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17 SUPERIOR COURT OF CALIFORNIA  
18 COUNTY OF ALAMEDA  
19 UNLIMITED JURISDICTION  
20

21 FELIPE DIAZ, individually and on behalf  
22 of all others similarly situated,

23 Plaintiff,

24 v.

25 ALCO IRON & METAL CO. and DOES 1  
26 to 30,

27 Defendant.  
28

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FELIPE DIAZ and the Plaintiff Class

CASE NO. HG10517616

**CLASS ACTION**

**CLASS SETTLEMENT AGREEMENT  
AND RELEASE**

Date:  
Time:  
Dept.: 17  
Judge: Hon. Steven Brick

**CLASS SETTLEMENT AGREEMENT AND RELEASE**

**1. Introduction.**

1.1 This Class Settlement Agreement and Release (the “Settlement Agreement”) is entered into on October 10, 2011 (the “Effective Date”) by and between Defendant Alco Iron & Metal Co. (“Defendant”) and Plaintiff Felipe Diaz (“Plaintiff”), individually, and as Class Representative on behalf of the Class (defined below), and subject to the approval of the Court. Plaintiff and Defendants are sometimes herein referred to individually as a “Party” and jointly and collectively as the “Parties.”

1.2 This Settlement Agreement relates to the proceeding pending in the Alameda County Superior Court (the “Court”) entitled *Felipe Diaz v. Alco Iron & Metal Co.*, Case No. HG10517616 (the “Action”). In the First Amended Complaint (“FAC”) filed in the Action on March 8, 2011, Plaintiff alleges that Defendant purportedly failed to provide meal and rest periods, failed to keep required payroll records and issue adequate pay stubs, failed to pay the full wages owed to employees upon termination, and engaged in unfair business practices in violation of Business & Professions Code §§ 17200, et seq. Through the FAC, Plaintiff, on behalf of himself and those similarly situated, sought damages, restitution, statutory penalties, pre-judgment and post-judgment interest, reasonable attorneys’ fees and costs, and any further relief deemed appropriate by the Court, on behalf of himself and other similarly situated employees of Defendant in California.

1.3 On June 16, 2011, the Court issued a “Certification Order” certifying the following class: All persons who have worked at any time between April 1, 2006 and July 31, 2011, for Defendant in California (the “Class”). The Certification Order certified the Class as to the following claims: (1) failure to provide afternoon rest breaks, (2) failure to provide meal breaks on days employees are required to attend safety meetings, (3) failure to record meal periods, (4) failure to issue adequate pay stubs, (5) failure to pay the full wages owed to employees upon termination, and (6) unfair competition. These claims shall collectively be referred to herein as the “Certified Claims.” All claims asserted in the FAC that were not certified in the Certification Order shall collectively be referred to as the “Individual Claims.”

1           **1.4** On August 2, 2010, Defendant filed its Answer to the Complaint denying all liability  
2 and setting forth affirmative defenses to the Action. Defendant denies each of the Individual  
3 Claims and Certified Claims asserted in the Action. Defendant has repeatedly asserted and  
4 continues to assert defenses thereto, and has expressly denied and continues to deny any  
5 wrongdoing or liability arising out of any of the facts or conduct alleged in the Action. Defendant  
6 also has denied and continues to deny the allegations that the Class Members (defined below)  
7 have suffered damage, injury or harm by the conduct alleged in the Action.

8           **1.5** On July 25, 2011, Defendant filed a motion for summary adjudication (“MSA”).

9           **1.6** Plaintiff and Defendant and their respective attorneys have conducted significant  
10 written discovery and numerous depositions investigating the facts and law pertaining to the  
11 Action, which included the production and review of voluminous documents, timecards, payroll  
12 records, pay stubs and exchange of information relating to Defendant’s policies and practices  
13 prior to settling this matter.

14           **1.7** During the settlement negotiations, Plaintiff and Class Counsel concluded, after taking  
15 into account the sharply disputed factual and legal issues involved in this Action, the risks  
16 attending further prosecution, Defendant’s MSA, the releases obtained by Defendant from Class  
17 Members, and the substantial benefits to be received pursuant to the compromise and settlement  
18 of the Action as set forth herein, that settlement on the terms set forth herein is in the best interest  
19 of the Class Members and is fair and reasonable. Similarly, Defendant concluded, after taking  
20 into account the sharply disputed factual and legal issues involved in the Action, the risks and  
21 expense attending further litigation, and its desire to put the controversy to rest, that settlement on  
22 the terms set forth herein is in its best interest, is in the best interests of its employees, and is fair  
23 and reasonable.

24           NOW THEREFORE, in consideration of the mutual promises stated herein, and for other  
25 good and valuable consideration stated below, the Parties hereto agree to the following terms of  
26 this Settlement Agreement, with the intent that this Settlement Agreement finally dispose of this  
27 Action contingent upon Court approval.

28 ///

1     **2. No Admission of Liability.**

2           Neither the terms of this Settlement Agreement nor any documents referred to herein, nor  
3     any action taken to affect this Settlement Agreement, shall in any way be construed as an  
4     admission of liability or wrongdoing on the part of any Party.

5     **3. Definitions.**

6           Unless otherwise defined herein, the capitalized terms used in this Settlement Agreement  
7     shall have the meanings set forth below:

8           **3.1** “Allocation Form” means the Settlement Allocation Form, a true and correct copy of  
9     which is attached hereto as Exhibit B. The Allocation Form sets forth an estimate of the dollar  
10    amount of each Class Member’s share of the Net Settlement Fund, and the basis for calculation of  
11    the Settlement shares.

12          **3.2** “Claims Administration Costs” means all fees and costs incurred and/or charged by  
13    the Claims Administrator in connection with the execution of its duties under this Settlement  
14    Agreement.

15          **3.3** “Claims Administrator” means Dahl, Inc., 410 Central Avenue N, Faribault, MN  
16    55021, which the Parties have agreed will be responsible for the administration of the Net  
17    Settlement Fund and matters relating to the administration of this Settlement Agreement.

18          **3.4** “Class Counsel” means Ram, Olson, Cereghino & Kopczynski LLP and the Law  
19    Offices of Roberto C. Jimenez, collectively.

20          **3.5** “Class Member Opt-Out(s)” means the Class Members who submit valid and timely  
21    requests for exclusion from the Settlement, pursuant to the terms of the Notice.

22          **3.6** “Class Member” means any person who worked at any time between April 1, 2006  
23    and July 31, 2011, for Defendant in California.

24          **3.7** “Class Period” means the period of time between April 1, 2006, to and including July  
25    31, 2011.

26          **3.8** “Class Representative” means Plaintiff Felipe Diaz.

27          **3.9** “Dispute Resolution” means the process described in Paragraph 14.9, below.

28          **3.10** “Enhancement Award” means the Settlement payment to be paid to the Class

1 Representative in a total amount not to exceed \$5,000 as enhancement for his risks, service, time,  
2 and effort spent in connection with his role as Class Representative in the Action. Plaintiff shall  
3 receive this Enhancement Award in addition to his Settlement share of the Net Settlement Fund.

4 **3.11** “Fees and Costs Award” means the attorneys’ fees and costs awarded to Class  
5 Counsel by the Court for their representation of Plaintiff and the Class in this Action, whether  
6 embodied in the Final Order and Judgment or in a separate post-judgment order. The amount of  
7 the Fees and Costs Award shall not exceed the sum of One Hundred and Seventy-Six Thousand  
8 One Hundred and Sixty-One Dollars and Thirty-Five Cents (\$176,161.35).

9 **3.12** “Final Approval Hearing” means the hearing to determine if the Court will issue a  
10 Final Order and Judgment approving the Settlement.

11 **3.13** “Final Order and Judgment” means the final decision to be entered by the Court:  
12 (1) approving this Agreement as in good faith, fair, adequate, reasonable, and in the best interests  
13 of the Class, and (2) making such other findings and determinations as the Court deems necessary  
14 and appropriate to effectuate the terms of this Agreement or to comply with applicable law,  
15 including without limitation an order on the Fees and Costs Award.

16 **3.14** “Finality Date” is defined as follows: The settlement embodied in this Settlement  
17 Agreement shall become effective on the later of: (i) the Court’s final approval of this settlement  
18 if no objections by Class Members have been filed or all objections are withdrawn, (ii) the time  
19 for appeal has expired if an objection has been filed and not withdrawn, or (iii) the final  
20 resolution of any appeal of objections if an appeal has been filed and not dismissed.

21 **3.15** “Gross Settlement Fund” means an amount not to exceed Four Hundred and  
22 Eighty-Five Thousand Dollars (\$485,000.00), excluding Claims Administration Costs and  
23 Defendant’s share of payroll taxes. This is not a claims made settlement.

24 **3.16** “Individual Settlement Amount” means each Participating Class Member’s share  
25 of the Net Settlement Fund.

26 **3.17** “Net Settlement Fund” means the Gross Settlement Fund, less the Fees and Costs  
27 Award, the Enhancement Award to the Class Representative and the Reserve Fund (defined in  
28 Paragraph 9, below).

1           **3.18** “Non-Exempt Settlement Amount” means the portion of the Net Settlement Fund  
2 remaining after the deduction of the Pay Stub Settlement Amount.

3           **3.19** “Notice” means the Notice of Class Action Settlement and Hearing Date for Court  
4 Approval to be mailed to Class Members by the Claims Administrator, a true and correct copy of  
5 which is attached hereto as Exhibit A.

6           **3.20** “Opt-Out Statement” means a signed written statement signed by the Class  
7 Member which includes the Class Member’s name, address and a request to Opt-Out of the  
8 Settlement.

9           **3.21** “Opt-Out” means the exercising of the right to be excluded from the Settlement  
10 pursuant to the terms of the Notice.

11           **3.22** “Participating Class Member” means all Class Members who do not submit valid  
12 and timely requests for exclusion from the Settlement, pursuant to the terms of the Notice.

13           **3.23** “Pay Stub Claim” means the Certified Claim for the alleged violation of California  
14 Labor Code section 226 for the disclosure of full Social Security numbers on pay stubs.

15           **3.24** “Pay Stub Settlement Amount” means the portion of the Net Settlement Fund that  
16 the parties have, in good faith, decided is attributable to settlement of the Pay Stub Claim.

17           **3.25** “Pay Stub Statutory Period” means January 1, 2008 (the date that Labor Code  
18 section 226 was amended to require redaction of Social Security numbers on pay stubs) through  
19 March 5, 2009 (the date that Defendant began redacting Social Security numbers in compliance  
20 with Labor Code section 226).

21           **3.26** “Preliminary Approval Hearing” means the hearing to determine the good faith,  
22 fairness, adequacy, and reasonableness of this Settlement Agreement and related matters as  
23 provided by law.

24           **3.27** “Preliminary Approval” means the Court’s order giving preliminary approval to  
25 this Settlement Agreement as a class action settlement and directing the mailing of the Notice to  
26 Class Members.

27           **3.28** “Released Claims” means all claims, liabilities, demands, obligations, guarantees,  
28 causes of action, contingent or accrued, penalties, and any legal, equitable, statutory, or other

1 relief of any kind, including, but not limited to, writs of mandate, injunctions, damages, sums of  
2 money in any form, forfeitures, penalties, compensation, costs, expert fees, expenses, attorneys'  
3 fees, whether unknown or unanticipated, against the Released Parties which were or could have  
4 been alleged based upon the facts pleaded in the FAC, including but not limited to the Certified  
5 Claims.

6 **3.29** "Released Parties" means Alco Iron & Metal Co., and its present and former  
7 officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors,  
8 advisors, representatives, consultants, predecessors, successors and assigns.

9 **3.30** "Settlement," "Agreement," or "Settlement Agreement" means this Settlement  
10 Agreement, all terms and conditions thereof, and Exhibits A and B thereto:

11 a. Exhibit A – Notice of Class Action Settlement and Hearing Date For Court  
12 Approval (to be mailed to Class Members).

13 b. Exhibit B - Settlement Allocation Form.

14 **4. Stay of Discovery, Motions And Other Proceedings.**

15 The Parties agree to stay all proceedings in the Action, including all discovery, motions  
16 and other litigation, except such proceedings necessary to implement and complete the  
17 Settlement, pending the Court's issuance of the Final Order and Judgment.

18 **5. Release.**

19 **5.1** As of the Finality Date, and except as to all rights and claims created by this  
20 Settlement Agreement, Plaintiff, individually and as Class Representative ("Plaintiff"), and each  
21 Participating Class Member fully releases and discharges the Released Parties from the Released  
22 Claims. Plaintiff also fully releases and discharges the Release Parties from the Individual  
23 Claims and all claims which arise out of or are derivative of the Individual Claims, the Certified  
24 Claims, or any individual or Class claims or causes of action that were or could have been based  
25 upon the facts pleaded in the FAC. Notwithstanding the foregoing, if Defendant decides at its  
26 sole discretion to distribute the Gross Settlement Fund as set forth in this Agreement prior to the  
27 Finality Date, the release set forth in this Paragraph 5 shall take effect as of the date of the first  
28 payment of any portion of the Gross Settlement Fund.

1           **5.2** Plaintiff also expressly waives any claim or right to assert hereafter that any claim,  
2 demand, obligation, and/or cause of action has, through ignorance, oversight, or error, been  
3 omitted from the terms of this Settlement Agreement pertaining to the Released Claims and all  
4 claims which arise out of or are derivative of the Individual Claims, the Certified Claims, or any  
5 individual or Class claims or causes of action that were or could have been based upon the facts  
6 pleaded in the FAC.

7           **5.3** With regards to Plaintiff, this is a full and final release applying to all unknown and  
8 unanticipated claims, demands, existing causes of action and potential causes of action and  
9 arising out of the Action. Plaintiff waives his rights with respect to the Released Claims, under  
10 Section 1542 of the Civil Code, which states:

11           **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
12 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**  
13 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**  
14 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**  
15 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

16           Plaintiff makes this waiver with full knowledge of his rights and with the specific intent to  
17 release all known and unknown claims arising out of or derivative of the Released Claims.

18 **6.     Request for Preliminary Approval.**

19           Plaintiff shall prepare a written motion for Preliminary Approval of the Settlement,  
20 including an order directing Notice to the Class and setting the date of the Preliminary Approval  
21 Hearing on September 30, 2011, or as soon thereafter as the Court can hear the motion. The  
22 Parties shall cooperate fully in promptly requesting preliminary and final approval of this  
23 Settlement Agreement by the Court, including the determination by the Court that this settlement  
24 is fair, reasonable, and adequate, approving the proposed Notice, and any other documents  
25 necessary to implement this Settlement Agreement.

26 **7.     Notice of Class Action Settlement and Hearing Date for Court Approval.**

27           **7.1 Identifying Information to be provided by Defendant.** Within five (5) business  
28 days of the Court's Preliminary Approval, Defendant shall transmit to the Claims Administrator  
all necessary information for the administration of this Settlement Agreement, including a list of  
the names of each Class Member, last known home address, Social Security number, date of hire



1 and date of termination (if any). For each non-exempt Class Member, Defendant shall also  
2 provide the Class Administrator with the total wages earned by the Class Member during the  
3 Class Period. The Social Security numbers shall only be used for purposes of preparing tax forms  
4 and locating Class Members whose addresses the Claims Administrator determines are not  
5 current or correct addresses. The Claims Administrator shall not provide the Class Members'  
6 Social Security numbers to Plaintiff or Class Counsel. This data and information to be  
7 transmitted by Defendant shall, to the fullest extent possible, be in electronic form, sent password  
8 protected, readable by computer and, if possible, by the Microsoft Excel program.

9 **7.2 Initial Mailing by Claims Administrator to Class Members.** Upon receipt of the  
10 Class Member Addresses, the Claims Administrator shall check and update the addresses through  
11 the National Change of Address Database ("NCOA"). Within five (5) business days of receipt of  
12 the Class Members Addresses, the Claims Administrator shall mail to each Class Member via  
13 first class regular U.S. mail the Notice and Allocation Form, in English and Spanish. The  
14 addresses to which these documents are mailed shall be determined by the Claims Administrator  
15 from the information provided by Defendant, the NCOA search and by such other means as the  
16 Claims Administrator customarily uses to locate class members in the administration of class  
17 action settlements.

18 **7.3 Opt-Out Statement.** As set forth in the Notice, Class Members can Opt-Out of the  
19 Settlement by mailing an Opt-Out Statement to the Claims Administrator postmarked within  
20 forty-five (45) days of the date the Notice was first mailed by the Claims Administrator. Class  
21 Member Opt-Outs shall not receive any payment pursuant to this Settlement, shall have no right  
22 to object to this Settlement, shall not be bound by any release provided for in this Agreement, and  
23 shall not release any of his or her claims, causes of action or rights virtue of this Agreement or  
24 Action. Class Members who fail to submit a valid and timely Opt-Out Statement shall be deemed  
25 Participating Class Members and shall be bound by all terms of the Settlement and the Final  
26 Order and Judgment entered in this Action if the Settlement is approved by the Court.

27 **7.4 Disputes as to Settlement Share.** On or before forty-five (45) days from the date the  
28 Notice was first mailed by the Claims Administrator, Participating Class Members may challenge

1 the amount of his or her Settlement share reflected in the Allocation Form by mailing a signed  
2 written challenge to the Claims Administrator, as provided in the Allocation Form. Within five  
3 (5) business days of the receipt of any dispute, Defendant shall investigate the dispute and  
4 forward the results of such investigation to the Claims Administrator. The Claims  
5 Administrator's determination on any disputes shall be final and binding on all Parties.

6 **7.5 Objections to this Settlement.** As set forth in the Notice, Participating Class  
7 Members who wish to object to the Settlement must either (1) file with the Court and mail to  
8 Class Counsel and Defendant's counsel written notice of objection within forty-five (45) days  
9 from the date the Notice was mailed by the Claims Administrator, or (2) mail to the Claims  
10 Administrator a written notice of objection postmarked within forty-five (45) days from the date  
11 the Notice was mailed by the Claims Administrator. The objection must be signed by a Class  
12 Member or his or her attorney (at his or her expense). The Claims Administrator shall thereafter  
13 promptly file and serve Class Counsel and Defendant's counsel with any objections mailed to it.  
14 Any objection that does not meet the requirements of this paragraph shall not be considered by  
15 the Court, unless otherwise ordered by the Court. Class Members who fail to file or submit  
16 timely and proper written objections shall be deemed to have waived any objections and shall be  
17 foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.  
18 Counsel for the Parties shall file a response to any filed objections no later than ten (10) days  
19 before the Final Approval Hearing.

20 **7.6 Defective Addresses.**

21 a. Any Notices returned to the Claims Administrator as undeliverable before the  
22 deadline for a Class Member to provide an Opt-Out Statement to the Claims Administrator,  
23 pursuant to the Notice, shall be sent to the forwarding address affixed thereto. If no forwarding  
24 address is provided, then the Claims Administrator shall promptly attempt to determine a correct  
25 address using a skip trace, or other search customarily used by the Claims Administrator. If an  
26 address is obtained by the skip trace, or a forwarding address is provided on the returned  
27 envelope, the Claims Administrator shall promptly remail the Notice and Allocation Form to such  
28 member.

1           **b.** If more than forty-five (45) days, but not more than sixty (60) days, have  
2 passed from the date of the initial mailing, and the Claims Administrator learns that a Class  
3 Member has not received the mailing because it was returned by the Postal Service as  
4 undelivered, the address to which it was sent was not current or correct, or for some other reason,  
5 the Claims Administrator shall promptly notify Defendant's counsel and Class Counsel. The  
6 Claims Administrator shall skip trace and re-mail all returned, undelivered Notices and  
7 Allocations Forms within five (5) days of receiving notice that the mailing was undeliverable. To  
8 Opt-Out or dispute the amount of the Settlement share, these Class Members must mail the Opt-  
9 Out Statement or written challenge to the Settlement share amount to the Claims Administrator  
10 postmarked within forty-five (45) days of the date of the re-mailing. To object to this Settlement,  
11 the written statement of the grounds of objection must be filed with the Court within forty-five  
12 (45) days of such re-mailing or mailed to Class Counsel, postmarked within forty-five (45) days of  
13 such re-mailing.

14           **7.7 Determination of Mailing Date:** The date Notices and Allocation Forms are mailed  
15 to Class members shall be exclusively determined according to the records of the Claims  
16 Administrator. The date Allocation Forms, Opt-Out Statements, objections to the Settlement, or  
17 other documents are mailed by Class members shall be established exclusively by the postmark  
18 on the return envelope.

19           **7.8 Declaration of Responses.** As soon as practicable, but no later than one hundred and  
20 ten (110) days following the initial mailing of the Notices and Allocation Forms, the Claims  
21 Administrator shall provide Class Counsel and Counsel for Defendant with a declaration attesting  
22 to completion of the notice process set forth in this Agreement, including an explanation of  
23 efforts to resend undeliverable notices returned with forwarding addresses, disputed claims, and  
24 Opt-Outs, which declaration shall be filed with the Court by Class Counsel along with their  
25 motion for final approval of the Settlement.

26           **7.9 Prohibition from Encouraging Class Members.** Other than Class Counsel, no Party  
27 shall directly or indirectly, through any person or entity, encourage any Class Member to Opt-Out  
28 or not to Opt-Out of this Settlement.

1 **8. Final Approval Hearing and Entry of Final Order and Judgment.**

2 **8.1** A Final Approval Hearing shall be conducted by the Court to enter the Final Order and  
3 Judgment within twenty (20) days after the date that the Claims Administrator declares that the  
4 notice process is complete, or as soon thereafter as the Court schedules the hearing.

5 **8.2** The Final Order and Judgment shall contain the following terms and provisions, all of  
6 which constitute conditions of this Settlement:

7 **a.** Granting final approval to this Agreement as fair, reasonable, adequate, in  
8 good faith, and in the best interests of the Class as a whole, and ordering the Parties to carry out  
9 the provisions of this Agreement;

10 **b.** Adjudging that all Participating Class Members will have waived and  
11 released the Released Parties from any and all Released Claims upon the earlier of the Finality  
12 Date or the date that Defendant makes the first Settlement payment hereunder;

13 **c.** Reserving exclusive and continuing jurisdiction in this Court (i) over the  
14 implementation of this Agreement pursuant to further orders of the Court until each and every act  
15 agreed to be performed by the parties hereto shall have been performed pursuant to this  
16 Agreement, (ii) over the enforcement, construction and interpretation of this Agreement, and (iii)  
17 over the enforcement terms of the Final Order and Judgment.

18 **8.3 Date and Method of Payments by Defendant.** No Settlement payments are required  
19 to be made hereunder until the Finality Date. Notwithstanding the foregoing, Defendant may in  
20 its sole discretion, but is not required to, distribute the Gross Settlement Fund before the Finality  
21 Date.

22 **8.4 Upon the occurrence of the Finality Date.**

23 **a.** Within ten (10) business days following the Finality Date, Defendant shall  
24 issue and mail to Class Counsel via first class mail a check made payable to Class Counsel for  
25 ninety percent (90%) of the Fees and Cost Award and a check made payable to Plaintiff for the  
26 Enhancement Award. Defendant shall issue and mail to Class Counsel via first class mail a check  
27 made payable to Class Counsel for the remaining ten percent (10%) of the Fees and Cost Award  
28 after the distribution of the Settlement payments is complete and the Court has approved the final

1 accounting.

2           **b.** Within ten (10) business days following the Finality Date, Defendant shall also  
3 transfer payment to the Claims Administrator the sum of the Net Settlement Fund and Reserve  
4 Fund (defined below) via check or wire transfer, at Defendant's discretion. Within fifteen (15)  
5 days of receipt of these funds, the Claims Administrator shall issue checks to distribute the Net  
6 Settlement Fund pursuant to the terms of this Agreement and mail them by first-class mail to the  
7 respective Participating Class Members. Checks to Participating Class Members for their portion  
8 of the Net Settlement Fund shall contain on the face of each check a statement that the check is  
9 void if not cashed within one hundred and twenty (120) days from the date of issuance. Such  
10 Settlement checks shall be mailed to the Participating Class Members on the issuance date of the  
11 check. If any Settlement check is not cashed within that one hundred and twenty (120) day  
12 period, the check will be void and the undistributed funds and any amounts remaining in the  
13 Reserve Fund will be redistributed amongst the Participating Class Members that cashed their  
14 checks in proportion to their respective Individual Settlement Amounts. However, if the  
15 remaining balance of the uncashed checks and the Reserve Fund is collectively less than  
16 \$10,000.00, this remaining balance will be made payable to the Legal Aid Society–Employment  
17 Law Center, a nonprofit, legal services organization assisting California's low-income working  
18 families, located in San Francisco, California. In such event, the payee of such voided check  
19 shall be deemed to have irrevocably waived any right in or claim to any portion of the Net  
20 Settlement Fund, but this Settlement Agreement shall remain binding upon them.

21 **9. Settlement Payment.**

22           **9.1 The Gross Settlement Fund is a Cap.** Pursuant to this Settlement Agreement,  
23 Defendant shall make payments only according to the terms of this Settlement Agreement. The  
24 Gross Settlement Fund represents the total payments by Defendant pursuant to this Settlement  
25 Agreement for claims of Plaintiff and the Participating Class Members, the Enhancement Award  
26 to the Class Representative, and the Fees and Costs Award, the total of which shall be no greater  
27 than Four Hundred and Eighty-Five Thousand Dollars (\$485,000.00). The Gross Settlement  
28 Fund does not include the Class Administration Costs or Defendant's share of payroll taxes,

1 which Defendant will be solely liable for. Defendant shall pay no interest on the Gross Settlement  
2 Fund or any portion thereof. Payment of the Gross Settlement Fund is made in exchange for the  
3 releases set forth in Paragraph 5, above, as well as the other conditions contained in this  
4 Settlement Agreement.

5 **9.2 Fees and Cost Award.**

6 a. Class Counsel will request that the Court approve an award of attorneys' fees  
7 in the sum of One Hundred and Fifty-Four Thousand Four Hundred and Nineteen Dollars and  
8 Thirty-Two Cents (\$154,419.32) and costs in the sum of Twenty-One Thousand Seven Hundred  
9 and Forty-Two Dollars and Three Cents (\$21,742.03). Defendant agrees not to oppose this  
10 request. After the Finality Date, the Fees and Costs Award shall be paid out of the Gross  
11 Settlement Fund before any payments are made to Participating Class Members. To the extent  
12 that the Court approves a lesser amount for the Fees and Cost Award, the difference between the  
13 requested amount and the actual award will be distributed amongst the Participating Class  
14 Members in proportion to their respective Individual Settlement Amounts.

15 b. Class Counsel shall not petition the Court for, or accept, any additional  
16 payments for fees, costs, or interest, and the Fees and Costs Award shall be for all claims for  
17 attorneys' fees and costs, whether past, present, or future, incurred in the Action. The payment of  
18 the Fees and Costs Award to Class Counsel from the Gross Settlement Fund shall constitute full  
19 satisfaction of the obligation to pay any amounts to any person, attorney, or law firm for  
20 attorneys' fees, expenses and/or costs in the Action incurred or claimed by any attorney on behalf  
21 of Plaintiff, individually and as Class Representative, or any Class Member, and shall relieve  
22 Defendant and Defendant's counsel of any other claims or liability to any other attorney or law  
23 firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled  
24 on behalf of Plaintiff or any Class Member.

25 **9.3 Enhancement Award to Class Representative.** Defendant and its counsel agree not  
26 to oppose an application for the Enhancement Award to be paid to the Class Representative in a  
27 total amount not to exceed \$5,000 as enhancement for his risks, service, time, and effort spent in  
28 connection with his role as Class Representative in the Action and in settlement of any Individual

1 Claims. After the Finality Date, this Enhancement Award shall be paid out of and deducted from  
2 the Gross Settlement Fund before any payments are made to Participating Class Members. The  
3 Class Representative shall also be entitled to receive a Settlement share from the Net Settlement  
4 Fund and Reserve Fund in addition to the Enhancement Award. No portion of the Enhancement  
5 Award shall be taxed as wages, and Class Representative will receive a Form 1099 in relation to  
6 the Enhancement Award. To the extent that the Court approves less than the amount of the  
7 Enhancement Award as requested by the Class Representative, the difference between the  
8 requested and awarded amounts will be distributed to the Participating Class Members in  
9 proportion to their respective Individual Settlement Amounts.

10 **9.4 Claims Administration Costs.** Dahl, Inc., shall be retained to serve as Claims  
11 Administrator. Dahl, Inc. has agreed to perform all necessary class administration duties. All  
12 Claims Administration Costs shall be paid by Defendant. This administration duty of the Claims  
13 Administrator shall include without limitation, mailing the Notices and Allocation Forms,  
14 performing address updates and verifications as necessary prior to the first mailing, performing a  
15 single skip trace on any returned mail, and the calculation, processing, and mailing of all Class  
16 member settlement checks and tax forms (including W-2s and 1099s to be issued by Defendant)  
17 to the Participating Class Members and tax authorities.

18 **9.5 Payment Allocation to Participating Class Members.**

19 **a.** Upon the occurrence of the Finality Date, the Claims Administrator shall  
20 prepare, verify the correctness of, and disburse amounts to be paid to Participating Class  
21 Members pursuant to this Agreement. Only Participating Class Members shall be eligible to  
22 receive payment from the Net Settlement Fund.

23 **b. Reserve Fund.** The Parties agree to reserve \$10,000.00, or slightly over two  
24 percent (2%) of the Gross Settlement Fund, as a reserve in the unlikely event that a Class Member  
25 is inadvertently not included on the class list, did not receive notice, or successfully disputes his  
26 or her Individual Settlement Amount, or there are any unforeseen claims. The \$10,000.00 will  
27 held as a Reserve Fund until the one hundred and twenty (120) day deadline for the Participating  
28 Class Members to cash their checks.

1           c. After deducting from the Gross Settlement Fund the (1) Fees and Cost Award,  
2 (2) the Enhancement Award, and (3) the Reserve Fund, the remaining Net Settlement Fund shall  
3 be divided between the Pay Stub Settlement Amount and the Non-Exempt Settlement Amount.

4           **d. Pay Stub Settlement Amount.** After taking into account the sharply disputed  
5 factual and legal issues surrounding the Pay Stub Claim, Defendant's MSA, the risks attending  
6 further prosecution, and the releases obtained by Defendant from Class Members, the Parties have  
7 agreed that Fifteen Thousand Dollars (\$15,000) shall constitute the Pay Stub Settlement Amount.  
8 Each Class Member's share of the Pay Stub Settlement Amount shall be calculated as follows:  
9 (The total number of pay periods a particular Class Member worked during the Pay Stub  
10 Statutory Period divided by the total number of pay periods during the Pay Stub Statutory Period  
11 worked by all Class Members) multiplied by \$15,000. The exempt Participating Class Members  
12 only have a potential Pay Stub Claim and, therefore, shall only receive a share of the Pay Stub  
13 Settlement Amount.

14           **e. Non-Exempt Settlement Amount.** The remaining amount of the Net  
15 Settlement Amount, after deduction of the \$15,000 for the Pay Stub Settlement Amount, shall  
16 constitute the Non-Exempt Settlement Amount. Each non-exempt Class Member's Individual  
17 Settlement Share shall include his or her share of the Pay Stub Settlement Amount as well as his  
18 or her share of the Non-Exempt Settlement Amount, which shall be calculated as follows: (Non-  
19 Exempt Settlement Amount divided by the total wages paid by Alco to non-exempt Class  
20 Members during the Class Period) multiplied by (the total wages earned by the particular non-  
21 exempt Class Member during the Class Period).

22           **f.** If a Class Member properly Opts-Out, the pro rata share of the Settlement  
23 amounts which each Class Member Opt-Out would otherwise have been entitled to receive shall  
24 be added to the Net Settlement Amount and shall be distributed amongst the Participating Class  
25 Members.

26           **g. Redistribution.** The amount of any checks not cashed within the one hundred  
27 and twenty (120) day period, in addition to any funds remaining in the Reserve Funds, will be  
28 redistributed amongst the Participating Class Members that cashed their checks in proportion to



1 their respective Individual Settlement Amounts. However, if the remaining balance (constituting  
2 the uncashed check payments and the amounts remaining in the Reserve Fund) is less than  
3 \$10,000.00, the remaining balance will be made payable to the Legal Aid Society–Employment  
4 Law Center. Any money left one hundred and thirty (130) days after the re-distribution will be  
5 paid to the Legal Aid Society-Employment Law Center.

6 **h.** No person shall have any claim against Defendant, Defendant’s attorneys of  
7 record, the Released Parties, the Class Representative, any Class Member, Class Counsel, or the  
8 Claims Administrator based on distributions or payments made in accordance with this  
9 Settlement Agreement.

10 **i.** Class Member Opt-Outs who submit valid and timely requests for exclusion  
11 from the Settlement, pursuant to the terms and procedures of the Notice, shall be excluded from  
12 all obligations, benefits, and consequences of this Agreement, including but not limited to any  
13 monetary payment from Defendant.

14 **10. Claims Administration.**

15 The Claims Administrator shall not distribute any disbursements from the Net Settlement  
16 Fund or Reserve Fund except as expressly authorized by this Settlement Agreement or as ordered  
17 by the Court.

18 **10.1 Claims Administrator.** With respect to the claims administration, the Claims  
19 Administrator shall:

20 **a.** Prepare, print, and mail Notices and Allocation Forms to the Class members as  
21 provided in this Settlement Agreement.

22 **b.** Skip trace and remail all returned, undelivered mail within five (5) days of  
23 receiving notice that the mailing was undeliverable.

24 **c.** Identify the Class Members, determine the correct Individual Settlement  
25 Amount and withholdings, and timely forward all requisite information to the Parties.

26 **d.** Coordinate with Defendant to research and/or investigate any disputes or  
27 challenges submitted by Participating Class Members regarding the portion of the Net Settlement  
28 Fund to be paid to a particular Participating Class Member.

1 e. File with the Court and serve Class Counsel and Defendant's counsel with any  
2 objections mailed to it.

3 f. Identify and report Class Member Opt-Outs to the Parties.

4 g. Prepare and circulate to counsel for the Parties a Declaration of Responses.

5 h. Identify any checks for Individual Settlement Amounts that are not timely  
6 cashed in accordance with the terms of this Settlement Agreement and provide such information  
7 to the Parties.

8 i. Confirm to the Parties the payments to be remitted by the Claims  
9 Administrator and mail Settlement checks to Participating Class Members.

10 j. If applicable, recalculate and confirm any reallocation and mail such checks to  
11 Participating Class Members in accordance with the terms of this Settlement Agreement.

12 k. The Claims Administrator shall attempt to resolve any disagreement with any  
13 Participating Class Member and may request any information or assistance from Defendant or  
14 Class Counsel that the Claims Administrator believes may assist in resolving the disagreement.  
15 In the event of a dispute by a Participating Class Member, or a discrepancy, regarding the portion  
16 of the Net Settlement Fund to be paid to a particular Participating Class Member, Defendant's  
17 records of dates of employment, employer personnel records and employer payroll records shall  
18 be presumed to be correct, which may only be rebutted by evidence, including any documentary  
19 evidence, submitted by the Participating Class Member. In connection with the resolution of such  
20 a dispute, Defendant shall make available to Class Counsel such records and documents as are in  
21 its possession or control that bear on the calculation of the Participating Class Member's  
22 entitlement to a portion of the Net Settlement Fund. In connection with any such disputes, the  
23 Claims Administrator's determination or decision shall be the final and binding decision.

24 l. Calculate, process and mail the settlement checks and tax forms (including W-  
25 2s and 1099s to be issued by Defendant) to the Participating Class Members and tax authorities.

26 m. Prepare and circulate to counsel for the Parties a Declaration of Compliance  
27 including a final, detailed list of all payments to Participating Class Members.

28 n. Provide to Defendant a detailed list of IRS Forms provided to Participating

1 Class Members by the Claims Administrator.

2 o. All such other tasks required by this Agreement, as the Parties mutually agree  
3 or as the Court orders.

4 **10.2 Defendant.** With respect to the Claims Administrator, in addition to any other  
5 obligations of Defendant set forth herein, Defendant shall:

6 a. Transfer the Net Settlement Amount and Reserve Fund to the Claims  
7 Administrator for distribution and payment by the Claims Administrator in accordance with the  
8 terms of this Settlement Agreement. Defendant shall have no responsibility with respect to the  
9 distribution of the Net Settlement Fund or Reserve Fund or any portions thereof.

10 b. Assist the Claims Administrator in resolving disputes as to Participating Class  
11 Member's Individual Settlement Amounts and as otherwise required by this Settlement  
12 Agreement.

13 **10.3 Class Counsel.** With respect to the Claims Administration, Class Counsel shall  
14 assist the Claims Administrator, upon request and where necessary, in determining or supporting  
15 the Individual Settlement Amounts to the Participating Class Members and as otherwise required  
16 by this Settlement Agreement.

17 **11. Taxation.**

18 **11.1** The Individual Settlement Amounts constitute payments from an employer to its  
19 workers and the legal rate for prejudgment interest is ten percent (10%). The Parties have  
20 therefore agreed that the Individual Settlement Amounts will be allocated for tax purposes as  
21 ninety percent (90%) wages and ten percent (10%) interest. Based on the Parties' assessment of  
22 the merits, the Parties have agreed not to allocate any portion of the Individual Settlement  
23 Amounts to the penalties sought in the Action.

24 **11.2** The Claims Administrator shall be responsible for preparing all IRS Forms W-2,  
25 IRS Forms 1099, notices, mailings, claims administration, and making any and all payments to  
26 Participating Class Members in accordance with this Settlement. Participating Class Members  
27 are responsible for paying appropriate taxes due on the payments they receive. Class Counsel and  
28 counsel for Defendant do not intend this Settlement Agreement to constitute legal or tax advice.

1 To the extent that this Settlement is interpreted to contain or constitute advice regarding any  
2 federal, state or local tax issue, such advice is not intended or written to be used or relied upon  
3 and cannot be used or relied upon by any person for the purpose of avoiding any tax liability or  
4 penalties.

5 **11.3** The Claims Administrator is responsible for timely providing to Participating  
6 Class Members and the Class Representative all tax information required by any federal, state or  
7 local taxing authority. The Claims Administrator will also be responsible for all required  
8 withholdings.

9 **11.4** The Claims Administrator will distribute Form W-2s and Form 1099s, as  
10 applicable, at times and in the manner required by the Internal Revenue Code of 1986 (the  
11 “Code”). If the Code or other applicable tax laws change after the date of this Settlement  
12 Agreement, the processes set forth in this Settlement Agreement may be modified to the extent  
13 necessary to comply with such changes to the Code.

14 **11.5** The Parties agree and recognize that it is the obligation of the Participating Class  
15 Members to pay appropriate federal, state, and local income taxes on all portions of monetary  
16 relief provided under this Settlement Agreement that lawfully qualify as taxable income.  
17 Participating Class Members unconditionally and absolutely agree to indemnify and hold the  
18 Released Parties, Plaintiff, Defense Counsel and Class Counsel fully harmless from any and all  
19 liability which may hereafter be asserted against them by the United States of America or the  
20 State of California for Social Security taxes, income taxes, or any other taxes claimed in  
21 connection with this Settlement payment together with interest and penalties thereon.  
22 Defendant’s share of federal, state, and local governmentally required contributions (such as, but  
23 not limited to, FICA) shall be borne by Defendant, and shall not reduce the Net Settlement Fund  
24 or Individual Settlement Amount. Except as prohibited by law or the terms of such plans,  
25 Participating Class Members’ Individual Settlement Amounts shall not count as earnings or  
26 compensation for purposes of any company sponsored benefit plans (e.g., 401(k) plan; retirement  
27 plan; etc.) which may be sponsored by Defendant.

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1    **12.    No Retaliation.**

2           Defendant shall not retaliate against any worker, employee or Class Member for  
3 participating in this Action or for Opting-Out of this Settlement.

4    **13.    Publicity of Settlement.**

5           Class Counsel may post brief statements on their respective websites regarding this  
6 Settlement which do not disparage Defendant. Both Parties may publish mutually agreed upon,  
7 non-disparaging comments in response to inquiries regarding the Settlement.

8    **14.    Other Provisions.**

9           **14.1    Agreement of Parties to Use Best Efforts to Effectuate Settlement.** The Parties  
10 agree to use their best efforts to carry out the terms of this Settlement Agreement.

11           **14.2    Exhibits.** The terms of this Settlement Agreement include the terms set forth in the  
12 attached Exhibits A and B (Notice and Allocation Form, respectively), which are incorporated by  
13 this reference as though fully set forth herein. Exhibits to this Settlement Agreement are an  
14 integral part of the Settlement.

15           **14.3    Headings.** The descriptive headings of any paragraphs or sections of this  
16 Settlement Agreement are inserted for convenience of reference only and do not constitute a part  
17 of this Settlement Agreement.

18           **14.4    Entire Agreement-Integration.** This Agreement sets forth the Parties' entire  
19 agreement and understanding relating to its subject matter and merges and supersedes all prior  
20 agreements, writings, commitments, discussions, and understandings between the Parties. The  
21 Agreement's terms are contractual and not mere recitals. No amendment, waiver, or modification  
22 may be made to this Agreement unless it is in writing and signed by each Party.

23           **14.5    Amendment or Modification.** This Settlement Agreement may be amended or  
24 modified only by a written instrument signed by counsel for all Parties or their successors-in-  
25 interest.

26           **14.6    Binding on Successors and Assigns.** The terms and provisions of this Agreement  
27 shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs,  
28 successors, executors, and permitted assigns.

1           **14.7 No Prior Assignments.** The Parties hereto represent, covenant, and warrant that  
2 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
3 transfer, or encumber to any person or entity any portion of any liability, claim, demand, cause of  
4 action or rights herein released and discharged except as set forth herein.

5           **14.8 Governing Law and Continuing Jurisdiction.** All terms of this Settlement  
6 Agreement and the Exhibits attached hereto shall be governed by and interpreted in accordance  
7 with the laws of the State of California, without giving effect to conflicts of laws principles.

8           **14.9 Dispute Resolution.** Any disputes relating to this Agreement, the enforcement  
9 thereof, or the form or content of any document required to implement the Agreement, or the  
10 Final Order and Judgment shall be resolved according to the following procedure:

11                   **a. Meet and Confer.** If either Party believes that a dispute exists relating to this  
12 Agreement, it shall notify the other Party in accordance with Subparagraph 14.18, below. The  
13 Parties shall meet and confer in an effort to reach agreement.

14                   **b. Mediation.** If the Parties are unable to resolve the dispute through the meet-  
15 and-confer process, the Parties shall engage in mediation in an effort to reach agreement.

16                   **c. Action or Proceeding.** The Court shall reserve jurisdiction to interpret and  
17 enforce the provisions of this Settlement Agreement and of the Final Order and Judgment. If the  
18 Parties are unable to resolve the dispute through mediation, or agree to waive the mediation  
19 requirement, the Parties can seek Court assistance to resolve the dispute.

20                   **d. Attorneys' Fees.** The prevailing party in any litigation or proceeding to  
21 enforce the terms of the Settlement Agreement shall be entitled to its attorneys' fees, costs, and  
22 expenses, including fees, costs and expenses paid to expert witnesses and consultants, if (1) the  
23 prevailing party made a demand for mediation prior to instigating such litigation or proceeding, or  
24 (2) the Parties agreed to waive the mediation requirement.

25           **14.10 No Third Party Beneficiaries.**

26                   **a.** Nothing in this Agreement, express or implied, is intended to or shall confer  
27 upon any person or entity not a Party to this Agreement any right, benefit, or remedy of any  
28 nature whatsoever under or by reason of this Agreement.

1           **b.** For purposes of interpreting or enforcing this Agreement, individual Class  
2 Members shall not be deemed to be third-party beneficiaries of this Agreement. Only the Class  
3 Representative through Class Counsel may seek to enforce the terms of this Agreement. To the  
4 extent individual class members have complaints regarding Defendant's implementation of the  
5 terms of this Agreement, they should bring them to the attention of the Class Representative  
6 and/or Class Counsel

7           **14.11 Counterparts.** This Agreement may be executed in one or more counterparts,  
8 each of which shall be deemed an original, but all of which together shall constitute one and the  
9 same instrument. The Parties agree that signatures on this Agreement transmitted electronically,  
10 whether sent via facsimile or as attached files to electronic mail messages (*e.g.*, in PDF format)  
11 shall be acceptable to bind the Parties, and neither electronically transmitted signatures nor the  
12 Parties' failure to exchange ink-signed originals shall in any way affect this Agreement's validity.  
13 The electronic transmission of a signature, whether by facsimile, by electronic mail, or by other  
14 means, by counsel for any Party shall be deemed a representation that the signature so transmitted  
15 is authentic.

16           **14.12 Cooperation.** Each party to the Agreement agrees to perform any further acts and  
17 to execute and deliver any additional documents that may be reasonably necessary to carry out the  
18 provisions and intent of the Agreement.

19           **14.13 Construction.** The Parties are each deemed to be equal drafters of the Agreement.  
20 The Parties hereto further agree that the terms and conditions of this Settlement are the result of  
21 lengthy, intensive arms-length negotiations between the Parties and that this Settlement shall not  
22 be construed in favor of nor against any Party by reason of the extent to which any Party, or his,  
23 her or its counsel participated in the drafting of this Settlement. In entering into this Settlement  
24 Agreement, no Party is relying upon any statement, representation, or promise of any other party  
25 or any officer, director, agent, partner, employee, consultant, representative, or attorney of or for  
26 any Party in executing this Settlement Agreement or in making this Settlement Agreement, except  
27 as expressly stated in this Settlement Agreement.

28           **14.14 Corporate Signatory.** Any person executing this Settlement or any related

1 document on behalf of Defendant as a corporate signatory hereby warrants and promises for the  
2 benefit of all Parties hereto that such person has been duly authorized by such corporation to  
3 execute this Settlement or any related document.

4 **14.15 Waiver.** No waiver of any of the terms of this Settlement Agreement shall be  
5 valid unless in writing and signed by the Party against whom such waiver is sought to be  
6 enforced. The waiver by any Party of any provision of this Settlement Agreement shall not  
7 operate or be construed as a waiver of any subsequent breach by any Party, nor shall any waiver  
8 operate or be construed as a rescission of this Settlement Agreement.

9 **14.16 Deadlines.** The Parties and the Court recognize that from time to time unforeseen  
10 events, such as exigent business circumstances, labor disputes, natural disasters, personnel issues,  
11 and negotiations with third parties, cause delays in the accomplishment of objectives no matter  
12 how well-intentioned and diligent the Parties may be. Accordingly, with regard to the provisions  
13 of this Agreement that require that certain acts be taken within specified periods, the Parties  
14 understand and agree that Court approval shall not be required for reasonable extensions of  
15 deadlines. In the event that any Party determines that an action required by this Agreement cannot  
16 be taken within the specified time period that Party shall promptly notify the other Parties that it  
17 anticipates a delay, the reasons for the delay, and proposed alternative deadline. The Parties shall  
18 endeavor to cooperate in reasonably rescheduling such deadlines. However, if the other Party  
19 does not agree to the proposed delay, the Parties shall submit the matter to Dispute Resolution.

20 **14.17 Representation of Comprehension of Document.** In entering into this  
21 Agreement, the Parties represent that they have relied upon the advice of their attorneys, who are  
22 the attorneys of the Parties' own choice, concerning the legal consequences of this Agreement;  
23 that the terms of this Agreement have been completely read and explained to the parties by the  
24 Parties' attorneys; and the terms of this Agreement are fully understood and voluntarily accepted  
25 by the Parties.

26 **14.18 Compliance by Defendant.** Defendant agrees that, as part of this Agreement, it  
27 will change its wage and hour policies by: (a) requiring non-exempt employees to properly  
28 document all meal periods; and (b) providing written schedules for all rest breaks for non-exempt



1 employees. Defendant will provide Class Counsel and Court with proof of these changes within  
2 one hundred and twenty (120) days after the Finality Date.

3 **14.19 Notice.** All notices, demands, or other communications given under this  
4 Agreement to counsel for the Parties or between counsel and the Claims Administrator shall be in  
5 writing and sent via first class mail and electronic mail, addressed as follows:

6 To Representative for Plaintiff and the Class/Class Counsel:

7 Karl Olson  
8 Michael Ram  
9 RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP  
10 555 Montgomery Street, Suite 820  
11 San Francisco, CA 94111  
12 Electronic mail: kolson@rocklawcal.com; mram@rocklawcal.com

13 To Representative for Defendant/Counsel for Defendant:

14 William R. Hill  
15 Andrew S. MacKay  
16 DONAHUE GALLAGHER WOODS LLP  
17 Attorneys at Law  
18 1999 Harrison Street, 25th Floor  
19 Oakland, California 94612-3520  
20 Mail: P.O. Box 12979  
21 Oakland, California 94604-2979  
22 Electronic mail: rock@donahue.com; andrew@donahue.com

23 [Remainder of page left intentionally blank; signature page to follow]  
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IN WITNESS WHEREOF the undersigned have executed this Agreement as of the Effective Date hereinabove set forth.

\_\_\_\_\_  
Felipe Diaz, an individual

Date: \_\_\_\_\_

ALCO IRON & METAL CO.:

By: [Signature]

Its: PRESIDENT

Date: 10-10-11

APPROVED AS TO FORM:

Dated: October \_\_, 2011

RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP

By: \_\_\_\_\_

Karl Olson  
Attorneys for Plaintiff  
FELIPE DIAZ and the Plaintiff Class

Dated: October \_\_, 2011

LAW OFFICE OF ROBERTO C. JIMENEZ

By: \_\_\_\_\_

Roberto C. Jimenez  
Attorneys for Plaintiff  
FELIPE DIAZ and the Plaintiff Class

Dated: October 11, 2011

DONAHUE GALLAGHER WOODS LLP

By: [Signature]

William R. Hill  
Attorneys for Defendant  
ALCO IRON & METAL CO.