

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE, CIVIL COMPLEX CENTER

Coordination Proceeding
Special Title (Rule 3.550)

**KIMCO STAFFING DATA BREACH
CASES**

**JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 5321**

Assigned to: Hon. Melissa R. McCormick
Dept.: CX104

CLASS ACTION

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of February 17, 2025, is made and entered into by and among the following Parties (as defined below): Plaintiffs Stephen Varela, Sheryl Bailas, Jose Peralta, and Jesus Guerrero ("Plaintiffs"), individually and on behalf of the Settlement Class (as defined below), and Kimco Staffing Services, Inc. ("Defendant" or "Kimco" and, together with Plaintiffs, the "Parties,"), by and through their respective counsel of record. The Settlement Agreement is subject to Court approval and is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

I. THE LITIGATION

Plaintiffs allege that on or about June 24, 2023, Kimco experienced a cyberattack in which unauthorized individuals infiltrated Kimco's computer network and gained access to specific personal data, including the personally identifiable information ("PII") of approximately 69,687 individuals (the "Data Incident"). Plaintiffs allege that during the Data Incident, cybercriminals potentially accessed and/or exfiltrated sensitive personal identifiable information ("Private Information" or "PII"), including names, Social Security numbers, financial account information, and payment card information, belonging to Plaintiffs and Class Members. Plaintiffs and members of the Settlement Class (defined below) received notices of the Data Incident in or around December of 2023.

On December 21, 2023, the first putative class action arising from the Data Incident was filed in San Diego Superior Court and captioned *Kawauna Pittman vs. Kimco Staffing Services, Inc.* ("Pittman"), Case Number 37-2023-00055232.¹ Beginning on December 27, 2023, four cases were filed in the Orange Superior Court, where Kimco is headquartered. Those cases are captioned: *Stephen Varela et al. vs. Kimco Staffing Services, Inc.* ("Varela"), Case Number 30-2023-01369914; *Sheryl Bailas et al. vs. Kimco Staffing Services, Inc. et al.* ("Bailas"), Case Number 30-2024-01370515; *Jose Peralta et al. vs. Kimco Staffing Services, Inc. et al.* ("Peralta"), Case Number 30-2024-01371244; *Jesus Guerrero v. Kimco Staffing Services Inc.* ("Guerrero"), Case Number 30-2024-01381971. All of these actions alleged claims relating to the potential exposure of PII in the Data Incident.

On April 3, 2024, the *Varela*, *Bailas*, *Peralta*, and *Guerrero* Plaintiffs petitioned for the coordination of all actions in the Orange County Superior Court. On June 3, 2024, the Court

¹ Plaintiff Kawauna Pittman, who is also proceeding in a pending arbitration, neither is a party to this Settlement Agreement nor was a party to the negotiations that led to the same. Plaintiff Pittman is, thus, not included in the definition of "Plaintiffs".

granted Plaintiffs' petition in full, and the Honorable Melissa M. McCormick was appointed as coordination judge.

During this time, the Parties engaged in several months of settlement negotiations. These negotiations included the preparation of informal discovery requests, the exchange of informal discovery, and the preparation and exchange of mediation statements.

On April 10, 2024, the Parties participated in a full-day mediation session with experienced mediator, the Hon. Wayne Andersen (Ret.) of JAMS. Despite a full day of intense negotiations, the Parties were unable to reach a resolution at the mediation.

The Parties continued to negotiate with the assistance of Judge Andersen while engaging in formal discovery, and the Parties propounded and responded to requests for production and special interrogatories. Ultimately, on September 25, 2024, the Parties negotiated a term sheet that memorialized the principal terms reflected in this Settlement Agreement.

This Settlement Agreement was negotiated at arm's length, in good faith, and without collusion, by capable and experienced counsel, with full knowledge of the facts, the law, and the inherent risks in the Litigation, and with the active involvement of the Parties.

II. CLAIMS AND BENEFITS OF SETTLING

Plaintiffs believe the claims asserted in this action have merit. Plaintiffs and Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to litigate this action against Defendant through motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Class Counsel, in consultation with Plaintiffs, have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

III. DENIAL OF WRONGDOING AND LIABILITY

Defendant denies: (a) each and every allegation and all charges of wrongdoing or liability of any kind whatsoever asserted or which could have been asserted in this Litigation, (b) that Plaintiffs and the Class they seek to represent have suffered any damage, and (c) that the Litigation satisfies the requirements to be tried as a class action under California's Code of Civil Procedure § 382. Nonetheless, Defendant has considered the uncertainty and risks inherent in any litigation and concluded that contesting the Litigation further could be protracted and expensive, so it is desirable and beneficial that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. This Settlement Agreement is for settlement purposes only, and nothing in this agreement shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or admission by any of the Parties of the validity or lack thereof of any claim, allegation, or defense asserted in the Litigation or in any other action. The sole purpose of this Settlement Agreement is to reach a final conclusive disposition of Plaintiffs' claims against Defendant arising out of the Data Incident.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by Plaintiffs (individually and on behalf of the Settlement Class), Class Counsel, and Defendant that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this agreement.

1.2 “Attorneys’ Fees and Expenses Award” means the amount awarded by the Court to be paid to Class Counsel from the Settlement Fund, such amount to be in full and complete satisfaction of Class Counsel’s claim or request for payment of attorneys’ fees, costs, disbursements, and compensation in the Litigation.

1.3 “Business Practice Enhancements” means the good and valuable security hardening measures referenced in ¶ 2.4.

1.4 “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Settlement Administrator.

1.5 “Claims Administrator” or “Settlement Administrator” means Kroll Settlement Administration (“Kroll”), a company experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation.

1.6 “Claims Deadline” means the deadline by which Settlement Class Members must submit any valid Settlement Claims. The Claims Deadline shall be set by the Court in the Preliminary Approval Order. The Parties propose a Claims Deadline that is 90 days after the Notice Commencement Date.

1.7 “Claim Form” means the form that will be used by Settlement Class Members to submit a Settlement Claim to the Settlement Administrator and that is substantially in the form as shown in Exhibit A to this Settlement Agreement.

1.8 “Class Counsel” means John J. Nelson and Jason M. Wucetich.

1.9 “Class Representatives” or “Plaintiffs” means Stephen Varela, Sheryl Bailas, Jose Peralta, and Jesus Guerrero.

1.10 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration, the Notice Program, the administration of opt-outs, and the administration of objections. All Costs of Claims Administration shall be paid from the Settlement

Fund.

1.11 “Court” means the Superior Court for the State of California for the County of Orange.

1.12 “Credit Monitoring and Identity-Protection Services” means the credit monitoring and identity-protection services available to the Settlement Class pursuant to ¶ 2.4.

1.13 “Data Incident” means the data security incident that resulted in the notice to Class Representatives of the incident.

1.14 “Effective Date” shall have the meaning specified in ¶ 9.1.

1.15 “Final Judgment Order” means the order of the Court that approves this Settlement Agreement, provides for the release of the Released Claims, and makes such other final rulings as are contemplated by this Settlement Agreement, which may or may not include approving payment of any Service Award and Class Counsel’s Attorneys’ Fees and Expenses Award. The Parties’ proposed form of Final Judgment Order is attached to this Settlement Agreement as Exhibit G.

1.16 “Litigation” means the above-captioned litigation.

1.17 “Long Notice” means the long form notice of settlement to be posted on the Settlement Website (as defined below), substantially in the form of Exhibit B to this Settlement Agreement.

1.18 “Notice Program” means the plan described in Section 3 for disseminating notice to members of the Settlement Class of the terms of this Settlement Agreement and the Final Judgment Order.

1.19 The “Notice Commencement Date” means thirty (30) days after the entry of the Preliminary Approval Order.

1.20 “Objection Date” means the date by which Settlement Class Members’ objections to the Settlement must be postmarked to the Settlement Administrator on or before the Objection Date. The Objection Date shall be set by the Court in the Preliminary Approval Order. The Parties

propose an Objection Date that is sixty (60) days after the Notice Commencement Date.

1.21 “Opt-Out Date” means the date by which members of the Settlement Class requests for exclusion from the Settlement Class must be postmarked by mailing them to the Settlement Administrator for that request to be effective. The Opt-Out Date shall be set by the Court in the Preliminary Approval Order. The Parties propose an Opt-Out Date that is sixty (60) days after the Notice Commencement Date.

1.22 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.23 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Parties’ proposed form of Preliminary Approval Order is attached to this Settlement Agreement as Exhibit F.

1.24 “*Pro Rata* Cash Payment” means the equal *pro rata* distribution from the Net Monetary Settlement Amount to all Settlement Class Members who file a valid claim. The amount of this benefit shall be based on the number of claims received and the amount of funds remaining in the Settlement Fund following the payment of any Attorneys’ Fees and Expenses Award, any Service Awards to Plaintiffs, the Costs of Claims Administration, and claims for Out-of-Pocket Losses, and Credit Monitoring and Identity-Protection Services.

1.25 “Released Claims” shall collectively mean any and all past, present, and future claims, causes of action, demands, damages, debts, liabilities, remedies, proceedings, actions, suits, allegations, assertions of wrongdoing, and any demand for injunctive relief or any other type of equitable or legal relief including, but not limited to, any causes of action arising under or

premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted by any Settlement Class Member against any of the Released Persons arising from, or connected to, the Data Incident. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of individuals in the Settlement Class who have timely excluded themselves from the Settlement.

1.26 “Released Persons” means Defendant and its past or present parents, subsidiaries, divisions, and related or affiliated entities, of any nature whatsoever, whether direct or indirect, as well as each of Defendant’s and these entities’ past, present and future assigns, successors in interest, heirs, executors, subrogees, insurers, reinsurers, agents, brokers, servants, representatives, advisors, consultants, vendors, predecessors, producers, employees, affiliates, associates, officers, directors, partners, principals, shareholders, stockholders, parent companies, attorneys, subsidiaries, divisions, contractors, subcontractors, administrators, all other persons, firms, entities or corporations with whom any of the former have been, are now or may hereafter be affiliated, and all persons acting by, through, under or in concert with Defendant of any nature whatsoever, whether direct or indirect.

1.27 “Reminder Notice” means a reminder notice, based off of the Short Notice. The Settlement Administrator shall also have the option, if requested by Class Counsel, to send reminder notices to Settlement Class Members who have not yet submitted a Claim Form, with such reminder notices to be sent, if at all, thirty (30) days prior to the Claims Deadline. Any such reminder notices shall be sent via email to members of the Settlement Class for whom Defendant possess email addresses and via single postcard to any member of the Settlement Class for whom

Defendant possesses a physical address but not an email address.

1.28 “Settlement Claim(s)” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.29 “Settlement Class” means all individuals who reside in the United States whose Private Information was exposed in the Data Incident involving Defendant, including all who were sent notice of the Data Incident. The Settlement Class specifically excludes: (i) Defendant; (ii) any entity in which Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by Defendant; (iii) the affiliates, legal representatives, attorneys, heirs, predecessors, successors, and assigns of Defendant; and (iv) the judges and court personnel in this case and any members of their immediate families.

1.30 “Settlement Class Member(s)” means an individual within the defined Settlement Class who does not timely and validly request exclusion from the Settlement Class.

1.31 “Settlement Consideration” or “Total Settlement Benefits” means the following: (1) the non-reversionary cash fund that shall be established by Defendant in the amount of Six Hundred and Forty Thousand Dollars (\$640,000.00); and (2) Defendant’s Four Hundred Thousand Dollars (\$400,000.00) in Business Practice Enhancements. The Settlement Consideration provided for in this Settlement is, therefore, One Million and Forty Thousand Dollars (\$1,040,000.00).

1.32 “Settlement Fund” means the non-reversionary cash fund to be paid by Defendant in an amount equal to Six Hundred and Forty Thousand Dollars (\$640,000.00), which shall be used to pay for: (i) Valid Claims; (ii) Costs of Claims Administration; (iii) any Service Award approved by the Court; and (iv) any Attorneys’ Fees and Expenses Award payment approved by the Court. The Settlement Fund will not be used to pay for the Business Practice Enhancements identified in ¶ 2.4, which will be exclusively paid for by Defendant.

1.33 “Short Notice” means the short notice of the proposed class action settlement, substantially in the form of Exhibit C to this Settlement Agreement, sent via email to members of

the Settlement Class for whom Defendant possesses email addresses, and via single postcard to members of the Settlement Class for whom Defendant possesses physical addresses. The Short Notice will direct recipients to the Settlement Website where recipients may view the Long Notice and make a claim for monetary relief. The emailed version of the Short Notice will include a link to download the Claim Form. The Short Notice will also provide the Settlement Class with instructions on how to enroll in the Credit Monitoring and Identity-Protection Services Benefits explained below in ¶ 2.4. The Short Notice will also inform the Settlement Class, *inter alia*, of the Claims Deadline, and the Opt-Out Date and Objection Date.

1.34 “Short Notice Completion Date” means forty-five (45) days after the entry of the Preliminary Approval Order.

1.35 “United States” as used in this Settlement Agreement includes the District of Columbia and all United States and territories.

1.36 “Valid Claims” means Settlement Claims in an amount approved by the Settlement Administrator.

1.37 All time periods herein stated in terms of “days” shall be in calendar days unless otherwise expressly stated.

2. Settlement Benefits

2.1 In consideration for the release contained in this Settlement Agreement, and as a direct result of the Litigation, and without admitting liability for any of the alleged acts or omissions alleged in the Litigation, and in the interests of minimizing the costs inherent in any litigation, Kimco will perform all the following.

2.2 Kimco will establish the Settlement Fund with the Settlement Administrator as follows:

2.2.1 Within fourteen (14) days of the Court granting preliminary approval of this Settlement Agreement, Defendant shall pay all costs associated with notifying the Settlement Class Members of this Settlement Agreement in an amount estimated by the Claims Administrator (said amount being part of and not in addition to the Settlement Fund); and

- 2.2.2 Within seven (7) days of the Effective Date, Defendant shall pay into a Qualified Settlement Fund to be established and maintained by the Settlement Administrator the remaining portion of the Settlement Fund.
- 2.2.3 Additionally, within one hundred twenty (120) days after the Effective Date, Kimco will implement the Business Practice Enhancements as described in ¶ 2.4.
- 2.2.4 Kimco will not be required to pay any amount in excess of the amount identified in the Settlement Fund under any circumstances.

2.3 All Class Members shall have the opportunity to submit a Claim Form for certain claimed benefits. The claimed benefits, as described below, shall include: (a) Credit Monitoring and Identity-Protection Services; (b) Out-of-Pocket Losses; (c) CCPA Payments; and (d) *Pro Rata* Cash Payments. Any Valid Claim may be combined with any other Valid Claim. The cost of providing Credit Monitoring and Identity-Protection Services shall be paid from the Settlement Fund after the payment of any Attorneys' Fees and Expenses Award, any Service Award, and the Costs of Claims Administration. Thereafter, the priority for payment of claimed benefits will be as follows: (1) Out-of-Pocket Losses, (2) CCPA Payments, and (3) *Pro Rata* Cash Payment. If the Settlement Fund is insufficient to cover all Out-of-Pocket Losses and CCPA Payments, such claims shall be reduced *pro rata* to account for the amount of remaining funds, and no money shall be paid to any claimants for *Pro Rata* Cash Payments. Any remaining money in the Settlement Fund (to the extent any exists) after the payment of Out-of-Pocket Losses and CCPA Payments shall be disbursed in a *pro rata* amount to all valid claimants.

2.3.1 Credit Monitoring and Identity-Protection Services Benefit: All members of the Settlement Class who submit a valid Claim Form (regardless of whether they request a monetary payment under the settlement) shall be provided access to credit monitoring and identity-protection services for a period of two (2) years from the date a member of the Settlement Class claims the offer as provided on the Short Notice (defined below). The Credit Monitoring and

Identity-Protection Services will include a minimum of the following features: (1) credit monitoring; (2) identity theft insurance (with a \$1,000,000 policy limit); (3) real-time credit monitoring services; and (4) access to fraud resolution agents. The costs for such services will be paid from the Settlement Fund.

2.3.2 Out-of-Pocket Losses: Every Settlement Class Member may submit a claim for up to \$5,000 for out-of-pocket expenses and losses including proven actual monetary losses, upon submission of a valid Claim Form provided that: (i) the loss is an actual, unreimbursed monetary loss is supported by third-party documentation; (ii) the loss is fairly traceable to the Data Incident; (iii) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance; and (v) the actual misuse or fraud loss occurred between June 24, 2023, and the close of the Claims Period. Losses may include, without limitation, the following: (i) out-of-pocket expenses incurred as a result of the Data Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel, fees for credit reports, credit monitoring, or other identity theft insurance product; and (iii) other expenses fairly traceable to the Data Incident.

Settlement Class Members who elect to submit a claim for reimbursement of Out-of-Pocket Losses must provide to the Settlement Administrator information required to evaluate the claim, including: (1) the Settlement Class Member's name and current address; (2) documentation reasonably supporting their claim; and (3) a brief description of the nature of the loss, if the nature of the loss is not apparent from the documentation alone. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Settlement Class Member concerning the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to clarify or

support other submitted documentation. Out-of-Pocket Losses will be deemed “fairly traceable” if: (1) the timing of the loss occurred on or after the respective Data Incident, and (2) in the Settlement Administrator’s sole determination, the Out-of-Pocket Losses could reasonably be caused by either of the Data Incident. Claims for Out-of-Pocket Losses may be reduced *pro rata* if insufficient funds remain in the Settlement Fund after the payment of Attorneys’ Fees and Expenses Award, any Service Award, and the Costs of Claims Administration.

2.3.3 CCPA Payment: All Settlement Class Members who resided in California on June 24, 2023 may submit a claim to receive a cash payment of \$50. Settlement Class Members who make a valid claim for the CCPA Payment will also be entitled to make a claim for Out-of-Pocket Losses, Pro Rata Cash Payment, and Credit Monitoring and Identity-Protection Services.

2.3.4 Pro Rata Cash Payment: Following the payment of any Attorneys’ Fees and Expenses Award, any Service Award, the Costs of Claims Administration, the cost of Credit Monitoring and Identity-Protection Services, claims for Out-of-Pocket Losses, and CCPA Payments, any remaining amount in the Settlement Fund shall be distributed on a *pro rata* basis to all Settlement Class Members who submitted approved claims.

2.3.5 Residual Funds: As to any portion of the Settlement Fund that remains after all of the above have been paid, the Parties shall meet and confer regarding the appropriate use of such residual funds, including the possibility for using residual funds for additional Credit Monitoring and Identity-Protection Services or whether any such funds shall be paid to National Cybersecurity Alliance as *cy pres* recipient. The Parties agree that no residual funds will revert to Defendant.

2.3.6 Claim Form Submission: Settlement Class Members submitting a claim for Credit Monitoring and Identity-Protection Services, Out-of-Pocket Losses, CCPA Payment, and/or Pro Rata Cash Payment must complete and submit a Claim Form to the Settlement Administrator, postmarked or submitted online on or before the Claims Deadline. A Claim Form being filed for

an Out-of-Pocket Expense and Loss reimbursement must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief. Notarization is not required. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶ 8.1.

2.4 Business Practice Enhancements: Kimco shall take or continue the implementation of reasonable steps to secure personal information within its network. As part of those efforts, Kimco agrees that it has taken or will take the following measures: The costs associated with implementing and/or maintaining these Business Practice Enhancements are separate and apart from the Settlement Fund:

- 1) Sentinel One Complete Endpoint Protection via Arete Managed Detection & Response (MDR): Provides 24/7 cybersecurity expert monitoring of Kimco's network through autonomous, AI-driven endpoint threat detection and that will deploy an immediate response to mitigate potential threats (EDR). Integrated Ranger Network Visibility and Control offers unparalleled insight into unmanaged and IoT devices, ensuring no blind spots in Kimco's network.
- 2) Rapid7InsightVM: Continuous and dynamic vulnerability management with actionable insights into risks across our Kimco's infrastructure. The software's integrated remediation workflows streamline the process of patch management and vulnerability resolution, improving operational efficiency.
- 3) Varonis: Empowers Kimco with real-time visibility into sensitive data access and user behaviors. By identifying potential insider threats and minimizing unnecessary data exposure, Varonis effectively reduces the blast radius of any security incident. Its proactive threat detection platform ensures that suspicious activities are flagged and addressed before they escalate.

4) Trend Micro Vision One: This cloud email and collaboration protection platform shields Kimco's email systems and collaboration tools (e.g., Microsoft 365) from phishing, malware, and business email compromise (BEC). Its extended detection and response (XDR) capabilities enhance our ability to correlate events across multiple vectors, providing a unified view of threats.

5) Zerto Disaster Recovery Solution: Ensures the resilience of Kimco's critical systems by enabling near-instant recovery of data and applications. This solution reduces downtime and data loss during unforeseen disruptions, safeguarding Kimco business continuity.

6) On-Premise Surveillance Camera System: Enhances physical security by monitoring critical locations and providing a deterrent against unauthorized access. This system integrates with our broader security framework for cohesive incident management.

7) Increased Comprehensive Security Review and Penetration Testing: Increased frequency of independent third-party penetration testing and end-to-end internal and external security reviews to ensure that all layers of Kimco's cybersecurity infrastructure are tested, validated, and optimized against current threat landscapes.

8) Policy and Response Plan Updates: Conducted a thorough review and, where necessary, updates to all internal security policies and incident response plans to ensure alignment with current industry standards and best practices. These revisions enhance our preparedness and ensure a swift, coordinated response to potential future incidents.

9) Upgraded IT Infrastructure and End-User Devices: Reviewed and upgraded all

desktop computers, laptops, and tablets to ensure they meet the latest security and performance standards. Additionally, key data center switches and routers were upgraded to enhance network reliability, performance, and security. These improvements minimize vulnerabilities in endpoint devices and core network infrastructure, ensuring a stronger, more resilient IT environment.

Kimco acknowledges that the business practice changes already implemented were implemented in substantial part due to the pending Litigation and/or this Settlement. The cost of the Business Practice Enhancement being implemented and/or maintained is approximately \$400,000. The costs of the Business Practice Enhancement are to be paid by Defendant separate and apart from the Settlement Fund.

2.5 Validity of Claims.

2.5.1 The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support a claim for Out-of-Pocket Losses, pursuant to ¶¶ 2.3.2 and 2.5.3; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses or expenses as a result of the Data Incident. Subject to ¶ 2.5.3, the Settlement Administrator may, at any time, request from the claimant, in writing, additional information as the Settlement Administrator may reasonably require in order to evaluate the claim, e.g., documentation requested on the Claim Form, information regarding the claimed expenses, and claims previously made for identity theft and the resolution thereof.

2.5.2 Upon receipt of an incomplete or unsigned Claim Form the Settlement Administrator shall request additional information and give the claimant thirty (30) days to cure

the defect before rejecting the claim. If the defect is not cured to the satisfaction of the Settlement Administrator, then the claim will be deemed invalid, there shall be no obligation to pay the defective claim, and the claim shall not be considered a Valid Claim.

2.5.3 For a Claim Form for an Out-of-Pocket Loss that is not accompanied by sufficient documentation to support the claimed expenses, within thirty (30) days after the Claims Deadline, the Settlement Administrator shall request additional information and give the claimant thirty (30) days to cure the defect before rejecting the claim, in whole or in part. If the defect is not cured to the satisfaction of the Settlement Administrator, then any claim for Out-of-Pocket Losses under section ¶ 2.3.2 will be deemed invalid to the extent the documentation does not support the claim and as a Valid Claim to the extent the documentation supports the claim. Following receipt of additional information requested by the Settlement Administrator, the Settlement Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. To the extent the claim is deemed invalid by the Settlement Administrator, there will be no obligation to pay the claim and it will not be considered a Valid Claim. Notwithstanding the foregoing, the failure to provide sufficient information to support a claim for Out-of-Pocket Losses shall have no impact on a claimant's eligibility for other Settlement benefits.

2.6 Settlement Checks. If a Settlement Class Member opts for payment via mailed check, all settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within ninety (90) days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of payment on his/her claim, the Settlement Class Member's right to receive monetary relief shall be extinguished, and neither the Settlement Fund, Settlement Administrator, Defendant nor Settlement Class Counsel shall have any obligation to make payments to the Settlement Class Member on the claim. The same

provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days after the Effective Date, requests for re-issuance need not be honored after such checks become void.

2.6.1 In the event that a Settlement Check is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Settlement Check to the forwarding address within seven (7) days of receiving the returned Short Notice

2.6.2 In the event that a Settlement Check is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, i.e., the envelope is marked "Return to Sender" and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular member of the Settlement Class in question and, if such an address is ascertained, the Settlement Administrator will re-send the Settlement Check within seven (7) days of receiving such information. This shall be the final requirement for mailing.

2.7 Payment of Valid Claims, whether via mailed check or electronic distribution, shall be issued by the Settlement Administrator. The Settlement Administrator will make every reasonable effort to pay valid claims within forty-five (45) days after the Effective Date.

2.8 Settlement Class Certification. The Parties agree, for purposes of this settlement only, to the certification of the Settlement Class and Settlement Subclass. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class and Settlement Subclass provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class and Settlement Subclass had never been certified, without prejudice to any Party's position on the issue

of class certification or any other issue. The Parties' agreement to the certification of the Settlement Class and Settlement Subclass is also without prejudice to any position asserted by the Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

3. Order of Preliminary Approval and Publishing of Notice of Final Approval Hearing

3.1. As soon as practicable after the execution of the Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court, and Class Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form substantially similar to Exhibit D, requesting, *inter alia*:

- a) certification of the Settlement Class and Settlement Subclass for settlement purposes only pursuant to ¶ 2.8;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Class Counsel as Settlement Class Counsel;
- d) appointment of Plaintiffs as Class Representatives;
- e) approval of the Short Notice to be emailed or mailed to Settlement Class Members and Settlement Subclass Members in a form substantially similar to the one attached as Exhibit C to this Settlement Agreement;
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as Exhibit B to this Settlement Agreement, which, together with the Short Notice, shall include a fair summary of the parties' respective litigation positions, statements that the settlement and notice of settlement are legitimate and that the Settlement Class and Settlement Subclass are entitled to benefits under the settlement, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, instructions for

how to obtain the Credit Monitoring and Identity-Protection Services Benefit, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Approval Hearing;

- g) approval of a Claim Form to be used by Settlement Class Members and Settlement Subclass Members to make a claim in a form substantially similar to the one attached as Exhibit A to this Settlement Agreement; and
- h) appointment of Kroll Settlement Administration as the Settlement Administrator.

3.2 Notice Program. The Short Notice, Long Notice, and Claim Form have been reviewed and approved by the Settlement Administrator but may be revised as agreed upon by the Parties prior to submission to the Court for approval. Immaterial revisions to these documents may also be made prior to dissemination of notice.

3.3 The Settlement Fund shall be used to pay for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the other costs of Claims Administration. Attorneys' fees, costs, and expenses of Class Counsel, and any Service Award to the Class Representatives, as approved by the Court, shall be paid by Settlement Fund as set forth in ¶ 7 below. Notice shall be provided to the Settlement Class by the Settlement Administrator as follows:

- a) *Class Member Information:* No later than ten (10) days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the names, email addresses, and any last known physical address of each member of the Settlement Class and Settlement Subclass (collectively, "Class Member Information") that Defendant possesses.
- b) The Class Member Information and its contents shall be used by the

Settlement Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement or provide all data and information in its possession to the Parties upon request, the Settlement Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information. The Settlement Administrator shall delete all information associated with this Litigation when it no longer has a legal requirement to retain such data.

- c) *Settlement Website:* Prior to the dissemination of the Short Notice, the Settlement Administrator shall establish a settlement website (www.KimcoDataSettlement.com) that will inform members of the Settlement Class of the terms of this Agreement, their rights, dates and deadlines and related information (“Settlement Website”). The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Agreement; (v) the Complaint; and (vii) any other materials agreed upon by the Parties and/or required by the Court, *e.g.*, the Order and Judgment of Final Approval in this Litigation, an exclusion form, and an objection form (substantially in the form as shown in Exhibits D and E to this Settlement Agreement). The Settlement Website shall provide members of the Settlement Class with the ability to complete and submit the Claim Form electronically. The Settlement Website shall be activated by the Notice Commencement Date and shall remain active until one hundred and eighty (180) days after the Effective Date. The Settlement Website will have

the Short Notice, Long Notice, Claim Form, and other necessary forms available in Spanish, with the mailed Short Notice directing Spanish speaking Settlement Class Members to the Website for Spanish translations.

d) *Short Notice:* By the Notice Commencement Date, the Settlement Administrator will begin providing the Short Notice to the Settlement Class, which provision shall be substantially completed by the Short Notice Completion Date. Subject to the requirements of this Settlement Agreement and the Preliminary Approval Order, the Settlement Administrator will provide the Short Notice to the Settlement Class as follows:

- i. Via mail to the postal address in Defendant's possession. Before any mailing under this paragraph occurs, the Settlement Administrator shall run the postal addresses of members of the Settlement Class through the United States Postal Service ("USPS") National Change of Address database to update any change of address on file with the USPS;
- ii. Via email to those members of the Settlement Class for whom Defendant has email addresses but does not have postal addresses;
- iii. In the event that a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;
- iv. In the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out Date and

Objection Date, a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular member of the Settlement Class in question and, if such an address is ascertained, the Settlement Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

- e) Publishing, on or before the Notice Commencement Date, the Claim Form, Long Notice and this Settlement Agreement on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period as provided in Section 3.3(c);
- f) Providing the Settlement Class with a Reminder Notice via email or postcard at least thirty (30) days before the Claims Deadline, if requested by Class Counsel;
- g) A toll-free help line with a live operator shall be made available to provide members of the Settlement Class with additional information about the settlement. The Settlement Administrator also will provide copies of the Long Notice and paper Claim Form, as well as this Settlement Agreement, upon request; and
- h) Contemporaneously with seeking Final Approval of the Settlement, Class Counsel and the Settlement Administrator shall cause to be filed with the

Court an appropriate affidavit or declaration with respect to complying with these provisions regarding notice.

3.4 The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Settlement Administrator in consultation and agreement with the Parties as may be reasonable and not inconsistent with such approval. The Notice Program shall commence by the Notice Commencement Date.

3.5 The Parties through their respective counsel shall request that the Court hold a hearing (the “Final Approval Hearing”) no fewer than 120 days after the Preliminary Approval Order and grant final approval of the settlement set forth herein. Class Counsel shall file a Motion for Final Approval at least thirty-five (35) days before the Final Approval Hearing (or at such other time as ordered by the Court).

4. Opt-Out Procedures

4.1 Each Person who intends to opt out of the Settlement Class must personally sign themselves (with a physical ink signature or via DocuSign, or other similar process for transmitting authenticated digital signatures) and timely submit a written notice to the Settlement Administrator of their intent to opt out of the Settlement Class by mailing it with a postmark by the Opt-Out Date to the designated Post Office box established by the Settlement Administrator, or (b) emailing it to the Settlement Administrator using the email address provided on the Settlement Website. To be effective, the written opt-out notice must include the following: (a) the requestor’s name, address, and email address; (b) the requestor’s physical ink or digitally authenticated signature; (c) the name and number of this Litigation, *Kimco Staffing Data Breach Cases*, Judicial Council Coordination Proceeding No. 5321; and (d) a statement that clearly manifests his or her intent to be excluded from the Settlement Class for purposes of this settlement. To be timely, written notice must be postmarked or emailed no later than the Opt-Out Date. To meet requirements to make an opt out notice effective stated above, the signature must be physically written in ink beneath the declaration

of the signer's expression of intent to opt out of the Settlement Class or digital signatures. In the event that a Person submits an opt out notice without a physical, ink signature or via DocuSign, or other similar process for transmitting authenticated digital signatures, the Settlement Administrator must contact the Person using the email address provided in the opt out notice and request the Person to correct their signature and submit a physical, ink signature or via DocuSign, or other similar process for transmitting authenticated digital signatures to be postmarked or emailed no later than one week from the date of the request. Failure to submit the physical ink or digitally authenticated signature before that deadline will result in the opt out notice being untimely and ineffective.

4.2 All Persons who submit valid and timely notices of their intent to opt-out and not be a Settlement Class Member, as set forth in ¶ 4.1 above, referred to herein as "Opt-Out(s)," shall not receive any benefits of and will not be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not submit a timely and effective opt out notice under Section 4.1.1 will be bound by the terms of this Settlement Agreement and Final Judgment Order entered thereon.

4.3 Persons submitting an Opt-Out are not entitled to any benefits of this settlement under Section 2. Any member of the Settlement Class who submits an Opt-Out and a Claim Form may not submit objections under Section 5 and may not receive any benefit and his or her claim shall not be considered a Valid Claim.

5. Objection Procedures

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection to the Settlement Administrator by the Objection Date. Such notice shall state: (a) the objector's full name and address; (b) the case name and number, *Kimco Staffing Data Breach Cases*, Judicial Council Coordination Proceeding No. 5321; (c) information identifying the objector as a Settlement Class Member, including proof that

the objector is a member of the Settlement Class (*e.g.*, copy of the objector's settlement notice, copy of original notice of one or both of the Data Incident, or a statement explaining why the objector believes he or she is a Settlement Class Member); (d) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (e) the identity of any and all counsel representing the objector in connection with the objection; (f) a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; (g) a list of any other objections submitted by the Settlement Class Member or Settlement Subclass Member, or their counsel, to any class actions submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years; and (h) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. All objections must be emailed or postmarked to the Settlement Administrator on or before the Objection Deadline, as set forth above. Thereafter, the Parties' counsel shall file a single packet of all objections with the Court.

5.2 The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any appeal of the Settlement Agreement or the Final Judgment Order approving this Settlement Agreement shall be pursuant to appeal under the California's Code of Civil Procedure. Any Settlement Class Member or any other Party to the Settlement Agreement may not challenge the Settlement Agreement or the Final Judgment Order approving this Settlement Agreement through a collateral attack.

6. Releases

6.1 Upon the Effective Date, each Settlement Class Member, Settlement Subclass Member, and Plaintiffs, shall be deemed to have, and by operation of the Final Judgment Order shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims, including, without limitation, Unknown Claims. Further, upon the Effective Date, and to the fullest extent

permitted by law, each Settlement Class Member, Settlement Subclass Member, and Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

6.2 Upon the occurrence of the later of the Effective Date and Defendant paying the full amount of the Settlement Fund to the Settlement Administrator, and in consideration of the Released Claims described herein, Defendant shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Class Representatives, Class Counsel, and all Settlement Class Members of all claims based upon the institution, prosecution, settlement, or resolution of the litigation or the Released Claims, except for enforcement of the Settlement Agreement. Notwithstanding the above, any other claims or defenses Defendant may have against such Persons including, without limitation, any claims based upon any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons not based upon the institution, prosecution, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

7. Class Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to Class Representatives

7.1 The Parties did not discuss the amount of Attorneys' Fees and Expenses Award and/or Service Award to Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon.

7.2 At least thirty-five (35) days prior to the Final Fairness hearing, Class Counsel will move the Court for an award of reasonable attorneys' fees incurred in the Action in an amount not to exceed one third (1/3) of the Settlement Fund, and reimbursement of documented costs and expenses of an amount not to exceed \$45,000.00. The amount of the Attorneys' Fees and Expenses

Award shall be determined by the Court. Class Counsel, in their sole discretion, shall allocate and distribute any amounts of attorneys' fees, costs, and expenses awarded by the Court among Class Counsel and other plaintiffs' counsel.

7.3 Subject to Court approval, Class Counsel will move the court for Service Awards to the Class Representatives in the amount of \$2,500 (the "Service Award") each. The amount of the Service Award shall be determined by the Court.

7.4 It is not a condition of this Settlement Agreement that any particular amount of attorneys' fees, costs, or expenses or Service Awards be approved by the Court, or that such fees, costs, expenses, or awards be approved at all. Any order or proceeding relating to the amount of any award of attorneys' fees, costs, or expenses or Service Awards, or any appeal from any order relating thereto, or reversal or modification thereof, shall not operate to modify, terminate, or cancel this Settlement Agreement, or affect or delay the finality of the Final Judgment Order and the Judgment.

7.5 If awarded by the Court, the Settlement Administrator shall pay from the Settlement Fund any Attorneys' Fees and Expenses Award and any Service Award for the Class Representatives, as set forth in ¶¶ 7.2 and 7.3 in the amounts awarded by the Court within ten (10) days after the Effective Date. Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among themselves and other plaintiffs' counsel, and the Service Awards to Plaintiffs, consistent with ¶¶ 7.2 and 7.3.

8. Administration of Claims

8.1 The Settlement Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2.3. Class Counsel and Defendant shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Settlement Administrator shall make the initial determination of whether a Settlement Claim is valid. Claimants will have the opportunity to seek review by the Parties' Counsel, if they dispute the Settlement Administrator's initial determination.

8.2 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the timeframes set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Final Judgment Order.

8.3 No Person shall have any claim against the Settlement Administrator, Defendant, Class Counsel, the Class Representatives, and/or Defendant's counsel based on distributions of benefits to Settlement Class Members.

8.4 The funds provided by Kimco under the Settlement will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account insured by the Federal Deposit Insurance Corporation ("FDIC") at a reputable financial institution. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process.

9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

9.1 The Effective Date shall mean one business day following the latest of: (i) the date upon

which the time expires for filing or noticing any reconsideration or appeal of the Final Judgment Order, or entry of the Final Judgment Order if no person or entity has standing to appeal or seek reconsideration; (ii) if there is an appeal or appeals or reconsideration sought, other than an appeal or appeals or reconsideration solely with respect to attorneys' fees, costs, and expenses, the date on which the Final Judgment Order is affirmed without any material modification and is no longer subject to judicial review; or (iii) the date of final dismissal of any appeal or reconsideration or the final dismissal of any proceeding on certiorari with respect to the Final Judgment Order, and the Final Judgment Order is no longer subject to judicial review.

9.2 If the Court does not approve the Settlement Agreement or the Effective Date does not occur for any reason, the Settlement Agreement shall be canceled and terminated subject to ¶ 9.4 unless Class Counsel and Defendant's counsel mutually agree in writing to proceed with the Settlement Agreement.

9.3 Within seven (7) days after the Opt-Out Date, the Settlement Administrator shall furnish to Class Counsel and to Defendant's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.4 The Settlement Agreement may be terminated and cancelled at the sole and exclusive discretion of Defendant if 150 or more of the Settlement Class Members timely and validly exclude themselves from the Settlement Class, on the ground that exclusion at that level threatens to frustrate the essential purpose of this agreement. Defendant may exercise their right to terminate this Settlement Agreement under this subsection by providing written notification to Class Counsel of their election within five (5) business days after the Settlement Administrator has delivered the Opt-Out List to the Parties.

9.5 In the event that the Settlement Agreement or the releases set forth in ¶ 6.1 above are not approved by the Court, the Effective Date does not occur for any reason, or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (a) the Parties shall

be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or Service Awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, the Settlement Fund shall be used to pay any Costs of Claims Administration that have already been incurred by the Settlement Administrator, and the remaining Settlement Fund shall be paid back to Defendant or its insurer, as the case may be.

10. Miscellaneous Provisions

10.1 The Parties (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Party as to the merits of any claim or defense. The Parties each agree that the settlement was negotiated in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith

or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Final Judgment Order in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.5 The exhibits to this Settlement Agreement and any exhibits thereto are a material part of the settlement and are incorporated and made a part of the Agreement.

10.6 This Settlement Agreement, including all exhibits hereto, contains the entire understanding between Defendant and Plaintiffs regarding the payment of the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between Defendant and Plaintiffs in connection with the payment of the Litigation settlement. Except as otherwise provided herein, each party shall bear its own costs. This Settlement Agreement supersedes all previous agreements between Defendant and Plaintiffs.

10.7 Class Counsel, on behalf of the Settlement Class, are expressly authorized by the Class Representatives to take all appropriate actions required or permitted to be taken by the

Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

10.8 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.9 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be an original but all of which shall constitute one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

10.10 The Settlement Agreement shall be binding upon, and inure to the benefit of, the respective successors, assigns, affiliates, associates, heirs, executors, and administrators of the parties hereto.

10.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement. The Court shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

10.12 As used herein, "he" means "he, she, they, or it;" "his" means "his, hers, theirs,

or its,” and “him” means “him, her, them, or it.”

10.13 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California.

10.14 All dollar amounts are in United States dollars (USD).

10.15 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement, including but not limited to those relating to all information exchanged for purposes of mediation or under the auspices of California Evidence Code § 1152. Defendant shall not be liable for any additional attorneys’ fees and expenses of any Settlement Class Members’ or Settlement Subclass Members’ counsel, including any potential objectors or counsel representing a Settlement Class Member or Settlement Subclass Member individually, other than what is expressly provided for in this Agreement. Class Counsel agree to hold Defendant harmless from any claim regarding the division of any award of attorneys’ fees and expenses to Class Counsel, and any claim that the term “Class Counsel” fails to include any counsel, Person, or firm who claims that they are entitled to a share of any attorneys’ fees or expense awarded to Class Counsel in this lawsuit.

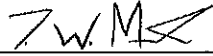
10.16 Except as required by law or any other disclosure obligations, or as provided herein, the Parties, and the Parties’ counsel, shall not issue any press releases or make any postings on social media, written or verbal, related to this case or the settlement; however, Defendant may respond to relevant posts on Defendant’s website or social media sites, and a Party or the Party’s counsel may also respond to any incoming press inquiry about this case or the Settlement with a responsive statement approved in advance by the opposing Party or the opposing Party’s counsel. Counsel for the Parties may identify this case, its nature, and the fact that it settled on their personal or firm resumes and on their websites.

10.17 The attached Appendix A compiles the dates and deadlines established by this Agreement. The Appendix is provided for convenience and should not be interpreted to alter the substance of this Agreement in any way.

IN WITNESS WHEREOF, the Parties have executed the Settlement Agreement.

Dated: February 18, 2025

Respectfully submitted,



Tom Megonigal
President, Kimco Staffing Services, Inc.



Dhavé Balatéro
Counsel for Defendant

Dated: February 17, 2025



Stephen Varela (Feb 17, 2025 13:16 PST)
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Plaintiff Sheryl Bailas

Plaintiff Jose Peralta

Plaintiff Jesus Guerrero

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