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and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

CECILIO OSUNA-REYES, an individual  
and on behalf of all others similarly situated,

Plaintiff,

v.

KIRKHILL RUBBER COMPANY, a  
Delaware corporation; HEXPOL HOLDING,  
INC., a Delaware corporation; HEXPOL  
COMPOUNDING CA INC., a Delaware  
corporation; JAMES STOLL, an individual;  
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 21STCV42216

**CLASS AND PAGA SETTLEMENT  
AGREEMENT**

Action Filed: November 16, 2021  
Trial Date: None Set

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and on behalf of all others similarly situated.

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COMPANY

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and  
2 between plaintiff Cecilio Osuna-Reyes (“Plaintiff Osuna-Reyes”) and Jorge Orozco (“Plaintiff  
3 Orozco” and collectively, “Plaintiffs”) on the one hand; and defendant Kirkhill Rubber Company  
4 (“Defendant” and together with Plaintiffs, the “Parties”); on the other hand. The Agreement  
5 refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

6 **1. DEFINITIONS**

7 1.1. “Action” means the Plaintiffs’ consolidated lawsuit alleging wage and hour violations  
8 against Defendant, including the lawsuit captioned *Cecilio Osuna-Reyes v. Kirkhill Rubber*  
9 *Company*, Los Angeles Superior Court Case No. 21STCV42216, initiated on November 16,  
10 2021, and the lawsuit captioned *Jorge Orozco v. Kirkhill Rubber Company, et al.*, Los Angeles  
11 Superior Court Case No. 22STCV00597, initiated on January 6, 2022.

12 1.2. “Administrator” means Apex Class Action, LLC the neutral entity the Parties have agreed  
13 to appoint to administer the Settlement.

14 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid  
15 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance  
16 with the Administrator’s “not to exceed” bid submitted to the Court in connection with  
17 Preliminary Approval of the Settlement.

18 1.4. “PAGA Member” means a current or former non-exempt employee of Defendant within  
19 the State of California at any time during the PAGA Period.

20 1.5. “Class” means all current and former non-exempt employees of Defendant within the  
21 State of California at any time during the Class Period.

22 1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,  
23 P.C. and Kashif Haque, Samuel Wong, Jessica L. Campbell and Joseph M. Szilagyi of Aegis  
24 Law Firm, PC.

25 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean  
26 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and  
27 expenses, respectively, incurred to prosecute the Action.

28 1.8. “Class Data” means Class Member identifying information in Defendant’s possession,

1 including the Class Member's (1) name; (2) last known address(es); (3) last known telephone  
2 number(s); (4) last known Social Security Number(s); and (5) the dates of employment (i.e., hire  
3 dates, and, if applicable, re-hire date(s) and/or separation date(s)).

4 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either  
5 a Participating Class Member or Non-Participating Class Member (including a Non- Participating  
6 Class Member who qualifies as an PAGA Member).

7 1.10. "Class Member Address Search" means the Administrator's investigation and search for  
8 current Class Member mailing addresses using all reasonably available sources, methods and  
9 means including, but not limited to, the National Change of Address database, skip traces, and  
10 direct contact by the Administrator with Class Members.

11 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION  
12 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to  
13 Class Members in English and Spanish in the form, without material variation, attached as Exhibit  
14 A and incorporated by reference into this Agreement.

15 1.12. "Class Period" means the period from November 16, 2017 through October 11, 2025.

16 1.13. "Class Representatives" means the named Plaintiffs.

17 1.14. "Class Representative Service Payment" means the payment to the Class Representatives  
18 for initiating the Action and providing services in support of the Action.

19 1.15. "Court" means the Superior Court of California, County of Los Angeles.

20 1.16. "Defendant" means named defendant Kirkhill Rubber Company.

21 1.17. "Defense Counsel" means Wesley A. Krueger of Lewis Brisbois Bisgaard & Smith  
22 LLP.

23 1.18. "Effective Date" means the later of: (a) the Court enters a Judgment on its Order Granting  
24 Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the  
25 latest of the following occurrences: (a) if no Participating Class Member objects to the  
26 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members  
27 objects to the Settlement, the day after the deadline for filing a notice of appeal from the  
28 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court

1 affirms the Judgment and issues a remittitur.

2 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

3 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval  
4 of the Settlement.

5 1.21. “Final Judgment” means the Judgment entered by the Court upon Final Approval of the  
6 Settlement.

7 1.22. “Gross Settlement Amount” means \$932,080.00 (Nine Hundred Thirty-Two Thousand  
8 Eighty Dollars and Zero Cents) which is the total amount Defendant agrees to pay under the  
9 Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes  
10 owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount  
11 will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA  
12 Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment,  
13 and Administrator’s Expenses.

14 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the  
15 Net Settlement Amount calculated according to the number of Workweeks worked during the  
16 Class Period.

17 1.24. “Individual PAGA Payment” means the PAGA Member’s pro rata share of 25% of the  
18 PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA  
19 Period.

20 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

21 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency  
22 entitled, under Labor Code section 2699, subd. (i).

23 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA  
24 under Labor Code section 2699, subd. (i).

25 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following  
26 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA  
27 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel  
28 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be

1 paid to Participating Class Members as Individual Class Payments.

2 1.29. “Non-Participating Class Member” means any Class Member who opts out of the  
3 Settlement by sending the Administrator a valid and timely Request for Exclusion.

4 1.30. “PAGA Pay Period” means any Pay Period during which an PAGA Member worked for  
5 Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as  
6 applicable), and termination dates (as applicable).

7 1.31. “PAGA Period” means the period from November 23, 2020 through the end of the Class  
8 Period.

9 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

10 1.33. “PAGA Notice” collectively means Plaintiff Osuna Reyes’s November 23, 2021 letter to  
11 Defendant and the LWDA and Plaintiff Orozco’s January 6, 2022 letter to Defendant and the  
12 LWDA , providing notice pursuant to Labor Code section 2699.3 subd. (a).

13 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the  
14 Gross Settlement Amount, allocated 25% to the PAGA Members (\$25,000.00) and the 75% to  
15 the LWDA (\$75,000.00) in settlement of PAGA claims.

16 1.35. “Participating Class Member” means a Class Member who does not submit a valid and  
17 timely Request for Exclusion from the Settlement.

18 1.36. “Plaintiffs” means Cecilio Osuna Reyes and Jorge Orozco the named plaintiffs in the  
19 Action.

20 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the  
21 Settlement.

22 1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval  
23 and Approval of PAGA Settlement.

24 1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2  
25 below.

26 1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4  
27 below.

28 1.41. “Released Parties” means: Defendant and its past, present, and future affiliates,

1 predecessors, successors, assigns, shareholders, members, and agents (including, without  
2 limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, and any past,  
3 present, or future officers, directors, and employees), and all of their current and former officers,  
4 directors, members, managers, employees, consultants, partners, shareholders, joint venturers,  
5 agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal  
6 representatives. Notwithstanding the foregoing, Released Parties shall not include any staffing  
7 companies utilized by Defendant.

8 1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be  
9 excluded from the Class Settlement signed by the Class Member.

10 1.43. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to  
11 Class Members and PAGA Members, and shall be the last date on which Class Members may:  
12 (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the  
13 Settlement. Class Members to whom Notice Packets are resent after having been returned  
14 undeliverable to the Administrator shall have an additional 15 days beyond the Response  
15 Deadline has expired.

16 1.44. “Settlement” means the disposition of the Action effected by this Agreement and the  
17 Judgment.

18 1.45. “Workweek” means any week during which a Class Member worked for Defendant, for  
19 at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and  
20 termination dates (as applicable).

21 **2. RECITALS**

22 2.1. On November 16, 2021, Plaintiff Osuna-Reyes commenced this Action by filing a  
23 complaint against Defendant for: failure to pay overtime and minimum wages; failure to provide  
24 meal breaks, rest breaks, or compensation in lieu thereof; waiting time penalties; wage statement  
25 violations; and unfair competition (“Action”).

26 2.2. On November 23, 2021, Plaintiff Osuna-Reyes filed with the LWDA, and served on  
27 Defendant, a notice under Labor Code section 2699, *et seq.*, asserting various Labor Code  
28

1 violations against Defendant for which he sought civil PAGA penalties on behalf of himself and  
2 the PAGA Members (“PAGA Notice”).

3 2.3. On February 9, 2022, Plaintiff Osuna-Reyes filed a First Amended Complaint in the  
4 Action adding a cause of action for civil penalties under PAGA for the Labor Code violations  
5 asserted in the PAGA Notice.

6 2.4. On January 6, 2022, Plaintiff Orozco filed a separate putative class action against  
7 Defendant.

8 2.5. On January 6, 2022, Plaintiff Orozco filed a PAGA Notice with the LWDA and served  
9 the PAGA Notice onto Defendant pursuant to Labor Code section 2699, *et seq.*

10 2.6. On March 28, 2022, Plaintiff Orozco filed a First Amended Complaint adding a cause  
11 of action for civil penalties under PAGA for the Labor Code violations asserted in the PAGA  
12 Notice.

13 2.7. On May 2, 2022, Plaintiff Osuna-Reyes’ and Plaintiff Orozco’s separate actions were  
14 consolidated, with Plaintiff Osuna-Reyes’ action as the lead case.

15 2.8. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

16 2.9. Prior to mediation Plaintiffs obtained, through informal discovery: (a) time and payroll  
17 records for 100% of Class Members through mediation; (b) a class list of hire dates, termination  
18 dates, and rates of pay for all Class Members; (c) wage and hour policy documents; (d) contact  
19 information for part of the Class; and (e) all documents pertaining to Plaintiffs available to  
20 Defendant.

21 2.10. Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in  
22 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*  
23 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

24 2.11. On April 16, 2025, the Parties participated in an all-day mediation with labor and  
25 employment mediator Todd Smith, Esq. The mediation was successful, and the Parties agreed to  
26 globally resolve all class and PAGA claims in the Action.

27 2.12. The Court has not granted class certification.

28 2.13. The Parties represent that they are not aware of any other pending matter or action

1 asserting claims that will be extinguished or affected by the Settlement.

2 **3. MONETARY TERMS**

3 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below,  
4 Defendant agrees to pay \$932,080.00 (Nine Hundred and Thirty-Two Thousand Eighty Dollars  
5 and Zero Cents) as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of  
6 this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage  
7 Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross  
8 Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this  
9 Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking  
10 or requiring Participating Class Members or PAGA Members to submit any claim as a condition  
11 of payment. None of the Gross Settlement Amount will revert to Defendant.

12 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct  
13 the following payments from the Gross Settlement Amount, in the amounts specified by the Court  
14 in the Final Approval:

15 3.2.1. To Plaintiffs: Class Representative Service Payment to Plaintiffs of not more than  
16 \$7,500.00 to each Class Representative, for a total of \$15,000.00, in addition to any  
17 Individual Class Payment and any Individual PAGA Payment Plaintiffs are entitled to  
18 receive as a Participating Class Member. Defendant will not oppose Plaintiffs' request  
19 for a Class Representative Service Payment that does not exceed this amount. As part  
20 of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment,  
21 Plaintiffs will seek Court approval for any Class Representative Service Payments prior  
22 to the Final Approval Hearing. If the Court approves a Class Representative Service  
23 Payment less than the amount requested, the Administrator will retain the remainder in  
24 the Net Settlement Amount. The Administrator will pay the Class Representative  
25 Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and  
26 liability for employee taxes owed on the Class Representative Service Payment.

27 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 1/3 of the  
28 Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this

1 Agreement, is currently estimated to be \$310,693.33 and a Class Counsel Litigation  
2 Expenses Payment of not more than \$60,000.00 representing costs actually incurred.  
3 Defendant will not oppose requests for these payments provided that do not exceed these  
4 amounts. Plaintiffs and/or Class Counsel will endeavor to file a motion for Class  
5 Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court  
6 days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees  
7 Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts  
8 requested, the Administrator will allocate the remainder to the Net Settlement Amount.  
9 Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel  
10 arising from any claim to any portion any Class Counsel Fee Payment and/or Class  
11 Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel  
12 Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms.  
13 Class Counsel assume full responsibility and liability for taxes owed on the Class  
14 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and hold  
15 Defendant harmless, and indemnifies Defendant, from any dispute or controversy  
16 regarding any division or sharing of any of these Payments. There will be no additional  
17 charge of any kind to either the Class Members or request for additional consideration  
18 from Defendant for such work unless Defendant materially breaches this Agreement,  
19 including any term regarding funding, and further efforts are necessary from Class  
20 Counsel to remedy said breach, including, without limitation, moving the Court to  
21 enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs  
22 and expenses in amounts that are less than the amounts provided for herein, then the  
23 unapproved portion(s) shall be a part of the Net Settlement Amount.

24 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed  
25 \$7,250.00 except for a showing of good cause and as approved by the Court. To the  
26 extent the Administration Expenses are less or the Court approves payment less than  
27 \$7,250.00, the Administrator will retain the remainder in the Net Settlement Amount.

28 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated

1 by (a) dividing the Net Settlement Amount by the total number of Workweeks worked  
2 by all Participating Class Members during the Class Period and (b) multiplying the result  
3 by each Participating Class Member's Workweeks.

4 3.2.4.1. Tax Allocation of Individual Class Payments. 10% of each Participating  
5 Class Member's Individual Class Payment will be allocated to settlement of  
6 wage claims (the "Wage Portion"). The Wage Portions are subject to tax  
7 withholding and will be reported on an IRS W-2 Form. The 90% of each  
8 Participating Class Member's Individual Class Payment will be allocated to  
9 settlement of claims for interest and penalties (the "Non-Wage Portion"). The  
10 Non-Wage Portions are not subject to wage withholdings and will be reported  
11 on IRS 1099 Forms. Participating Class Members assume full responsibility  
12 and liability for any employee taxes owed on their Individual Class Payment.

13 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual  
14 Class Payments. Non-Participating Class Members will not receive any  
15 Individual Class Payments. The Administrator will retain amounts equal to  
16 their Individual Class Payments in the Net Settlement Amount for distribution  
17 to Participating Class Members on a pro rata basis.

18 3.2.5. To the LWDA and PAGA Members: PAGA Penalties in the amount of a  
19 \$100,000.00 to be paid from the Gross Settlement Amount, with 75% (\$75,000.00)  
20 allocated to the LWDA PAGA Payment and 25% (\$25,000.00) allocated to the  
21 Individual PAGA Payments.

22 3.2.5.1. The Administrator will calculate each Individual PAGA  
23 Payment by (a) dividing the amount of the PAGA Members' 25% share of  
24 PAGA Penalties \$25,000.00 by the total number of PAGA Period Pay Periods  
25 worked by all PAGA Members during the PAGA Period and (b) multiplying  
26 the result by each PAGA Member's PAGA Period Pay Periods. PAGA  
27 Members assume full responsibility and liability for any taxes owed on their  
28 Individual PAGA Payment.

1                   3.2.5.2.     If the Court approves PAGA Penalties of less than the  
2                   amount requested, the Administrator will allocate the remainder to the Net  
3                   Settlement Amount. The Administrator will report the Individual PAGA  
4                   Payments on IRS 1099 Forms.

5                   **4.     SETTLEMENT FUNDING AND PAYMENTS**

6 4.1.     Class Workweeks and PAGA Member Pay Periods. Based on a review of its records to  
7 date, Defendant estimates there are 193 Class Members who collectively worked a total of 23,302  
8 Workweeks, and 151 of PAGA Members who worked a total of 7,413 PAGA Pay Periods.

9 4.2.     Class Data. Not later than 7 days after the Court grants Preliminary Approval of the  
10 Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft  
11 Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain  
12 the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no  
13 other purpose, and restrict access to the Class Data to Administrator employees who need access  
14 to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty  
15 to immediately notify Class Counsel if it discovers that the Class Data omitted class member  
16 identifying information and to provide corrected or updated Class Data as soon as reasonably  
17 feasible. Without any extension of the deadline by which Defendant must send the Class Data  
18 to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good  
19 faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

20 4.3.     Final Disbursement Calculations. Within seven (7) calendar days after the Court grants  
21 Final Approval of the Settlement, the Administrator shall provide the Parties with a spreadsheet  
22 showing its final calculations for payments to all Participating Class Members, its final  
23 calculations for payments to all PAGA Members, and its final calculations for the amount of  
24 payroll taxes Defendant must deposit.

25 4.4.     Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement  
26 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by  
27 transmitting the funds to the Administrator no later than 30 days after the Effective Date.

28 4.5.     Payments from the Gross Settlement Amount. Within 14 days after Defendant funds the

1 Gross Settlement Amount, only after approval by the Parties of the final distribution amounts,  
2 the Administrator will mail checks for all Individual Class Payments, all Individual PAGA  
3 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel  
4 Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative  
5 Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation  
6 Expenses Payment and the Class Representative Service Payment shall not precede disbursement  
7 of Individual Class Payments, and the Individual PAGA Payments.

8 4.5.1. The Administrator will issue checks for the Individual Class Payments and/or  
9 Individual PAGA Payments and send them to the Class Members via First Class U.S.  
10 Mail, postage prepaid. The face of each check shall prominently state the date (not less  
11 than 180 days after the date of mailing) when the check will be voided. The  
12 Administrator will cancel all checks not cashed by the void date. The Administrator  
13 will send checks for Individual Settlement Payments to all Participating Class Members  
14 (including those for whom Class Notice was returned undelivered). The Administrator  
15 will send checks for Individual PAGA Payments to all PAGA Members including Non-  
16 Participating Class Members who qualify as PAGA Members (including those for  
17 whom Class Notice was returned undelivered). The Administrator may send  
18 Participating Class Members a single check combining the Individual Class Payment  
19 and the Individual PAGA Payment. Before mailing any checks, the Settlement  
20 Administrator must update the recipients' mailing addresses using the National Change  
21 of Address Database.

22 4.5.2. The Administrator must conduct a Class Member Address Search for all other  
23 Class Members whose checks are returned undelivered without USPS forwarding  
24 address. Within 7 days of receiving a returned check the Administrator must re-mail  
25 checks to the USPS forwarding address provided or to an address ascertained through  
26 the Class Member Address Search. The Administrator need not take further steps to  
27 deliver checks to Class Members whose re-mailed checks are returned as undelivered.  
28 The Administrator shall promptly send a replacement check to any Class Member whose

1 original check was lost or misplaced, requested by the Class Member prior to the void  
2 date.

3 4.5.3. For any Class Member whose Individual Class Payment check or Individual  
4 PAGA Payment check is uncashed and cancelled after the void date, the Administrator  
5 shall transmit the funds represented by such checks to the State of California Unclaimed  
6 Property Fund in the name of the Class Member or PAGA Member to whom they were  
7 originally issued.

8 4.5.4. The payment of Individual Class Payments and Individual PAGA Payments shall  
9 not obligate Defendant to confer any additional benefits or make any additional  
10 payments to Class Members (such as 401(k) contributions or bonuses) beyond those  
11 specified in this Agreement.

## 12 **5. RELEASE OF CLAIMS**

13 Effective upon entry of Judgment, the Order granting Final Approval of this Settlement,  
14 and on the date when Defendants fully fund the entire Gross Settlement Amount and fund all  
15 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs,  
16 Class Members, and Class Counsel will release claims against all Released Parties as follows:

17 5.1. Plaintiffs' Release. Plaintiffs Cecilo Osuna-Reyes and Jorge Orozco, and their respective  
18 former and present spouses, representatives, agents, attorneys, heirs, administrators, successors,  
19 and assigns generally, release and discharge Released Parties from all claims, demands, debts,  
20 duties, obligations, promises, liabilities, damages, accounts, payments, liens, acts, costs,  
21 expenses, sums of money, suits, dues, actions, or causes of action, both in law and equity, whether  
22 known or unknown, matured or unmatured, suspected or unsuspected, which he ever had, now  
23 has, or may have in the future with regard to any facts, transactions, events or occurrences that  
24 occurred prior to the date the Court grants Preliminary Approval of this settlement, including,  
25 but not limited to: (a) all claims that were, or reasonably could have been, alleged in the Action,  
26 based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or  
27 reasonably could have been, alleged based on facts contained in the Operative Complaint and  
28 Plaintiffs' PAGA Notice. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any

1 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment  
2 benefits, disability benefits, social security benefits, or workers' compensation benefits that arose  
3 at any time, or any claims that cannot be released as a matter of law. Plaintiffs acknowledge that  
4 Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs  
5 now know or believe to be true but agrees, nonetheless, that Plaintiffs' Release shall be and  
6 remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs'  
7 discovery of them.

8 5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For  
9 purposes of Plaintiffs' Release only, Plaintiffs expressly waive and relinquish the  
10 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,  
11 which reads:

12 A general release does not extend to claims that the creditor or releasing party does not  
13 know or suspect to exist in his or her favor at the time of executing the release, and that  
14 if known by him or her would have materially affected his or her settlement with the  
15 debtor or Released Party.

16 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of  
17 themselves and their respective former and present representatives, agents, attorneys, heirs,  
18 administrators, successors, and assigns, release Released Parties from all claims that were  
19 alleged, or reasonably could have been alleged, based on the facts stated in the complaints filed  
20 in the Action including, but not limited to, all claims for failure to pay overtime, failure to pay  
21 minimum wages, failure to provide meal periods, failure to provide rest breaks, failure to pay  
22 wages at separation, failure to provide accurate wage statements, failure to timely pay wages,  
23 failure to pay vacation pay, and unfair competition arising from events occurring during the Class  
24 Period, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable  
25 under said causes of action under California law, to the extent permissible, including, but not  
26 limited to, the California Labor Code and the applicable Wage Orders.

27 5.3. Except as set forth in Section 5.4 of this Agreement, Participating Class Members do not  
28 release any other claims, including claims for vested benefits, wrongful termination, violation of

1 the Fair Employment and Housing Act, unemployment insurance, disability, social security,  
2 workers' compensation, or claims based on facts occurring outside the Class Period.

3 5.4. Release by PAGA Members: All PAGA Members, on behalf of themselves and their  
4 respective former and present representatives, agents, attorneys, heirs, administrators, successors,  
5 and assigns, release the Released Parties from all claims for Violation of PAGA that were alleged,  
6 or reasonably could have been alleged, based on the facts stated in the complaints filed in the  
7 Action and the PAGA Notice, including, but not limited to, all claims for Violation of PAGA  
8 arising from any failure to pay overtime, failure to pay minimum wages, failure to provide meal  
9 periods, failure to provide rest breaks, failure to pay wages at separation, failure to provide  
10 accurate wage statements, failure to timely pay wages, failure to pay vacation pay, or unfair  
11 competition occurring during the PAGA Period.

## 12 **6. MOTION FOR PRELIMINARY APPROVAL**

13 Within 14 days following the Parties' execution of this Agreement, Plaintiff shall prepare  
14 and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies  
15 with the Court's current checklist for Preliminary Approvals.

16 6.1. Plaintiffs' Responsibilities. Prior to filing the Motion for Preliminary Approval, Plaintiffs  
17 will prepare and to deliver to Defense Counsel all documents necessary for obtaining Preliminary  
18 Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for  
19 Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request  
20 for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft  
21 proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft  
22 proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to  
23 exceed" bid for administering the Settlement and attesting to its willingness to serve;  
24 competency; operative procedures for protecting the security of Class Data; amounts of insurance  
25 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any  
26 actual or potential conflicts of interest with Class Members; and the nature and extent of any  
27 financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration  
28 from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant

1 to any actual or potential conflicts of interest with Class Members; (v) a signed declaration from  
2 each Class Counsel firm attesting to its competency to represent the Class Members; its timely  
3 transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor  
4 Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)),  
5 this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual  
6 or potential conflict of interest with Class Members and the Administrator.

7 6.2. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and  
8 filing the Motion for Preliminary Approval after the full execution of this Agreement; obtaining  
9 a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to  
10 advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for  
11 delivering the Court's Preliminary Approval Order to the Administrator.

12 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for  
13 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and  
14 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and  
15 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary  
16 Approval or conditions Preliminary Approval on any non-material change to this Agreement,  
17 Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by  
18 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the  
19 Court's concerns.

## 20 7. SETTLEMENT ADMINISTRATION

21 7.1. Selection of Administrator. The Parties have jointly selected Apex Class Action, LLC to  
22 serve as the Administrator and verified that, as a condition of appointment, Apex Class Action,  
23 LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in  
24 this Agreement in exchange for payment of Administration Expenses. The Parties represent that  
25 they have no interest or relationship, financial or otherwise, with the Administrator other than a  
26 professional relationship arising out of prior experiences administering settlements.

27 7.2. Employer Identification Number. The Administrator shall have and use its own Employer  
28 Identification Number for purposes of calculating payroll tax withholdings and providing reports

1 state and federal tax authorities.

2 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets  
3 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section  
4 468B-1.

5 7.4. Notice to Class Members

6 7.4.1. No later than three (3) business days after receipt of the Class Data, the  
7 Administrator shall notify the Parties that the list has been received and state the number  
8 of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.  
9 Also within three (3) business days after receipt of the Class Data, the Administrator will  
10 provide the Parties with a spreadsheet showing the Administrator's calculations for  
11 anticipated payments to Class Members, the allocation of workweeks to Class Members,  
12 and any payroll taxes to be paid by Defendant. Finally within three (3) business days  
13 after receipt of the Class Data, the Administrator will provide the Parties with a  
14 spreadsheet showing the Administrator's calculations for payments to the PAGA  
15 Members and the allocation of pay periods to PAGA Members. The Administrator shall  
16 redact any identifying information and instead use an employee number to differentiate  
17 (except as to the named Plaintiffs in the Action) in order to protect the Class Members’  
18 and PAGA Members’ confidential information.

19 7.4.2. Subject to the approval of the Parties, within 14 days after receiving the Class Data,  
20 the Administrator will send to all Class Members identified in the Class Data, via first-  
21 class United States Postal Service (“USPS”) mail, the Class Notice with Spanish  
22 translation, substantially in the form attached to this Agreement as Exhibit A. The first  
23 page of the Class Notice shall prominently estimate the dollar amounts of any Individual  
24 Class Payment and/or Individual PAGA Payment payable to the Class Member, and the  
25 number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these  
26 amounts. Before mailing Class Notices, the Administrator shall update Class Member  
27 addresses using the National Change of Address database.

28 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice

1 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice  
2 using any forwarding address provided by the USPS. If the USPS does not provide a  
3 forwarding address, the Administrator shall conduct a Class Member Address Search,  
4 and re-mail the Class Notice to the most current address obtained. The Administrator  
5 has no obligation to make further attempts to locate or send Class Notice to Class  
6 Members whose Class Notice is returned by the USPS a second time.

7 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks  
8 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days  
9 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose  
10 notice is re-mailed. The Administrator will inform the Class Member of the extended  
11 deadline with the re-mailed Class Notice.

12 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise  
13 discovers any persons who believe they should have been included in the Class Data  
14 and should have received Class Notice, the Parties will expeditiously meet and confer,  
15 and in good faith, in an effort to agree on whether to include them as Class Members.  
16 If the Parties agree, such persons will be Class Members entitled to the same rights as  
17 other Class Members, and the Administrator will send, via email or overnight delivery,  
18 a Class Notice requiring them to exercise options under this Agreement not later than  
19 15 days after receipt of Class Notice, or the deadline dates in the Class Notice, which  
20 ever are later.

21 7.5. Requests for Exclusion (Opt-Outs).

22 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement  
23 must send the Administrator, by mail, a signed written Request for Exclusion not later  
24 than 45 days after the Administrator mails the Class Notice (plus an additional 15 days  
25 for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter  
26 from a Class Member or his/her representative that reasonably communicates the Class  
27 Member's election to be excluded from the Settlement and includes the Class Member's  
28 name, address, email address or telephone number, and signature. To be valid, a

1 Request for Exclusion must be timely postmarked by the Response Deadline.

2 7.5.2. Every Class Member who does not submit a timely and valid Request for  
3 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled  
4 to all benefits and bound by all terms and conditions of the Settlement, including the  
5 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,  
6 regardless whether the Participating Class Member actually receives the Class Notice  
7 or objects to the Settlement.

8 7.5.3. Every Class Member who submits a valid and timely Request for Exclusion is a  
9 Non-Participating Class Member and shall not receive an Individual Class Payment or  
10 have the right to object to the class action components of the Settlement. Class Members  
11 and PAGA Members shall not be entitled to opt out of the PAGA portion of the  
12 settlement, however. Furthermore, because future PAGA claims are subject to claim  
13 preclusion upon entry of the Judgment, Non-Participating Class Members who are  
14 PAGA Members are deemed to release the claims identified in Paragraph 5.4 of this  
15 Agreement and are eligible for an Individual PAGA Payment.

16 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 30 days after  
17 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose  
18 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods  
19 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge  
20 the allocation by communicating with the Administrator via mail. In the absence of any contrary  
21 documentation, the Administrator is entitled to presume that the Workweeks contained in the  
22 Class Notice are correct so long as they are consistent with the Class Data. The Administrator's  
23 determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final  
24 and not appealable or otherwise susceptible to challenge. The Administrator shall promptly  
25 provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense  
26 Counsel and Class Counsel and the Administrator's determination the challenges.

27 7.7. Objections to Settlement

28 7.7.1. Only Participating Class Members may object to the class action components of

1 the Settlement and/or this Agreement, including contesting the fairness of the  
2 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class  
3 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

4 7.7.2. Participating Class Members may send written objections to the Administrator, by  
5 mail. In the alternative, Participating Class Members may appear in Court (or hire an  
6 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.  
7 A Participating Class Member who elects to send a written objection to the  
8 Administrator must do so not later than 45 days after the Administrator's mailing of the  
9 Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-  
10 mailed).

11 7.7.3. Non-Participating Class Members have no right to object to any of the class action  
12 components of the Settlement.

13 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be  
14 performed or observed by the Administrator contained in this Agreement or otherwise.

15 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain  
16 and use an internet website to post information of interest to Class Members including  
17 the date, time and location for the Final Approval Hearing and copies of the Settlement  
18 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class  
19 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,  
20 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,  
21 the Final Approval and the Judgment. The Administrator will also maintain and monitor  
22 an email address and a toll-free telephone number to receive Class Member calls and  
23 emails.

24 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will  
25 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.  
26 Not later than 5 days after the expiration of the deadline for submitting Requests for  
27 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel  
28 containing (a) the employee ID numbers of any Class Members who have timely

1 submitted valid Requests for Exclusion (“Exclusion List”); (b) the employee ID  
2 numbers of Class Members who have submitted invalid Requests for Exclusion; (c)  
3 copies of all Requests for Exclusion from Settlement submitted (whether valid or  
4 invalid) with all personally identifying information redacted.

5 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written  
6 reports to Class Counsel and Defense Counsel that, among other things, tally the number  
7 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for  
8 Exclusion (whether valid or invalid) received, objections received, challenges to  
9 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for  
10 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The  
11 Weekly Reports must include provide the Administrator’s assessment of the validity of  
12 Requests for Exclusion and attach copies of all Requests for Exclusion and objections  
13 received.

14 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to  
15 address and make final decisions consistent with the terms of this Agreement on all  
16 Class Member challenges over the calculation of Workweeks and/or Pay Periods. The  
17 Administrator’s decision shall be final and not appealable or otherwise susceptible to  
18 challenge.

19 7.8.5. Administrator’s Declaration. Before the date by which Plaintiffs are required to  
20 file the Motion for Final Approval of the Settlement, the Administrator will provide to  
21 Class Counsel and Defense Counsel, a declaration suitable for filing in Court attesting  
22 to its due diligence and compliance with all of its obligations under this Agreement,  
23 including, but not limited to, its mailing of Class Notice, the Class Notices returned as  
24 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total  
25 number of Requests for Exclusion from Settlement it received (both valid or invalid),  
26 the number of written objections and attach the Exclusion List. The Administrator will  
27 supplement its declaration as needed or requested by the Parties and/or the Court. Class  
28 Counsel is responsible for filing the Administrator’s declaration(s) in Court.

1 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator  
2 disburses all funds in the Gross Settlement Amount, the Administrator will provide  
3 Class Counsel and Defense Counsel with a final report detailing its disbursements by  
4 employee identification number only of all payments made under this Agreement. At  
5 least 7 days before any deadline set by the Court, the Administrator will prepare, and  
6 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in  
7 Court attesting to its disbursement of all payments required under this Agreement. Class  
8 Counsel is responsible for filing the Administrator's declaration in Court.

9 **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

10 Based on its records, Defendant estimates that, as of the date of this Settlement  
11 Agreement, (1) there are 193 Class Members and 23,302 Total Workweeks during the Class  
12 Period and (2) there are 151 PAGA Members who worked 7,413 Pay Periods during the PAGA  
13 Period.

14 8.1. Increase in Workweeks. In the event the number of workweeks worked by the Class  
15 Members increases by more than 10% (i.e. more than 25,632), Defendant shall increase the  
16 Gross Settlement Amount pro rata for every additional workweek worked by the Class Members  
17 above that 10% threshold (i.e. if the actual number of workweeks worked by the Class Members  
18 is 11% larger than this estimate, the Gross Settlement Amount shall be increased by 1%).

19 **9. DEFENDANT'S RIGHT TO WITHDRAW**

20 If the number of valid Requests for Exclusion identified in the Exclusion List exceeds  
21 10% of the total of all Class Members, Defendant may elect to withdraw from the Settlement.  
22 The Parties agree that, if Defendant withdraws, the Settlement shall be *void ab initio*, have no  
23 force or effect whatsoever, and that neither Party will have any further obligation to perform  
24 under this Agreement; provided, however, Defendant will remain responsible for paying all  
25 Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel  
26 of its election to withdraw not later than seven (7) days after the Administrator sends the final  
27 Exclusion List to Defense Counsel; late elections will have no effect.  
28

1           **10.     MOTION FOR FINAL APPROVAL**

2           Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will  
3 file in Court, a motion for final approval of the Settlement that includes a request for approval of  
4 the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order  
5 and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall endeavor  
6 to provide drafts of these documents to Defense Counsel not later than seven days prior to filing  
7 the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and  
8 confer, and in good faith, to resolve any disagreements concerning the Motion for Final  
9 Approval.

10 10.1. Response to Objections. Each Party retains the right to respond to any objection raised  
11 by a Participating Class Member, including the right to file responsive documents in Court no  
12 later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted  
13 by the Court.

14 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final  
15 Approval on any non-material change to the Settlement (including, but not limited to, the scope  
16 of release to be granted by Class Members), the Parties will expeditiously work together in good  
17 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final  
18 Approval. The Court’s decision to award less than the amounts requested for the Class  
19 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation  
20 Expenses Payment, and/or the Administrator Expenses Payment, shall not constitute a material  
21 modification to the Agreement within the meaning of this paragraph.

22 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the  
23 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of  
24 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,  
25 and (iii) addressing such post-Judgment matters as are permitted by law.

26 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and  
27 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class  
28 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their

1 respective counsel, and all Participating Class Members who did not object to the Settlement as  
2 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to  
3 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions  
4 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver  
5 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the  
6 Parties' obligations to perform under this Agreement will be suspended until such time as the  
7 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect  
8 the amount of the Net Settlement Amount.

9 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the  
10 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material  
11 modification of this Agreement (including, but not limited to, the scope of release to be granted  
12 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless  
13 expeditiously work together in good faith to address the appellate court's concerns and to obtain  
14 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration  
15 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify  
16 the Court's award of the Class Representative Service Payment or any payments to Class Counsel  
17 shall not constitute a material modification of the Judgment within the meaning of this paragraph,  
18 as long as the Gross Settlement Amount remains unchanged.

## 19 **11. AMENDED JUDGMENT**

20 If any amended judgment is required under Code of Civil Procedure section 384, the  
21 Parties will work together in good faith to prepare a proposed amended judgment for Plaintiffs'  
22 submission to the Court.

## 23 **12. ADDITIONAL PROVISIONS**

24 12.1. No Employment Relationship. In exchange for Defendant's agreement to the terms and  
25 conditions contained herein, including the payment of the Class Representative Service Award,  
26 Plaintiff Osuna-Reyes shall be deemed to have resigned his employment with Defendant and/or  
27 any Released Parties as of the date this Agreement has been signed by all Parties. Plaintiff Osuna-  
28 Reyes agrees to execute any documents reasonably requested by Defendant in order to effectuate

1 such resignation. The Parties further agree that Defendant's payment of monies to Plaintiffs  
2 pursuant to this Agreement does not create or reinstate any employment relationship between  
3 Plaintiffs and Defendant or between Plaintiffs and any Released Party.

4 12.2. No Admission of Liability, Class Certification or Representative Manageability for Other  
5 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.  
6 Nothing in this Agreement is intended or should be construed as an admission by Defendants  
7 that any of the allegations in the Operative Complaint have merit or that Defendants have any  
8 liability for any claims asserted; nor should it be intended or construed as an admission by  
9 Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class  
10 certification and representative treatment is for purposes of this Settlement only. If, for any  
11 reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants  
12 reserve the right to contest certification of any class for any reasons, and Defendants reserve all  
13 available defenses to the claims in the Action, and Plaintiffs reserves the right to move for class  
14 certification on any grounds available and to contest Defendants' defenses. The Settlement, this  
15 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be  
16 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the  
17 Settlement and this Agreement).

18 12.3. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants and  
19 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement  
20 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit  
21 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly  
22 or indirectly, specifically or generally, to any person, corporation, association, government  
23 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom  
24 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the  
25 extent necessary to report income to appropriate taxing authorities; (4) in response to a court  
26 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal  
27 government agency. Each Party agrees to immediately notify each other Party of any judicial or  
28 agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel,

1 Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any  
2 conversation or other communication, before the filing of the Motion for Preliminary Approval,  
3 any with third party regarding this Agreement or the matters giving rise to this Agreement except  
4 to respond only that “the matter was resolved,” or words to that effect. This paragraph does not  
5 restrict Class Counsel’s communications with Class Members in accordance with Class  
6 Counsel’s ethical obligations owed to Class Members.

7 12.4. No Solicitation. The Parties separately agree that they and their respective counsel and  
8 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal  
9 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s  
10 ability to communicate with Class Members in accordance with Class Counsel’s ethical  
11 obligations owed to Class Members.

12 12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement  
13 together with its attached exhibits shall constitute the entire agreement between the Parties  
14 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or  
15 inducements made to or by any Party.

16 12.6. Cooperation. The Parties will cooperate with each other and use their best efforts, in  
17 good faith, to implement the Settlement by, among other things, modifying the Settlement  
18 Agreement, submitting supplemental evidence and supplementing points and authorities as  
19 requested by the Court. In the event the Parties are unable to agree upon the form or content of  
20 any document necessary to implement the Settlement, or on any modification of the Agreement  
21 that may become necessary to implement the Settlement, the Parties will seek the assistance of a  
22 mediator and/or the Court for resolution.

23 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not  
24 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
25 encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
26 action, or right released and discharged by the Party in this Settlement.

27 12.8. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense Counsel are  
28 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied

1 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR  
2 Part 10, as amended) or otherwise.

3 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,  
4 modified, changed, or waived only by an express written instrument signed or agreed to by all  
5 Parties or their representatives, and approved by the Court.

6 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to  
7 the benefit of, the successors of each of the Parties.

8 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be  
9 governed by and interpreted according to the internal laws of the state of California, without  
10 regard to conflict of law principles.

11 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of  
12 this Agreement. This Agreement will not be construed against any Party on the basis that the  
13 Party was the drafter or participated in the drafting

14 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered  
15 during Action and in this Agreement relating to the confidentiality of information shall survive  
16 the execution of this Agreement

17 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal.  
18 Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by  
19 Defendants in connection with the mediation, other settlement negotiations, or in connection with  
20 the Settlement, may be used only with respect to this Settlement, and no other purpose, and may  
21 not be used in any way that violates any existing contractual agreement, statute, or rule of court.  
22 Not later than 90 days after the date when the Court discharges the Administrator's obligation to  
23 provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy,  
24 all paper and electronic versions of Class Data received from Defendant unless, prior to the  
25 Court's discharge of the Administrator's obligation, Defendant makes a written request to Class  
26 Counsel for the return, rather than the destructions, of Class Data.

27 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is  
28 inserted for convenience of reference only and does not constitute a part of this Agreement.

1 12.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall  
2 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a  
3 weekend or federal legal holiday, such date or deadline shall be on the first business day  
4 thereafter.

5 12.17. Notice. All notices, demands or other communications between the Parties in connection  
6 with this Agreement will be in writing and deemed to have been duly given as of the third  
7 business day after mailing by United States mail, or the day sent by email or messenger,  
8 addressed as follows:

9 To Plaintiff:

10 David D. Bibiyan  
11 david@tomorrowlaw.com  
12 Vedang J. Patel  
13 vedang@tomorrowlaw.com  
14 BIBIYAN LAW GROUP, P.C.  
15 1460 Westwood Boulevard  
Los Angeles, CA 90024  
Telephone: (310) 438-5555  
Facsimile: (310) 300-1705

16 Jessica L. Campbell  
17 jcampbell@aegislawfirm.com  
18 Joseph M. Szilagyi  
19 jszilagyi@aegislawfirm.com  
20 AEGIS LAW FIRM, PC  
21 9811 Irvine Center Drive, Suite 100  
Irvine, CA 92618  
22 Telephone: (949) 379-6250  
23 Facsimile: (949) 379-6251

24 To Defendant:

25 Wesley A. Krueger  
26 Wesley.Krueger@lewisbrisbois.com  
27 LEWIS BRISBOIS BISGAARD & SMITH LLP  
28 633 W. 5th Street, Suite 4000  
Los Angeles, CA 90071  
Telephone: (213) 250-1800  
Facsimile: (213) 250-7900

12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts

1 by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall  
2 be accepted as an original. All executed counterparts and each of them will be deemed to be one  
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5 and contents of this Agreement.

6 12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the  
7 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further  
8 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend  
9 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement  
10 process.

11 12.20. Severability. In the event that one or more of the provisions contained in this Agreement  
12 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,  
13 illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel  
14 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing  
15 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this  
16 Agreement.

17 **IT IS SO AGREED:**

18  
19 Dated: 05/20/2026 Cecilio Osuna-Reyes  
20 Cecilio Osuna-Reyes  
21 Plaintiff

22 Dated: \_\_\_\_\_ Jorge Orozco  
23 Plaintiff

24  
25 Dated: \_\_\_\_\_ Kirkhill Rubber Company

26  
27 By: \_\_\_\_\_  
28 Its: \_\_\_\_\_

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**AGREED AS TO FORM ONLY:**

*Vedang J. Patel*      5/21/2026  
\_\_\_\_\_  
David D. Biblyan  
Vedang J. Patel  
Counsel for Plaintiff

\_\_\_\_\_  
Wesley A. Krueger,  
William Mosher  
Counsel for Defendants

\_\_\_\_\_  
Kashif Haque  
Joseph M. Szilagy  
Counsel for Plaintiff Orozco

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16 Agreement.

17 **IT IS SO AGREED:**

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

\_\_\_\_\_  
Cecilio Osuna-Reyes  
Plaintiff

20  
21  
22 Dated: 5/22/2026 \_\_\_\_\_

Signed by:  
  
\_\_\_\_\_  
3AE3FD79734E445...  
Jorge Orozco  
Plaintiff

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24  
25 Dated: \_\_\_\_\_

\_\_\_\_\_  
Kirkhill Rubber Company

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

28 Its: \_\_\_\_\_

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**AGREED AS TO FORM ONLY:**

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David D. Bibiyan  
Vedang J. Patel  
Counsel for Plaintiff

---

Wesley A. Krueger,  
William Mosher  
Counsel for Defendants



---

Kashf Haque  
Joseph M. Szilagy  
Counsel for Plaintiff Orozco

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17 **IT IS SO AGREED:**

18  
19 Dated: \_\_\_\_\_  
20 Cecilio Osuna-Reyes  
21 Plaintiff

22 Dated: \_\_\_\_\_  
23 Jorge Orozco  
24 Plaintiff

25 Dated: 5/23/2026  
26 \_\_\_\_\_  
27 Kirkhill Rubber Company

27 By: Drew Dubois  
28 Its: Chief Financial Officer

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**AGREED AS TO FORM ONLY:**

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David D. Bibiyan  
Vedang J. Patel  
Counsel for Plaintiff



---

Wesley A. Krueger,  
William Mosher  
Counsel for Defendants

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Kashif Haque  
Joseph M. Szilagyi  
Counsel for Plaintiff Orozco