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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF CONTRA COSTA**

11 HECTOR SALAZAR an individual, on behalf
of himself and others similarly situated,

12 **PLAINTIFF,**

13 v.

14 CREATIVE CEILINGS, INC.; and DOES 1
15 thru 50, inclusive,

16 **DEFENDANTS.**

CASE NO. C19-02678

[Case Assigned for All Purposes to Hon. E.
Weil in Dept. 39]

**STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

1 This Stipulation of Class Action Settlement and Release of Claims (“Settlement” or
2 “Agreement”) is entered into by and between named Plaintiff HECTOR SALAZAR (“Plaintiff”),
3 on behalf of himself and the putative class, and Defendant CREATIVE CEILINGS, INC.
4 (“Defendant”) (collectively “the Parties”).

5 This Settlement shall be binding on Plaintiff, the current and former employees he seeks to
6 represent, the Settlement Class, and on Defendant, subject to the definitions, recitals, and terms set
7 forth herein, and the approval of the Court.

8 **I. DEFINITIONS**

9 **1. Action**

10 “Action” or “Lawsuit” means the civil action entitled *HECTOR SALAZAR, an individual,*
11 *on behalf of himself and others similarly situated, Plaintiff v. CREATIVE CEILINGS, INC., and*
12 *Does 1 thru 50, inclusive, Defendants,* filed on December 24, 2019 in the Superior Court of the
13 State of California for the County of Contra Costa, Case No. C19-02678.

14 **2. Class Counsel**

15 “Class Counsel” means Eric B. Kingsley and Kelsey M. Szamet of Kingsley & Kingsley,
16 APC, who, subject to Court approval, shall act as counsel for the Settlement Class.

17 **3. Class Counsel Award**

18 “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution
19 of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this
20 Lawsuit.

21 **4. Class Information**

22 “Class Information” or “Class Data” means information regarding Class members that
23 Defendant will in good faith compile from their records and provide to the Settlement
24 Administrator. It shall be formatted as a Microsoft Excel spreadsheet or other similar computer-
25 readable format and shall include: each Settlement Class Member’s full name; last known address;
26 last known home telephone number; social security number; dates of employment, and
27 Compensable Pay Periods. Defendant shall provide this data directly to the Settlement
28 Administrator within 20 business days from the Court’s Order Granting Preliminary Approval of

1 the Class Action Settlement. The Class Data shall be confidential and shall not be provided to
2 Class Counsel or Plaintiff or any third party (apart from the Settlement Administrator), and shall
3 be used only for the sole purpose of administering the Settlement of this action.

4 **5. Class Members**

5 “Class Members” means all persons who are employed are or have been employed by
6 Defendant in the State of California who worked one or more pay periods between December 20,
7 2018 and January 17, 2020 (the date of cure of the paystubs).

8 **6. Class Representative**

9 “Class Representative” means Plaintiff HECTOR SALAZAR.

10 **7. Class Representative Enhancement**

11 “Class Representative Enhancement” means the amount that the Court authorizes to be
12 paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of
13 Plaintiff’s efforts and risks in assisting with the prosecution of the Lawsuit and in return for
14 executing a general release with Defendant.

15 **8. Compensable Pay Periods**

16 “Compensable Pay Periods” means an estimate of the number of pay periods during which
17 Settlement Class Member(s) performed work for Defendant in the State of California during the
18 Covered Period based on Defendant’s records.

19 **9. Complaint**

20 “Complaint” means the operative complaint, filed in the Action.

21 **10. Court**

22 “Court” means the Superior Court for the County of Contra Costa, State of California.

23 **11. Covered Period**

24 “Covered Period” means the period from December 20, 2018 to January 17, 2020.

25 **12. Defendant**

26 “Defendant” means Defendant CREATIVE CEILINGS, INC.

27 **13. Effective Date**

28 “Effective Date” of the Settlement means the date on which the Court’s order granting

1 Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the
2 following events: (i) upon the Court issuing the Final Approval Order granting approval of this
3 Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is
4 withdrawn prior to the Court’s Final Approval Hearing; or (ii) in the event there are written
5 objections filed prior to the final approval hearing which are not thereafter withdrawn prior to the
6 hearing, the later of the following events: (a) the day after the last day by which a notice of appeal
7 of the order may be timely filed with the California Court of Appeal, and none is filed; (b) if an
8 appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the
9 last date for filing a request for further review of the Court of Appeal’s decision passes and no
10 further review is requested; (c) if an appeal is filed and there is a final disposition by ruling,
11 dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal’s
12 decision is requested, the day after the request for review is denied with prejudice and/or no further
13 review of the order can be requested; or (d) if review is accepted, the day the Supreme Court of
14 the State of California affirms the Settlement.

15 **14. Final Approval Hearing**

16 “Final Approval Hearing” means the final hearing held to ascertain the fairness,
17 reasonableness, and adequacy of the Settlement.

18 **15. Final Approval Order**

19 “Final Approval Order” means the proposed order granting final approval of the Parties’
20 settlement, in a form substantially similar to the order attached hereto as Exhibit C.

21 **16. Final Judgment**

22 “Final Judgment” means a judgment issued by the Court approving this Agreement as
23 binding upon the Parties. The Final Judgment shall constitute a judgment respecting the Parties
24 within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d,
25 and 904.1(a).

26 **17. Gross Fund Value**

27 “Gross Fund Value” means the agreed upon settlement amount totaling \$275,000.00 to be
28 paid by Defendant in full settlement of the Released Claims, and includes without limitation the

1 Class Counsel Award, Class Representative Enhancement, Individual Settlement Payments,
2 PAGA Payment, and Settlement Administrator Costs.

3 **18. Individual Settlement Payment**

4 “Individual Settlement Payment” means the amount paid from the Net Settlement Amount
5 to a Participating Class Member, based upon his/her Compensable Pay Periods.

6 **19. Net Settlement Amount**

7 “Net Settlement Amount” means the Gross Fund Value, less Court-approved Class
8 Counsel Award, Class Representative Enhancement, and Settlement Administration Costs.

9 **20. Notice of Class Action Settlement**

10 “Notice of Class Action Settlement” means the Notice of Pendency of Class Action
11 Settlement and Hearing Date for Court Approval substantially in the form attached hereto as
12 Exhibit A, which shall include an approximation of each Settlement Class Member’s anticipated
13 Individual Settlement Payment. It is the notice approved by the Parties and subject to Court
14 approval explaining the terms of this Agreement and the settlement process, which the Settlement
15 Administrator will mail to each Settlement Class Member. The Notice will be provided in English
16 and Spanish.

17 **21. Participating Class Members**

18 “Participating Class Members” means those Class Members who did not file a valid and
19 timely Request for Exclusion pursuant to section III, paragraph 6(e) of this Agreement.

20 **22. Parties**

21 “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either
22 Plaintiff or Defendant, individually.

23 **23. Payment Ratio**

24 “Payment Ratio” means the respective Compensable Pay Periods during which an
25 employee worked, in proportion to the aggregate number of workweeks worked by all Class
26 members.

27 **24. Plaintiff**

28 “Plaintiff” means Plaintiff HECTOR SALAZAR.

1 **25. Preliminary Approval Date**

2 “Preliminary Approval Date” means the date on which the Court issues an order granting
3 preliminary approval of the proposed in a form substantially similar to the order attached hereto
4 as Exhibit B.

5 **26. Released Claims**

6 “Released Claims” means any and all claims, debts, liabilities, demands, obligations,
7 penalties, guarantees, costs, expenses, attorney’s fees, damages, action or causes of action, whether
8 known or unknown, contingent or vested, in law or in equity, arising at any time during the
9 Covered Period, alleged in the Action, or that reasonably could have been pled based on the facts
10 alleged, including but not limited to class claims for wage statement violations under Labor Code
11 section 226, or any other ordinance, rule, regulation, or statute, or causes of action, and all
12 associated penalties (including those pursuant to the California Labor Code Private Attorneys
13 General Act of 2004 (“PAGA”), Cal. Lab. Code §§ 2698, *et seq.*).

14 **27. Released Parties**

15 “Released Parties” means Defendant and any of its former, present, and future affiliated
16 companies, parent companies, subsidiaries, affiliates, shareholders, members, agents (including,
17 without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any
18 past, present, or future officers, directors, employees, and other persons acting on its behalf)
19 predecessors, successors, and assigns.

20 **28. Request for Exclusion**

21 “Request for Exclusion” refers to a letter setting forth a Class Member’s name, present
22 address, and a simple statement electing to be excluded from the Settlement.

23 **29. Response Deadline**

24 “Response Deadline” means the date thirty (30) days after the Settlement Administrator
25 mails the Notice of Class Action Settlement to Class members, which is the last date on which
26 Class members may: (a) submit a Request for Exclusion; (b) file and serve objections to the
27 settlement; or (c) dispute the information contained in the Notice of Class Action Settlement.
28

1 **30. Settlement**

2 “Settlement” or “Agreement” means the disposition of the Lawsuit pursuant to this
3 Stipulation of Class Action Settlement and Release of Claims.

4 **31. Settlement Administrator**

5 “Settlement Administrator” means the third-party company to be responsible for
6 administering the Settlement. The Settlement Administrator is ILYM Group, Inc.

7 **32. Settlement Administrator Costs**

8 “Settlement Administrator Costs” means the amount to be paid to the Settlement
9 Administrator from the Gross Fund Value for administration of this Settlement.

10 **II. RECITALS**

11 **1. Class Certification.**

12 The Parties stipulate to class certification for purposes of settlement only. If the Court does
13 not grant either preliminary or final approval of this Settlement, the Parties agree that this
14 stipulation regarding class certification will be revoked and the Parties will return to a point in
15 litigation prior to the execution of this Agreement.

16 **2. Procedural History.**

17 On December 24, 2019, Plaintiff filed a Class Action Complaint and a notice with
18 California’s Labor and Workforce Development Agency (“LWDA”) regarding his intent to file an
19 action seeking civil penalties under PAGA.

20 The operative Complaint alleges a single claim for failure to issue accurate itemized wage
21 statements in compliance with Labor Code §226(a).

22 After the matter was at issue, the Parties began to engage in informal discovery to
23 understand the nature of the allegations and the scope of potential liability. Defendant provided
24 Plaintiff’s counsel with wage statement data. Plaintiff learned that the number of Class Members
25 is approximately 412 (including Plaintiff) and there is a maximum of 9,590 wage statements during
26 the Covered Period that are at issue.

27 Defendant denies any liability or wrongdoing of any kind associated with the claims
28 asserted in Plaintiff’s Complaint, disputes the damages and penalties claimed by Plaintiff, and

1 further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate
2 for class or representative action treatment. This Stipulation is a compromise of disputed claims.
3 Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry
4 out this Stipulation, shall be construed or used as an admission by or against Defendant as to the
5 merits or lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other
6 things, that, at all times, it has complied with all applicable state, federal and local laws related to
7 the Class Members' employment.

8 The Class Representative is represented by Class Counsel. Class Counsel conducted an
9 investigation into the facts relevant to the Lawsuit, including reviewing documents and
10 information provided by Defendant. Based on their own independent investigation and evaluation,
11 Class Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate,
12 and in the best interest of the Class Members in light of all known facts and circumstances,
13 including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a
14 class and representative action trial on the merits, and numerous potential appellate issues.
15 Although Defendant denies any liability, Defendant is agreeing to this Settlement solely to avoid
16 the cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and
17 forever settle, compromise and discharge all disputes and claims arising from or relating to the
18 Actions on the terms set forth herein.

19 **3. Benefits of Settlement to Class Members.**

20 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
21 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has
22 also taken into account the uncertainty and risk of the outcome of further litigation, and the
23 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of
24 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both
25 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
26 damages for the Class members. Plaintiff and Class Counsel have also taken into account
27 Defendant's agreement to enter into a settlement that confers substantial relief upon the Class
28 Members. Based on the foregoing, Class Counsel have concluded that settlement for the

1 consideration and on the terms set forth in this Settlement, is fair, reasonable, and adequate and is
2 in the best interest of the putative class in light of all known facts and circumstances, including the
3 risk of significant delay, defenses asserted by Defendant, Defendant's financial condition,
4 numerous potential appellate issues, and other risks inherent in litigation.

5 **4. Defendant's Reasons for Settlement.**

6 Defendant has concluded that any further defense of this litigation would be protracted and
7 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have
8 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the
9 claims asserted by Plaintiff and Class members. Defendant has also taken into account the risks
10 of further litigation in reaching its decision to enter into this Settlement. Even though Defendant
11 continues to contend that it is not liable for any of the claims set forth by Plaintiff in this Lawsuit,
12 Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this
13 Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has complied with
14 all applicable state, federal, and local laws.

15 **5. Settlement of Disputed Claims.**

16 This Agreement is a compromise of disputed claims. Defendant has claimed and continues
17 to claim that the Released Claims have no merit and do not give rise to liability. Class members
18 have claimed and continue to claim that the Released Claims have merit and give rise to liability
19 on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing contained
20 in this Agreement, no documents referred to herein, and no action taken to carry out this
21 Agreement, may be construed or used as an admission by or against the Class members or Class
22 Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

23 **III. TERMS OF AGREEMENT**

24 **1. Release as To All Participating Class Members.**

25 As of the Effective Date, the Participating Class Members, including Plaintiff, release the
26 Released Parties from the Released Claims for the Covered Period.

27 **2. Release of Claims by Plaintiff**

28 As of the Effective Date, Plaintiff releases the Released Parties from all of the Released

1 Claims during the Covered Period. Plaintiff, for himself and his heirs, successors and assigns,
2 further waives, releases, acquits and forever discharges the Released Parties from any and all
3 claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether
4 known or unknown, which exist or may exist on Plaintiff's behalf as of the date of this Agreement,
5 including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful
6 termination claims, disability claims, benefit claims, public policy claims, retaliation claims,
7 statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims,
8 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any
9 federal, state or other governmental statute, law, regulation or ordinance, including, but not limited
10 to, claims for violation of the Fair Labor Standards Act (FLSA) (and all regulations thereunder),
11 the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other
12 state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in
13 Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil
14 Rights Act of 1964, the California Fair Employment and Housing Act, the California Family
15 Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California
16 Business & Professions Code §§17200 et seq., and any and all claims arising under any federal,
17 state or other governmental statute, law, regulation or ordinance.

18 Plaintiff's releases set forth herein include a waiver of all rights under California Civil
19 Code §1542, which provides:

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

26 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
27 which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever
28 settle and release any and all claims against the Released Parties, known or unknown, suspected
or unsuspected, which exist or may exist on behalf of or against the other at the time of execution
of this Agreement, including, but not limited to, any and all claims relating to or arising from

1 Plaintiff's employment with Defendant.

2 **3. Tax Liability and Medicare.**

3 The Parties make no representations as to the tax treatment or legal effect of the payments
4 called for hereunder, and Class members are not relying on any statement or representation by the
5 Parties in this regard. Participating Class Members understand and agree that they will be
6 responsible for the payment of taxes and penalties assessed on the payments described herein and
7 will hold the Parties free and harmless from and against any claims resulting from treatment of
8 such payments as non-taxable damages, including the treatment of such payment as not subject to
9 withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based
10 upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not
11 shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Sec.
12 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved this matter in
13 compliance with both state and federal law. The Parties made every effort to adequately protect
14 Medicare's interest and incorporate such into the settlement terms. Plaintiff warrants that he is not
15 a Medicare beneficiary as of the date of this Agreement. Because Plaintiff is not a Medicare
16 recipient as of the date of this Agreement, no conditional payments have been made by Medicare.

17 **4. Circular 230 Disclaimer.**

18 Each Party to this Agreement (for purposes of this section, the "acknowledging party" and
19 each Party to this Agreement other than the acknowledging party, an "other party") acknowledges
20 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
21 between or among the Parties or their attorneys and other advisers, is or was intended to be, nor
22 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
23 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
24 as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
25 independent legal and tax counsel for advice (including tax advice) in connection with this
26 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
27 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
28 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty

1 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
2 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
3 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
4 acknowledging party of the tax treatment or tax structure of any transaction, including any
5 transaction contemplated by this Agreement.

6 **5. Preliminary Approval of Settlement.**

7 Plaintiff will move the Court to grant preliminary approval of this Settlement, certifying
8 the Settlement Class for settlement purposes only and setting a date for a final approval hearing.
9 All Parties agree to work diligently and cooperatively to have this Settlement presented to the
10 Court for preliminary approval. The proposed preliminary approval order shall provide for the
11 Notice of Class Action Settlement to be sent to Class members as specified herein.

12 **6. Settlement Administrator.**

13 Upon the Court granting preliminary approval of this Agreement, Defendant shall provide
14 the Settlement Administrator with the Class Information for purposes of mailing the Notice of
15 Class Action Settlement to the Class members. No later than three (3) days after receipt of the
16 Class Information, the Settlement Administrator shall notify counsel for the Parties that the list has
17 been received and state the number of Class members.

18 a. Notice by First Class U.S. Mail.

19 Upon receipt of the Class Information, the Settlement Administrator will perform a search
20 based on the National Change of Address Database to update and correct any known or identifiable
21 address changes. Within fifteen (15) days of preliminary approval of this Settlement, the
22 Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all Class
23 members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best
24 judgment to determine the current mailing address for each Settlement Class Member, including
25 performing a skip-trace to identify any updated addresses. The address identified by the Settlement
26 Administrator as the current mailing address shall be presumed to be the best mailing address for
27 each Settlement Class Member.
28

1 b. Undeliverable Notices.

2 Any Notice of Class Action Settlement returned to the Settlement Administrator as
3 undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding
4 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
5 promptly attempt to determine a correct address by use of skip-tracing, or other search using the
6 name, address and/or social security number of the Settlement Class Member whose notice was
7 undeliverable, and shall then re-mail all returned, undelivered mail within ten (10) days of
8 receiving notice that a notice was undeliverable. Class members who receive a re-mailed Notice
9 of Class Action Settlement shall have their Response Deadline extended twenty (20) days from
10 the original Response Deadline.

11 c. Disputes Regarding Individual Settlement Payments.

12 Class members will have the opportunity, should they disagree with Defendant's records
13 regarding the dates of employment stated on their Notice of Class Action Settlement, to provide
14 documentation and/or an explanation to show contrary information by the Response Deadline. If
15 there is a dispute, the Settlement Administrator will consult with the Parties to determine whether
16 an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and
17 the amounts of, any Individual Settlement Payments under the terms of this Agreement. The
18 Settlement Administrator's determination of the eligibility for and amount of any Individual
19 Settlement Payment shall be binding upon the Class members and the Parties. In the absence of
20 circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a
21 rebuttable presumption of accuracy.

22 d. Disputes Regarding Administration of Settlement.

23 Any disputes not resolved by the Settlement Administrator concerning the administration
24 of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to
25 any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the
26 disputes without the necessity of involving the Court.

27 e. Exclusions.

28 The Notice of Class Action Settlement shall state that Class members who wish to exclude

1 themselves from the Settlement must submit a Request for Exclusion by the Response Deadline.
2 The Request for Exclusion: (1) must contain the name, address, and telephone number of the
3 Settlement Class Member requesting exclusion; (2) must contain a statement expressing that the
4 Settlement Class Member elects to be excluded from the Settlement; (4) must be signed by the
5 Settlement Class Member; and (5) must be postmarked or fax stamped by the Response Deadline
6 and returned to the Settlement Administrator at the specified address or fax number. The Request
7 for Exclusion will be deemed invalid if it does not contain a Settlement Class Member's name,
8 address, telephone number, and signature. The date of the postmark on the return mailing envelope
9 or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether
10 a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests
11 to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement
12 and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment
13 thereon. Class members who fail to submit a valid and timely Request for Exclusion on or before
14 the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment
15 entered in this Lawsuit if the Settlement is approved by the Court. No later than seven (7) calendar
16 days after the Response Deadline, the Settlement Administrator shall provide counsel for the
17 Parties with a complete list of all members of the Settlement Class who have timely submitted a
18 Request for Exclusion.

19 f. Objections.

20 The Notice of Class Action Settlement shall state that Class members who wish to object
21 to the Settlement may do so in person at the Final Approval Hearing and/or in writing. Any written
22 objection ("Notice of Objection") must be mailed to the Settlement Administrator by the Response
23 Deadline. The date of mailing on the envelope shall be deemed the exclusive means for
24 determining that a Notice of Objection was timely received. The Notice of Objection must be
25 signed by the Settlement Class Member and state: (1) the full name of the Settlement Class
26 Member; (2) the dates of employment of the Settlement Class Member; (3) the basis for the
27 objection; and (4) if the Settlement Class Member intends to appear at the final approval hearing.
28 Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator

1 by the Response Deadline are filed with the Court along with the Motion for Final Approval. Either
2 of the Parties may file a responsive document to any objection before the Final Approval Hearing.
3 Class Counsel shall not represent any Class members with respect to any such objections.

4 Any Class Member who fails to submit a timely written objection or to present an objection
5 in person at the Final Approval Hearing shall be deemed to have waived any objections and shall
6 be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

7 **7. No Solicitation of Settlement Objections or Exclusions.**

8 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
9 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class members
10 to submit either written objections to the Settlement or requests for exclusion from the Settlement,
11 or to appeal from the Court's Final Judgment.

12 **8. Funding and Allocation of Gross Fund Value.**

13 No later than thirty (30) days after the Effective Date, Defendant shall provide the Gross
14 Fund Value to the Settlement Administrator to fund the Settlement, as set forth in this Agreement.
15 Defendant will not be obligated to make any payments contemplated by this Agreement unless
16 and until the Court enters the Final Approval Order and Final Judgment, and after the Effective
17 Date of the Agreement.

18 **9. Net Settlement Amount.**

19 The Net Settlement Amount will be determined by the Settlement Administrator by
20 subtracting the Class Counsel Award, Class Representative Enhancement, and Settlement
21 Administrator Costs from the Gross Fund Value. The anticipated Net Settlement Amount is
22 \$161,333.33. The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Fund Value:	\$	275,000.00
Class Representative Enhancement:	\$	5,000.00
Class Counsel Fees:	\$	91,666.67
Class Counsel Costs:	\$	5,000
Settlement Administrator Costs:	\$	12,000.00
Net Settlement Amount	\$	161,333.33

27 This is a non-reversionary Settlement in which Defendant is required to pay the entire
28 Gross Fund Value, which includes, the Class Counsel Award, Class Representative Enhancement,

1 Individual Settlement Payments and Settlement Administrator Costs. No portion of the Gross
2 Fund Value will revert to Defendant. Defendant's share of payroll taxes and other required
3 withholdings from Individual Settlement Payments, including but not limited to Defendant's FICA
4 and FUTA contributions, shall be paid separately from, and in addition to, the Gross Fund Value.

5 a. Individual Settlement Payments.

6 Individual Settlement Payments will be paid from the Net Settlement Amount and shall be
7 paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be
8 mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing
9 address within ten (10) calendar days after Defendant makes the final settlement payment. All
10 Individual Settlement Payments will be allocated 100% as statutory penalties and interest.

11 b. Class Member's Payment Ratio.

12 Payment will be made to Participating Class Members based on the following formula:
13 Prorated distribution based on number of paychecks (up to 41) received during the Covered Period
14 as a percentage of the payments to Participating Class Members.

15 c. Payment to Class Member.

16 Checks shall be made payable to each Participating Class Member for payment of each
17 Participating Class Member's Individual Settlement Payment as set forth in Paragraph 9(a) of this
18 Agreement.

19 d. Form of Payment to Class Member.

20 The Individual Settlement Payment amount due to each Participating Class Member shall
21 be paid in the form of a check to each Participating Class Member.

22 **10. Unclaimed Settlement Payment(s).**

23 After one hundred and eighty (180) days of the mailing of the Individual Settlement
24 Payment checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement
25 Payment checks will be transmitted to the Unclaimed Property Fund in the name of the
26 Participating Settlement Class Member. If for some reason the Court does not approve
27 escheatment of such funds, the Parties agree to cy pres designee Innocence Project pursuant to
28 Code of Civil Procedure section 384(b)(3)(C). The Parties agree to coordinate their efforts to seek

1 Court approval for such an escheatment process of uncashed funds. If, for some reason, the Court
2 does not approve the escheatment of uncashed funds to Innocence Project, the Parties agree upon
3 either Bay Area Legal Aid or Bet Tzedek Legal Services as the cy pres designee.

4 **11. Class Representative Enhancement.**

5 Plaintiff will request that the Court approve a Class Representative Enhancement of up to
6 \$5,000.00. Subject to Court approval, in exchange for the release of all Released Claims and for
7 their time and effort in bringing and prosecuting this matter, Plaintiff shall be paid a Class
8 Representative Enhancement of up to \$5,000.00. The Class Representative Enhancement shall be
9 paid to Plaintiff from the Gross Fund Value within ten (10) calendar days after Defendant makes
10 the final settlement payment. The Settlement Administrator shall issue an IRS Form 1099 – MISC
11 to Plaintiff for his respective Class Representative Enhancement. Plaintiff shall be solely and
12 legally responsible to pay any and all applicable taxes on his Class Representative Enhancement
13 and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes,
14 penalties, or interest arising as a result of the Class Representative Enhancement. The Class
15 Representative Enhancement shall be in addition to the Plaintiff's Individual Settlement Payment
16 as a Settlement Class Member. Any amount requested by Plaintiff for the Class Representative
17 Enhancement and not granted by the Court shall return to the Net Settlement Amount and be
18 distributed to Participating Class Members as provided in this Agreement.

19 **12. Class Counsel Award.**

20 Class Counsel will request that the Court approve attorneys' fees in the amount of up to
21 thirty-three and one-third percent (33.33%) (\$91,666.67) of the Gross Fund Value (\$91,666.67).
22 Class Counsel will request that the Court approve the reimbursement of any litigation costs or
23 expenses associated with Class Counsel's prosecution of this matter from the Gross Fund Value
24 not to exceed \$5,000. So long as there are no objections, Class Counsel shall be paid any Court-
25 approved fees and costs no later than ten (10) calendar days after Defendant funds the Gross Fund
26 Value. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the
27 payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form
28 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement

1 is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees
2 and costs. Any amount requested by Class Counsel for the Class Counsel Award and not granted
3 by the Court shall return to the Net Settlement Amount and be distributed to Participating Class
4 Members as provided in this Agreement.

5 **13. Settlement Administrator Costs.**

6 The Parties agree to allocate up to \$12,000.00 of the Gross Fund Value for Settlement
7 Administrator Costs. The Settlement Administrator shall have the authority and obligation to make
8 payments, credits and disbursements to Class members in the manner set forth herein, calculated
9 in accordance with the methodology set out in this Agreement and orders of the Court. The Parties
10 agree to cooperate in the Settlement administration process and to make all reasonable efforts to
11 control and minimize the cost and expenses incurred in administration of the Settlement.

12 **14. Responsibilities of the Settlement Administrator.**

13 The Settlement Administrator shall be responsible for the following: processing and
14 mailing payments to Plaintiff, Class Counsel, and Participating Class Members; printing, and
15 mailing the Notice of Class Action Settlement and tax forms to the Participating Class Members
16 as directed by the Court; receiving and reporting the requests for exclusion and objections
17 submitted by Class members; providing declaration(s) as necessary in support of preliminary
18 and/or final approval of this Settlement; and other tasks as the Parties mutually agree or the Court
19 orders the Settlement Administrator to perform. The Settlement Administrator shall keep the
20 Parties timely apprised of the performance of all Settlement Administrator responsibilities.

21 **15. Settlement Administrator Fees.**

22 The Settlement Administrator shall be paid the Settlement Administrator Costs within ten
23 (10) calendar days after Defendant makes the final settlement payment.

24 **16. Final Approval Hearing and Entry of Final Judgment.**

25 Upon expiration of the Response Deadline, with the Court's permission, a final approval
26 hearing shall be conducted to determine final approval of the Settlement along with the amount
27 properly payable for: (i) the Class Counsel Award; (ii) the Class Representative Enhancement; (iii)
28 Individual Settlement Payments; and (iv) the Settlement Administrator Costs.

1 **17. Final Approval Order.**

2 Plaintiff will request, and Defendant will concur in said request, that the Court enter, after
3 the Final Approval Hearing, a Final Approval Order in the form attached hereto as Exhibit B.
4 Plaintiff will request that the Final Approval Order certify the Settlement Class; find that this
5 Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to
6 carry out the provisions of this Agreement. If the Court finally approves the Settlement and enters
7 final judgment, notice of the Final Judgment will be posted on the Settlement Website.

8 **18. Nullification of Settlement Agreement.**

9 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court
10 denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgement as
11 provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement
12 Agreement shall be null and void and any order or judgement entered by the Court in furtherance
13 of this Settlement shall be treated as void from the beginning. To the extent the total number of
14 opt outs exceed 3% (Three Percent), Defendant has the option to nullify this settlement within ten
15 (10) court days of the last day of the response period via a written notice to Plaintiff's counsel. If
16 one or more of such events occur causing the Settlement Agreement to become null and void, the
17 Parties shall proceed in all respects as if this Agreement had not been executed, except that any
18 fees already incurred by the Settlement Administrator shall be paid by the party terminating the
19 Settlement or Defendant will be solely responsible for the costs incurred for the settlement
20 administration should it exercise its' option to nullify this agreement. The return of any paid
21 Settlement funds to Defendant shall occur no later than five (5) business days after one or more of
22 the triggering events leading to nullification occurs. In the event an appeal is filed from the Court's
23 Final Judgment, or any other appellate review is sought, administration of the Settlement shall be
24 stayed pending final resolution of the appeal or other appellate review, but any fees incurred by
25 the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's
26 Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator by
27 Defendant within thirty (30) days of said notification.

28 ///

1 **19. Increase in Compensable Pay Period or Settlement Class Members.**

2 It was represented to Class Counsel that the Settlement Class is estimated to be 412 people
3 and there are 9,590 Compensable Pay Periods during the Covered Period. Upon receipt of the
4 Class Data, the Settlement Administrator shall confirm to Plaintiff that the Class Data is consistent
5 with these representations. To the extent the number of Compensable Pay Periods increases
6 beyond 9,590 by more than 3%, Defendant shall have the option to increase the Gross Fund Value
7 by a proportionate amount. For example, if the number of Class members increases by 4%,
8 Defendant shall have the option to increase the Gross Fund Value by 4%. To the extent the number
9 of Class members increases beyond 412, if the increase causes an increase of the cost of Settlement
10 Administration beyond the amount that has been approved by the Court, Defendant shall separately
11 bear the increased cost of Settlement Administration outside of the Gross Fund Value. If the
12 number of pay periods actually accrued during the Covered Period should exceed 9,590 (as
13 estimated by the Parties) by more than 10% (Ten Percent), the Parties shall renegotiate the amount
14 of the settlement in good faith.

15 **20. No Effect on Employee Benefits.**

16 Amounts paid to Plaintiff or other Class members pursuant to this Agreement shall be
17 deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or
18 calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of
19 Plaintiff or Class members.

20 **21. No Admission by Defendant.**

21 Defendant denies any and all claims alleged in this Lawsuit and deny all wrongdoing
22 whatsoever. This Agreement is not a concession or admission, and shall not be used against
23 Defendant as an admission or indication with respect to any claim of any fault, concession, or
24 omission by Defendant.

25 **22. Exhibits and Headings.**

26 The terms of this Agreement include the terms set forth in any attached Exhibits, which are
27 incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are
28 an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this

1 Agreement are inserted for convenience of reference only and do not constitute a part of this
2 Agreement.

3 **23. Interim Stay of Proceedings.**

4 Upon full execution of this Agreement, the Parties agree that based upon Code of Civil
5 Procedure §583.310 (“the 5 year rule”), the Lawsuit shall be stayed in its entirety except for the
6 proceedings necessary to implement and complete the Settlement.

7 **24. Amendment or Modification.**

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

10 **25. Entire Agreement.**

11 Apart from the fully-executed Memorandum of Understanding, which the Parties
12 specifically agree to integrate herein, this Agreement and any attached Exhibits constitute the
13 entire Agreement among these Parties, and no oral or written representations, warranties, or
14 inducements have been made to any Party concerning this Agreement or its Exhibits other than
15 the representations, warranties, and covenants contained and memorialized in the Agreement and
16 its Exhibits. The Parties are entering into this Agreement based solely on the representations and
17 warranties herein and not based on any promises, representation, and/or warranties not found
18 herein.

19 **26. Authorization to Enter into Settlement Agreement.**

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

1 Defendant represent and warrant that they are authorized to sign this Agreement on behalf of
2 Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that
3 he does have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

4 **27. Binding on Successors and Assigns.**

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

7 **28. California Law Governs.**

8 All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted
9 according to the laws of the State of California.

10 **29. Counterparts.**

11 This Agreement may be executed in one or more counterparts. All executed counterparts
12 and each of them shall be deemed to be one and the same instrument.

13 **30. Jurisdiction of the Court.**

14 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
15 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this
16 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
17 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing,
18 and enforcing the settlement embodied in this Agreement and all orders and judgments entered in
19 connection therewith. All terms of this Agreement are subject to approval by the Court.

20 ///

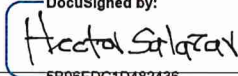
31. Invalidity of Any Provision.

Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.


WHEREFORE, Plaintiff, on behalf of himself and the Class members, and Defendant has executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: septiembre 8, 2020

DocuSigned by:

By: _____
HECTOR SALAZAR


Dated: September 14, 2020


By: _____
CREATIVE CEILINGS, INC.
Lisa Carozza, President, on Behalf of and an Authorized
Representative of Creative Ceilings, Inc.

APPROVED AS TO FORM AND CONTENT:


Dated: September 9, 2020

KINGSLEY & KINGSLEY APC

By: 
Eric B. Kingsley
Kelsey M. Szamet
Attorneys for Plaintiff HECTOR SALAZAR
and the Proposed Class

Dated: September 14, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 
Joseph R. Lordan
Allison L. Shallow
Attorneys for Defendant CREATIVE
CEILINGS, INC.