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11
12 **SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE COUNTY OF SACRAMENTO**

14 BLAKE MCMAHON, individually and on
15 behalf of all other similarly situated employees,

16 Plaintiff,

17 vs.

18 AIRCO MECHANICAL, INC., a California
19 Corporation; and DOES 1 to 100, inclusive,

20 Defendants.

Case No.: 34-2019-00259269

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: June 25, 2019
FAC Filed: September 19, 2019
SAC Filed: May 20, 2020
TAC Filed: April 23, 2021
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Blake McMahon (“Plaintiff”), on behalf of himself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendant Airco
4 Mechanical, Inc. (“Defendant”). This Agreement is subject to the terms and conditions set forth below
5 and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *McMahon v. Airco Mechanical, Inc.*, Sacramento
9 County Superior Court, Case No. 34-2019-00259269, filed June 25, 2019.

10 1.2 “Aggrieved Employee(s)” means all individuals who have, or continue to, perform work
11 for Defendant in California as non-exempt, hourly employees during the PAGA Claim Period.

12 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
13 Regarding Class Action and PAGA Settlement and Release.

14 1.4 “Claim Amount” means an individual Qualified Claimant’s and Aggrieved Employee’s
15 allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21,
16 1.25, 5.5, and 5.8.

17 1.5 “Claims Administrator” means and refers to ILYM Group, Inc., the third-party entity that
18 will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action
19 settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of
20 administering this Agreement. The Parties each represent that they do not have any financial interest in
21 the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create
22 a conflict of interest.

23 1.6 “Claims Administrator Costs” means the fees and expenses reasonably incurred by the
24 Claims Administrator as a result of the procedures and processes expressly required by this Agreement,
25 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
26 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees
27 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
28 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class

1 Members and/or Aggrieved Employees, Class Counsel, and Defendant’s Counsel; all costs and fees
2 associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes;
3 all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related
4 payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under
5 the Agreement; all costs and fees associated with preparing any tax returns and any other filings required
6 by any governmental taxing authority or agency; all costs and fees associated with preparing any other
7 notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other
8 costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of
9 its duties under this Agreement.

10 1.7 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of
11 Shimoda & Rodriguez Law, PC.

12 1.8 “Class Member(s)” means all individuals who have, or continue to, perform work for
13 Defendant in California as non-exempt, hourly employees during the Class Period. The estimated number
14 of Class Members is 606.

15 1.9 “Class Period” means June 25, 2015, up to either (1) the Preliminary Approval Date, or (2)
16 60 days after this Agreement is signed, whichever is earlier.

17 1.10 “Class Representative” means Plaintiff Blake McMahon.

18 1.11 “Class Representative’s Released Claims” means all claims arising from, that could have
19 been asserted, or related in any way to the Class Representative’s employment with Defendant, under
20 federal, state, or local laws, and/or ordinances, or tort or contract theories, including, without limitation,
21 claims under the Civil Rights Act of 1964, Title VII, the California Fair Employment and House Act, the
22 Americans with Disabilities Act and all amendments thereto, the Age Discrimination in Employment Act,
23 the Older Workers Benefit Protection Act, ERISA, the Family and Medical Leave Act, the California
24 Family Rights Act, the Fair Labor Standards Act, the California Labor Code, the Industrial Welfare
25 Commission Wage Orders, and the California Business and Professions Code, whether known or
26 unknown, and whether anticipated or unanticipated, including without limitation statutory, constitutional,
27 contractual or common law claims for lost wages, unpaid wages, emotional distress, punitive damages,
28 special damages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys’ fees, litigation

1 costs, restitution, equitable relief or other similar relief or claims. The Class Representative’s Released
2 Claims exclude claims for workers’ compensation, unemployment insurance benefits, or other claims that
3 cannot be released as a matter of law.

4 1.12 “Complaint” means the operative Complaint on file in the Action with the Court.

5 1.13 “Court” means the Sacramento County Superior Court.

6 1.14 “Defendant” means Airco Mechanical, Inc.

7 1.15 “Defendant’s Counsel” means Boutin Jones Inc.

8 1.16 “Enhancement Payment” means the amount approved by the Court to be paid to the Class
9 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
10 of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a
11 Qualified Claimant.

12 1.17 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
13 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
14 after a signed order approving this settlement has been filed provided no appellate proceeding having been
15 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
16 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
17 further remedies or relief, whichever is later.

18 1.18 “Final Approval Date” means the date a signed order granting final approval of this
19 Agreement is filed with the Court.

20 1.19 “Gross Settlement Amount” is the sum of four hundred forty-five thousand dollars and zero
21 cents (\$445,000.00).

22 1.20 “LWDA” means the California Labor and Workforce Development Agency.

23 1.21 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
24 distribution to Qualified Claimants, as described in this Agreement, after deduction of Class Counsel’s
25 attorneys’ fees and litigation costs, Claims Administrator Costs, the PAGA Payment, and Enhancement
26 Payment to the Class Representative.

27 1.22 “Notice of Settlement” means the document substantially in the form attached hereto as
28 Exhibit 1.

1 1.23 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
2 Settlement to Class Members and Aggrieved Employees.

3 1.24 “PAGA” means Private Attorneys General Act.

4 1.25 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
5 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

6 1.26 “PAGA Claim Period” means from July 1, 2018 up to either (1) to the Preliminary
7 Approval Date or (2) 60 days after this Agreement is signed, whichever is earlier.

8 1.27 “Parties” mean Defendant and Plaintiff.

9 1.28 “Preliminary Approval Date” means the date a signed order granting preliminary approval
10 of this Agreement is filed with the Court.

11 1.29 “QSF” means a Qualified Settlement Fund set up by the Claims Administrator for the
12 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this
13 Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain
14 the property of Defendant until the payments required under the Agreement are made.

15 1.30 “Qualified Claimant” means any and all Class Members who have not made any timely
16 request to opt-out of the Agreement.

17 1.31 “Qualified Claimant’s Released Claims” means any and all claims contained in the
18 Complaint and the PAGA Letter filed with the LWDA by Plaintiff, and any additional wage and hour
19 claims that could have been brought based on the facts alleged in the Complaint and the PAGA Letter
20 filed with the LWDA by Plaintiff, through the Class Period. This release excludes the release of claims
21 not permitted by law. The Qualified Claimant’s Released Claims exclude claims for workers’
22 compensation or unemployment insurance benefits. This release will cover all Class Members who do
23 not opt out.

24 1.32 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
25 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For each
26 Class Member, workweeks shall be defined as the total number of weeks in which the Class Member
27 worked any day in California during the Class Period. For Aggrieved Employees workweeks shall be
28 defined as the total length of service (in days) in California during the PAGA Claim Period divided by

1 seven. The calculation of a Class Member’s and/or Aggrieved Employee’s workweeks and a
2 determination as to whether a Class Member and/or Aggrieved Employee was actively employed in
3 California in a particular workweek shall be construed from Defendant’s records.

4 1.33 “Released PAGA Claims” means any and all claims that were brought under the Private
5 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and the PAGA Letter
6 filed with the LWDA by Plaintiff and any additional wage and hour PAGA claims that could have been
7 brought based on the facts alleged in the Complaint and the PAGA Letter filed with the LWDA by Plaintiff
8 during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

9 1.34 “Released Parties” means Defendant, as well as each of its officers, directors, members,
10 partners, owners, shareholders, agents, managing agents, insurers, assigns, predecessors, successors,
11 parent companies and organizations, and any other entity which Plaintiff, individually on behalf of
12 himself and on behalf of all Class Members and Aggrieved Employees, might claim are responsible for
13 the damages sought in the Action.

14 **2. DESCRIPTION OF THE LITIGATION**

15 2.1 On or about July 1, 2019, Plaintiff sent notice to the LWDA to exhaust administrative
16 remedies under the PAGA for failure to pay overtime wages, failure to pay minimum wages, failure to
17 provide accurate wage statements, failure to pay final wages, failure to provide meal periods or pay
18 premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof, and failure to
19 keep accurate records. The LWDA did not respond to the notice within the statutorily required time frame
20 and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

21 2.2 On or about June 25, 2019, Plaintiff filed a class action Complaint in Sacramento County
22 Superior Court on behalf of himself and Class Members alleging claims for failure to pay minimum wages,
23 failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to
24 provide accurate wage statements, waiting time penalties, and unfair competition. Plaintiff filed a First
25 Amended Complaint on approximately September 19, 2019, to add a PAGA cause of action based on the
26 violations alleged in the July 1, 2019 notice to the LWDA on behalf of himself and Aggrieved Employees.
27 Plaintiff filed a Second Amended Complaint on May 20, 2020 and a Third Amended Complaint on April
28 23, 2021 to specify subclasses.

1 2.3 Through formal and informal discovery, Defendant and Defendant’s Counsel provided
2 Class Counsel with copies of all applicable versions of its Collective Bargaining Agreements and
3 corresponding rate sheets, policies and procedures, employee handbooks, information on Class Members
4 including, but not limited to, total number of workweeks in the Class Period, total number of pay periods
5 in the Class Period, total number of Class Members, total number of pay periods in the PAGA Period, and
6 timecard data and payroll data for a randomly selected 15% sample of Class Members.

7 2.4 On September 1, 2022, the Parties participated in a full day mediation with private mediator
8 Lisa Klerman, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution. At
9 all times, the Parties’ settlement negotiations have been non-collusive, adversarial, and at arm’s length.

10 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties,
11 document productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and
12 the detailed analysis of the records, have permitted each side to assess the relative merits of the claims and
13 the defenses to those claims.

14 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to pay
15 all hours worked, including overtime wages and minimum wages due to alleged work off-the-clock and
16 rounding of hours worked; 2) failing to provide wage statements accurately itemizing all of the
17 information required by Labor Code section 226(a); 3) failing to timely pay all final wages owed; 4) failing
18 to provide all meal periods; 5) failing to provide all rest periods; and 6) failing to maintain record of all
19 start and end times for shifts worked and meal periods. Defendant has denied Plaintiff’s claims and denied
20 that this Action is appropriate for class certification for anything other than settlement purposes. The
21 agreed upon Gross Settlement Amount was reached after evaluating the Parties’ theories of potential
22 exposure for the underlying claims and the class data supporting these claims. The Parties, with the
23 assistance of the mediator, also assessed appropriate discounts to the potential liability based on
24 Defendant’s factual and legal contentions and defenses.

25 2.7 The Parties agree that the above-described investigation and evaluation, as well as
26 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
27 respective Parties’ positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class
28 Counsel, Defendant, and Defendant’s Counsel have concluded that it is desirable that the Action be settled

1 in a manner and upon such terms and conditions set forth herein in order to avoid further expense,
2 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
3 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
4 Plaintiff, Class Counsel, Defendant, and Defendant’s Counsel are of the opinion that the Agreement for
5 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts
6 and circumstances.

7 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

8 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
9 of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
10 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
11 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
12 conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the
13 Court’s approval of the settlement is reversed or materially modified on appellate review, this Agreement
14 shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or
15 utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain
16 subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence
17 408, and any other analogous rules of evidence that may be applicable.

18 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
19 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
20 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
21 the Final Approval Date does not occur, Defendant does not waive, but rather expressly reserve, all rights
22 to challenge all such claims and allegations in the Action upon all procedural and factual grounds,
23 including, without limitation, the ability to challenge class or collective treatment on any grounds, as well
24 as to assert any and all other potential defenses or privileges.

25 **4. SCOPE OF THE CLASS**

26 4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled
27 to all benefits as authorized under the Agreement and subject to all obligations and duties required under
28 the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees

1 as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely
2 requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

3 4.2 Individuals entitled to recover under this Agreement will include only those individuals
4 who are identified as being within the scope of this Agreement under Section 4.1.

5 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
6 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
7 did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data
8 request to the Claims Administrator. The data request must contain all of the following information: (a)
9 the full name and, if applicable, Social Security Number of the individual making the request; (b) the
10 name used by such employee as of the time his or her employment with Defendant ended; (c) the years
11 during which such employee was employed with Defendant; and (d) a return address to which a response
12 may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
13 otherwise submitted to the Claims Administrator such that it is received before the conclusion of the
14 Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event
15 more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant
16 review its records.

17 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
18 Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person
19 who submitted the data request, at the address designated for that purpose in the data request. All
20 provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements
21 sent in response to data requests, and any person who submits a data request and is sent a Notice of
22 Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved
23 Employee for all other purposes.

24 4.5 If Defendant disagrees that the person listed in a data request is a Class Member and/or
25 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute
26 in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
27 dispute. Defendant's records shall control unless the individual submitting the data request provides
28 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's

1 Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The
2 Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve
3 the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar
4 days after Defendant’s Counsel and Class Counsel submit the dispute to the Claims Administrator. The
5 decision by the Claims Administrator shall be final and there shall be no right of appeal.

6 **5. TERMS OF THE SETTLEMENT**

7 The Parties agree as follows:

8 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
9 Section 6, Defendant shall pay the Gross Settlement Amount (\$445,000.00). Funding of the Gross
10 Settlement Amount shall occur within 21 calendar days after the Effective Date to be held in trust in a
11 QSF by the Claims Administrator. The Gross Settlement Amount includes payments to Qualified
12 Claimants, Aggrieved Employees, all attorneys’ fees, costs and litigation expenses related to the Action
13 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering
14 the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement,
15 the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary
16 to satisfy Defendant’s tax obligations (e.g., employer FICA, FUTA and SDI contributions on wage
17 payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross
18 Settlement Amount.

19 5.2 Attorneys’ Fees and Costs: Class Counsel will apply to the Court for attorney’s fees of
20 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant
21 has agreed to not oppose Class Counsel’s application for attorneys’ fees so long as it does not exceed the
22 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not
23 to exceed \$17,500.00, which shall be paid from the Gross Settlement Amount. Defendant has agreed to
24 not oppose Class Counsel’s request for reimbursement for advanced litigation expenses so long as they
25 do not exceed the \$17,500.00 threshold. The Claims Administrator will issue Class Counsel an IRS Form
26 1099 for the attorneys’ fees and costs paid under this Agreement. In the event that the Court awards less
27 than the requested attorney’s fees and/or costs, the portion of the requested amounts not awarded to Class
28

1 Counsel shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro
2 rata basis.

3 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
4 Settlement Amount and shall not exceed \$15,000.00. The difference between any actual costs and the
5 allocated \$15,000.00 shall be added to the Net Settlement Amount to be distributed to Qualified Claimants
6 on a pro rata basis.

7 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
8 an Enhancement Payment to the Class Representative in an amount not to exceed \$15,000.00 to
9 compensate for the risks, time, and expense of his involvement in the Action and securing the benefits of
10 this Agreement for Class Members. The Enhancement Payment is in addition to the Claim Amount
11 Plaintiff would otherwise be due under the Agreement as a Qualified Claimant. Defendant has agreed to
12 not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed
13 the amount stated herein. The Enhancement Payment will be designated as a non-wage payment and
14 reported on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement
15 Payment amount requested, then any portion of the requested amount not awarded to the Class
16 Representative shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a
17 pro rata basis.

18 5.5 PAGA Payment: Ten thousand dollars and zero cents (\$10,000.00) of the Gross Settlement
19 Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA
20 Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees
21 on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the
22 allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Qualified
23 Claimants on a pro rata basis.

24 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or
25 PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by
26 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
27 donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights. No portion of
28 the Gross Settlement Amount will revert to Defendant for any reason.

1 5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants
2 and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
3 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not
4 entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits
5 under any company bonus or other compensation or benefit plan or agreement in place during the period
6 covered by the Agreement, nor will it entitle any Qualified Claimant Aggrieved Employee to any increased
7 retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is
8 the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments
9 to be made by Defendant to the Qualified Claimants and Aggrieved Employees in connection with this
10 Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan
11 document that might have been in effect during the period covered by this Agreement).

12 5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved
13 Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement
14 Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved
15 attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims
16 Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing
17 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks by all Class
18 Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class
19 Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25%
20 portion of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within
21 the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the
22 PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to
23 arrive at the Aggrieved Employee's individual share.

24 5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified
25 Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages.
26 The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to
27 Qualified Claimants as wages as well as calculating all required withholdings and deductions from said
28

1 wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved
2 Employees are as follows:

3 5.9.1 One third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for
4 payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall
5 receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

6 5.9.2 Two thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated for
7 disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of
8 the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive
9 an IRS Form 1099-MISC.

10 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
11 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
12 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the
13 Aggrieved Employees shall receive an IRS Form 1099-MISC.

14 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting
15 and payment of their share of any federal, state and/or municipal income or other taxes on payments made
16 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and
17 harmless from any claims resulting from treatment of such payments as non-taxable, including the
18 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.
19 No party has made any representation to any of the other Parties as to the taxability of any payments
20 pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved
21 Employees, the payments to Class Counsel, the payments to the Class Representative, the payroll tax
22 liability of Defendant, or the allocation of the Net Settlement Amount or PAGA Payment to wage and
23 non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this
24 Agreement.

25 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
26 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
27 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
28 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount,

1 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and
2 void as described in Section 3 because the Court, in its independent determination, finds that the
3 Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be
4 equally responsible for the costs of the Claims Administrator incurred between the date the Agreement
5 was executed and the date of such event.

6 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
7 only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for
8 establishing class certification have been met and are met.

9 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
10 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
11 Aggrieved Employees.

12 **6. RELEASE**

13 6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified
14 Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to
15 all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in
16 interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's
17 Released Claims against any of the Released Parties.

18 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
19 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
20 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
21 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
22 Claims against any of the Released Parties.

23 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to release Qualified
24 Claimant's Released Claims, Released PAGA Claims, and Class Representative's Released Claims as to
25 all Released Parties fully, finally, and forever. In addition, on the Effective Date, Plaintiff and any
26 successors in interest will be permanently enjoined and forever barred from prosecuting any of the
27 Qualified Claimant's Released Claims, Released PAGA Claims, and Class Representative's Released
28 Claims against any of the Released Parties. Plaintiff agrees not to sue or otherwise make a claim against

1 any of the Released Parties that is in any way related to the Qualified Claimant's Released Claims,
2 Released PAGA Claims, and Class Representative's Released Claims to the maximum extent permitted
3 by law. Plaintiff's release includes any unknown claims the Plaintiff do not know or suspect to exist in
4 his favor at the time of the releases, which, if known, might have affected Plaintiff's settlement with, and
5 release of, the Released Parties. With the releases given by Plaintiff herein, Plaintiff stipulates and agrees
6 that he shall be deemed to have, and by operation of Final Approval of this Agreement shall have,
7 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
8 benefits of Section 1542 of the California Civil Code, which states:

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

13 **7. SETTLEMENT ADMINISTRATION**

14 7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1)
15 receiving Class Member and Aggrieved Employee contact information and confirming addresses are
16 valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts,
17 including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members
18 and Aggrieved Employee whose address or contact information as provided to the Claims Administrator
19 is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification
20 to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving,
21 independently reviewing, and resolving any challenges (in consultation with Class Counsel and
22 Defendant's Counsel) from Class Members or Aggrieved Employees, including any associated
23 documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class
24 Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or any opt out
25 statements; 7) establishing a toll free telephone line and responding to inquiries and requests for
26 information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
27 determining and paying the final amounts due to be paid under the Agreement after resolution of all
28 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA

1 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
2 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late
3 opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual
4 funds from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the
5 statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the
6 number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the
7 number of total undeliverable Notice of Settlements; (e) the number of address traces performed for
8 undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced
9 addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the
10 number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court
11 regarding the final statistics of the administration and compliance with all payment obligations under the
12 Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to
13 Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to
14 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims
15 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which
16 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and
17 obligations contemplated by the Agreement have been fully executed.

18 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will
19 provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the
20 Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the
21 individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement
22 will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net
23 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,
24 proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the
25 class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class
26 Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
27 regarding Class Member's and Aggrieved Employee's estimated Claim Amount. The Notice of
28 Settlement will provide information on how to access electronic copies online of the Notice of Settlement,

1 any motions for approval of the Agreement, any motions for approval of attorneys' fees and costs, and
2 any other documents as the Court directs.

3 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
4 Preliminary Approval Date, Defendant shall provide the Claims Administrator with the name, last known
5 mailing address, last known telephone number, Social Security Number, start and end date of employment
6 (if any) of each Class Member and Aggrieved Employee, the number of Qualifying Workweeks for each
7 Class Member, and any other information the Claims Administrator needs to effectuate notice to Class
8 Members and Aggrieved Employees as outlined herein. The Claims Administrator shall review the data
9 to determine the number of Qualifying Workweeks for each Class Member and Aggrieved Employee. No
10 later than fourteen (14) calendar days after receipt of such address information, the Claims Administrator
11 will perform a national change of address ("NCOA") search, update the addresses per the results of the
12 NCOA search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to
13 each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The Claims
14 Administrator shall maintain all information received from Defendant confidential to itself, and
15 Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of Qualified
16 Workweeks and estimated Claim Amounts for Class Members and Aggrieved Employees prior to mailing
17 for quality assurance provided the personal identifying information is redacted and/or omitted.

18 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
19 is returned to the Claims Administrator as undeliverable on or before the conclusion of the Notice Period,
20 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar
21 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to
22 determine a correct address using a skip-trace, computer or other search using the name, address and/or
23 Social Security number of the individual involved, and shall then perform a single re-mailing within five
24 (5) calendar days to any more recent address found as a result of the search. Following each search that
25 does not result in a corrected address, for those Class Members who appear to be current employees of
26 Defendant at the time of the Preliminary Approval Date, the Claims Administrator shall contact
27 Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Claims
28 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they

1 are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address
2 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
3 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
4 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
5 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
6 be bound by all terms of the Agreement, including the releases contained in Section 6.

7 7.5 Responses to Notice of Settlement:

8 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish
9 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.
10 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that
11 he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants
12 to be excluded from the settlement; (c) identify the case name and number (i.e. *McMahon v. Airco*
13 *Mechanical, Inc.*, 34-2019-00259269); (d) be signed; and (e) be post-marked no later than the conclusion
14 of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally
15 sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members.
16 The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine
17 whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of
18 the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net Settlement
19 Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or comment
20 thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all
21 terms of the Agreement and any order or final judgment thereon, regardless of whether they otherwise
22 have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this Agreement as
23 it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a
24 Class Member.

25 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes
26 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
27 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and
28 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny

1 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
2 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
3 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify
4 the case name and number (i.e. McMahon v. Airco Mechanical, Inc., 34-2019-00259269) (e) be signed;
5 and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated
6 in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the Court and
7 serve the notice on Class Counsel and Defendant's Counsel, if they intend to appear at the final approval
8 hearing.

9 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
10 Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)
11 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
12 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
13 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two
14 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
15 dispute. Defendant's records shall presumptively control unless the Class Member can produce
16 documentation evidencing other periods of employment worked. If Defendant agrees with submitted
17 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
18 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
19 Class Member's Claim Amount. If Defendant does not agree with the submitted information, Defendant's
20 Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
21 documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class
22 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
23 Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot
24 timely resolve shall be resolved by the Claims Administrator or Court.

25 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
26 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator
27 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If
28 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency

1 shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever
2 is later.

3 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
4 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
5 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
6 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

7 7.7 Claims Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar
8 days after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and
9 Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed
10 report regarding the statistics and responses of settlement administration to date and all the Claims
11 Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

12 7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff:
13 Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of
14 attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the
15 PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net
16 Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any
17 applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's
18 Counsel. Defendant shall wire the Gross Settlement Amount and applicable taxes necessary to fund the
19 Settlement as described in Section 5.1 to the Claims Administrator within twenty-one (21) calendar days
20 after the Effective Date to be to be held in trust in a QSF. Within seven (7) calendar days after Defendant
21 fund the settlement, the Claims Administrator shall deliver payment of Class Counsels' attorney's fees
22 and costs, the Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable
23 to the LWDA, Claims Administrator Costs, and payment to Qualified Claimants and/or Aggrieved
24 Employees as required under this Agreement and approved by Court.

25 7.8.1 The Claims Administrator shall wire the Court-approved attorneys' fees and costs
26 to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide the
27 Claims Administrator with the pertinent taxpayer identification number and payment instructions after the
28 Final Approval Date.

1 7.8.2 The Claims Administrator shall send a check by mail for the Court-approved
2 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
3 requested by Class Counsel.

4 7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim
5 Amount.

6 7.8.4 The Claims Administrator shall remit and report the applicable portions of the
7 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
8 Agreement. Defendant agrees to reasonably cooperate with the Claims Administrator to the extent
9 necessary to determine the amount of the payroll tax payment required.

10 7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue
11 Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall
12 become null and void if not deposited within one hundred eighty (180) calendar days of issuance. After
13 one hundred eighty (180) calendar days of issuance, the checks shall be voided and funds from all
14 uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall
15 deliver these funds within fourteen (14) calendar days after the check cashing deadline.

16 7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration:
17 Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash
18 their settlement checks, the Claims Administrator shall provide Class Counsel and Defendant's Counsel
19 with a signed declaration under penalty of perjury providing a complete and detailed report regarding the
20 settlement administration documenting that all payments under the Agreement have been made, that the
21 Court's final approval order has been complied with, and that all the obligations of the Claims
22 Administrator have been completed.

23 **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

24 8.1 The schedule may be modified depending on whether and when the Court grants necessary
25 approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The
26 schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as
27 described above. In the event of such modification, the Parties shall cooperate to complete the settlement
28

1 procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and
 2 payment procedures carrying out the Agreement is as follows:

3		
4		
5	Last day for Defendant to provide Claims Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
6		
7	Last day for Claims Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendant
8		
9		
10	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
11		
12		
13	Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
14		
15	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
16		
17		
18		
19		
20	Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date
21		
22	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after Defendant fund the settlement
23		
24		
25		
26	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
27		
28		

1 2 3	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
4 5	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

6
7 **9. DUTIES OF THE PARTIES**

8 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed
9 motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this
10 Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class
11 action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of
12 any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may
13 be requested by the Court relating to, or that are otherwise necessary to the approval and implementation
14 of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement
15 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to
16 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final
17 approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the
18 Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments
19 and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from
20 Class Counsel. With regard to the final approval documents, a similar one-week maximum review and
21 response time shall be observed by the Parties. The Parties will request that the Court's preliminary
22 approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and
23 PAGA Settlement.

24 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
25 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
26 Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily
27 appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving
28 settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving

1 the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment
2 of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
3 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
4 approved as fair, reasonable and adequate as to the Class Members.

5 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
6 Agreement.

7 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during
8 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
9 appropriate to assure effective communication to individual Class Members of information about their
10 rights and obligations under this Agreement.

11 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
12 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
13 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
14 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice
15 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of
16 the Claim Administrator's mailings including tracing and re-mailing efforts.

17 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which
18 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,
19 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the
20 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
21 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)
22 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
23 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

24 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
25 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
26 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
27 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
28 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and

1 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and
2 assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each
3 other and assist the Claims Administrator as needed or requested in completing the distribution of any
4 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with
5 the Claims Administrator, will certify to the Court completion of all payments required to be made by this
6 Agreement.

7 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
8 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
9 and PAGA Settlement and Final Judgment.

10 9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development
11 Agency (“LWDA”) of this settlement in accordance with Labor Code § 2699(1)(2).

12 **10. MISCELLANEOUS TERMS**

13 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
14 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
15 with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its
16 furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to
17 Class Counsel, within seven (7) calendar days after the Claims Administrator notifies the Parties of the
18 total number of opt-outs. If the option to rescind is exercised, then any Claims Administrator Costs shall
19 be paid by Defendant. Defendant has represented that there are no more than 28,767 workweeks during
20 the Class Period. In the event the number of workweeks during the Class Period is more than 31,643.70
21 (*i.e.*, greater than 10% more than 28,767), then Defendant shall have the option to either (i) increase the
22 Gross Settlement Amount proportionally by the workweeks in excess of 28,767 multiplied by the pay
23 period value, for example, if there were 11,900 workweeks represented to exist during the Class Period,
24 but there are actually 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00
25 per workweek, Defendant would have to increase the Gross Settlement Amount by \$15,500.00 (15,000
26 workweeks – 11,900 workweeks = 3,100 workweeks x \$5.00/workweek); or (ii) agree that the Class
27 Period and PAGA Period shall only run through that date at which the workweeks reach 31,643.70.

28

1 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
2 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
3 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
4 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
5 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
6 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
7 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
8 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
9 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
10 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
11 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
12 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
13 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
14 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
15 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
16 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
17 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
18 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
19 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
20 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
21 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
22 BY THIS AGREEMENT.

23 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
24 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
25 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
26 and discharged in this Agreement.

27 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
28 signing this Agreement Defendant is waiving any rights to appeal from the Court’s approval of the

1 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
2 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

3 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
4 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
5 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

6 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment
7 will be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
8 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
9 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of
10 the Agreement after default by the other party may recover reasonable attorney's fees and costs related
11 thereto.

12 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
13 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
14 execution of such other documents and the taking of such other action as may reasonably be necessary to
15 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
16 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
17 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

18 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
19 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
20 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
21 Complaint, the representative character of the Action, the validity of any of the claims that were or could
22 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
23 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
24 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or
25 any other person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing
26 toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this
27 Stipulation with the intention to avoid further disputes and litigation.

28

1 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
2 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
3 the third business day after mailing by United States certified mail, return receipt requested, addressed as
4 follows:

5
6 To Plaintiff and the Class:

7 Galen T. Shimoda
8 Justin P. Rodriguez
9 Brittany V. Berzin
10 Shimoda & Rodriguez Law, PC
11 9401 East Stockton Blvd., Suite 120
12 Elk Grove, CA 95624

13 To Defendant:

14 Bruce M. Timm
15 Kimberly A. Lucia
16 Kendall C. Fisher-Wu
17 Boutin Jones Inc.
18 555 Capitol Mall, Ste. 1500
19 Sacramento, CA 95814

20 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
21 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
22 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
23 party or its counsel participated in the drafting of this Agreement.

24 10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
25 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
26 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
27 as expressly provided in this Agreement.

28 10.12 No Modifications: This Agreement may be amended or modified only by a written
instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
discharged except by performance in accordance with its terms.

 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
and to take all appropriate action required or permitted to be taken by such Parties pursuant to this

1 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
2 this Agreement.

3 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
4 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
5 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
6 may be executed on behalf of all Class Members by the Class Representative.

7 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
8 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
9 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
10 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
11 and effect of originals.

12 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
13 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
14 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
15 with, and governed by, the substantive laws of the State of California without giving effect to that State's
16 choice of law principles.

17 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
18 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
19 this Agreement, or any provision thereof.

20 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could
21 be construed as retaliation against any Class Members for participating or seeking to participate in this
22 class action settlement. The Parties will not discourage any class member from participating or seeking
23 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
24 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
25 shall be entitled to further attorneys' fees and costs.

26 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
27 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
28 Each party acknowledges that there is no representation, inducement, promise or agreement which has

1 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
2 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
3 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

4 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
5 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

6 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
7 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
8 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

9 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
11 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

12 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
13 attorneys, as of the day and year herein set forth.

14 **For Plaintiff:**

15 Date: 9/29/2022
16 _____

DocuSigned by:

78830F195D224B9...
Blake McMahon

17
18 **For Defendant:**

19 Date: _____

20 _____
By:
For Airco Mechanical, Inc.

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2 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
3 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

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10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
11 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

12 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
13 attorneys, as of the day and year herein set forth.

14 **For Plaintiff:**

15 Date: _____

16 _____
17 Blake McMahon

18 **For Defendant:**

19 Date: 10/14/22

20 _____
21 By:
22 For Airco Mechanical, Inc.