Tara Materials in California as an hourly-paid or non-exempt employee (“PAGA Group Member”) during the period of January 19, 2020 to March 15, 2022 (“PAGA Period”) will be paid a pro-rata share of the \$1,250.00 allocated for the PAGA Group Members’ share of the PAGA penalties. If you are a PAGA Group Member and the Court approves the Settlement, then you will receive a payment for your pro-rata share of the PAGA settlement regardless of whether you choose to exclude yourself from the Settlement.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class Members reflecting the payments each Settlement Class Member receives under the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 20% as wages and 80% as penalties and interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

**D. What are you giving up to get a payment and stay in the Class?**

As of the Effective Date (as that term is defined in Section 1.19 of the Settlement Agreement), all members of the Settlement Class (excluding those who have timely submitted a valid Request for Exclusion), including each of their respective attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs, successors, and assigns, and the Named Plaintiff, release Tara Materials and each of its former or present parents, subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or successors, and all agents, employees, officers, directors, shareholders, partners, members, managers, holding companies, insurers, and attorneys thereof (the “Released Parties”) from all claims asserted under any applicable laws and/or regulations relating to any and all facts and claims asserted in the Action or any other claims, with the exception of all claims under the PAGA, that could have been asserted in the Action based on the facts alleged, including without limitation claims related to minimum wages, overtime and double time wages (including, but not limited to, any claims for additional wages owed due to “rounding” or “off the clock” work); meal and rest breaks; failure to maintain accurate employment records; wage statement violations; separation pay violations; failure to reimburse business expenses; and unfair business practices arising during the Settlement Period.

**THE FINAL APPROVAL HEARING**

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on                     , 2023, at 330 West Broadway, San Diego, California 92101, in Department C-67 of the San Diego County Superior Court. The Court will determine: (i) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (ii) whether the Settlement Class Members should be bound by the terms of the settlement; (iii) the amount of the attorneys’ fees and costs to Plaintiff’s counsel; and (iv) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You are permitted to provide an objection at the Final Approval Hearing, in the first instance, even if you did not provide a written objection beforehand. You have a right to attend this hearing, but you are not required to do so.

You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiff's counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

### **WHAT ARE YOUR OPTIONS?**

- **OPTION 1 – GET A PAYMENT**

**IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.**

The amount of the Settlement Payment paid to each Settlement Class Member is based upon the number of workweeks you worked between January 13, 2017 through March 15, 2022.

The average potential recovery for each proposed Settlement Class Member is \$ [REDACTED].

The estimated amount of your Settlement Payment is \$ [REDACTED]. The estimated number of workweeks you worked for Tara Materials during the Settlement Period is: [REDACTED]. If you believe that the number of workweeks stated is incorrect, you must notify the Settlement Administrator by [45 days after mailing] of the dispute and submit documentation to support such dispute. You can only dispute your number of workweeks if you do not exclude yourself from the Settlement Class. If you believe that the number of workweeks stated is correct, you do not have to do anything.

In addition, all persons who worked for Tara Materials in California as a PAGA Group Member during the PAGA Period will be paid a pro-rata share of the Weekly PAGA Amount. The estimated number of workweeks you worked for Tara Materials during the PAGA Period is: [REDACTED]. Your Estimated Weekly PAGA Amount is \$ [REDACTED]. Class Members who are PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the Settlement.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Tara Materials, subject to time limits called Statute of Limitations and other potential defenses that Tara Materials may assert, and to pursue your own claims in a separate suit.

In order to exclude yourself from the Settlement Class, you must submit a Request for Exclusion no later than [REDACTED] [45 days after mailing]. A Request for Exclusion is a letter or written request to be

excluded from the Settlement Class submitted by you to the Settlement Administrator, Phoenix Settlement Administrators [insert address]. In order to be valid, the Request for Exclusion must include the your name, address, telephone number, last four digits of the Social Security number, years of employment, and signature, and contain a statement to the effect of: "I wish to be excluded from the Settlement Class."

Note that even if you exclude yourself, if the Court approves the Settlement, you will still release your claims under the PAGA only and will receive a settlement payment as to the PAGA only.

- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing to object, regardless of whether you provided a written objection beforehand, either in person or through an attorney at your own expense.

Any written objection may be mailed to the Settlement Administrator at [redacted] (Address) by [redacted] [45 days after mailing].

The contact information for Plaintiff’s counsel and Defendant’s counsel is provided below solely for your informational purposes. Written objections should only be sent to the Settlement Administrator at the address provided above, not to Plaintiff’s counsel or Defendant’s counsel.

**PLAINTIFF’S/CLASS COUNSEL**

Justin F. Marquez  
[justin@wilshirelawfirm.com](mailto:justin@wilshirelawfirm.com)  
Benjamin H. Haber  
[benjamin@wilshirelawfirm.com](mailto:benjamin@wilshirelawfirm.com)  
Arrash T. Fattahi  
[afattahi@wilshirelawfirm.com](mailto:afattahi@wilshirelawfirm.com)  
**WILSHIRE LAW FIRM, PLC**  
3055 Wilshire Blvd., 12th Floor  
Los Angeles, California 90010  
Telephone: (213) 381-9988  
Facsimile: (213) 381-9989

**TARA MATERIALS, INC.’S COUNSEL**

Danielle Hultenius Moore  
[dmoore@fisherphillips.com](mailto:dmoore@fisherphillips.com)  
Bret Martin  
[bmartin@fisherphillips.com](mailto:bmartin@fisherphillips.com)  
Benjamin P. Carney  
[bcarney@fisherphillips.com](mailto:bcarney@fisherphillips.com)  
**FISHER & PHILLIPS LLP**  
4747 Executive Drive, Suite 1000  
San Diego, California 92121  
Telephone: (858) 597-9600  
Facsimile: (858) 597-9601

**CHANGE OF ADDRESS**

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

Phoenix Settlement Administrators  
[Insert address]

**ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Joint Stipulation of Class Action and PAGA Representative Claims” which is available for viewing online, along with other court records regarding this case, on the following website:

URL: [Insert website provided by Settlement Administrator]

The pleadings and other records in the lawsuit are also available on the website.

Alternatively, you may also obtain a copy of the Settlement Agreement and related documents online through the San Diego County Superior Court’s website, by going to the following webpage: <https://roa.sdccourt.ca.gov/roa/> and entering “37-2021-00001473-CU-OE-CTL” for the case number.

**ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF’S COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, Phoenix Settlement Administrators, [insert contact information].** Please refer to the *Martin Ortiz v. Tara Materials, Inc.* Class Action Settlement.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS**

# Exhibit 3



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

### CASE ASSUMPTIONS

Class Members	75
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	74
Subtotal Admin Only	\$6,500.00

**Not-to-Exceed Total \$6,500.00**

**For 75 Members**

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

**January 5, 2023**

## Case: Ortiz v. Tara Materials Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez

Firm: Wilshire Law Firm, PLC

Contact Number: (213) 381-9988, Ext. 345

Email: justin@wilshirelawfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on 75 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

### Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$107.39	1	\$107.39
Call Center & Long Distance	\$2.00	16	\$32.00
NCOA (USPS)	\$25.00	1	\$25.00
<b>Total</b>			<b>\$564.39</b>

\* Up to 120 days after disbursement

### Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.50	75	\$37.50
Notice Packet & Opt-Out Form	\$2.00	75	\$150.00
Estimated Postage (up to 2 oz.)*	\$0.84	75	\$63.00
Static Website	\$200.00	1	\$200.00
Language Translation	\$1,000.00	1	\$1,000.00
<b>Total</b>			<b>\$1,700.50</b>

\* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

<b>Skip Tracing &amp; Remailing Notice Packets / Tracking &amp; Programming Undeliverables</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Case Associate	\$55.00	2	\$110.00
Skip Tracing Undeliverables	\$2.00	15	\$30.00
Remail Notice Packets	\$2.00	15	\$30.00
Estimated Postage	\$0.84	15	\$12.60
Programming Undeliverables	\$50.00	1	\$50.00
		<b>Total</b>	<b>\$232.60</b>

<b>Database Programming / Processing Opt-Outs, Deficiencies or Disputes</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Programming Claims Database	\$135.00	2	\$270.00
Non Opt-Out Processing	\$100.00	1	\$100.00
Case Associate	\$55.00	2	\$110.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	3	\$30.00
Case Manager	\$85.00	2	\$170.00
		<b>Total</b>	<b>\$680.00</b>

<b>Calculation &amp; Disbursement Programming/ Create &amp; Manage QSF/ Mail Checks</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Programming Calculations	\$135.00	2	\$270.00
Disbursement Review	\$135.00	2	\$270.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$100.00	2	\$200.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks *	\$1.75	74	\$129.94
Estimated Postage	\$0.61	74	\$45.29
		<b>Total</b>	<b>\$1,355.23</b>

\* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

<b>Tax Reporting &amp; Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Case Supervisor	\$100.00	3	\$300.00
Remail Undeliverable Checks (Postage Included)	\$1.50	15	\$22.28
Case Associate	\$50.00	2	\$100.00
Reconcile Uncashed Checks	\$75.00	2	\$150.00
Conclusion Reports	\$125.00	1	\$125.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$125.00	2	\$250.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$650.00	1	\$650.00
Check to Cy-Pres	\$150.00	1	Included
Uncashed Checks to the State of California Controllers Office	\$200.00	1	\$200.00
Estimated N/A Total Class Members			
		<b>Total</b>	<b>\$1,967.28</b>

\* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

**Estimate Total: \$6,500.00**



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## **TERMS AND CONDITIONS**

**Provisions:** The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

**Data Conversion and Mailing:** The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

**Claims:** PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

**Payment Terms:** All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

### **Tax Reporting Requirements**

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

