

1 CAROLYN B. HALL, CA Bar No. 212311  
carolyn.hall@ogletree.com  
2 MICHAEL D. WILSON, JR., CA Bar No. 233334  
michael.wilson@ogletree.com  
3 OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.  
4 One Embarcadero Center, Suite 900  
San Francisco, CA 94111  
5 Telephone: 415-442-4810  
Facsimile: 415-442-4870  
6

7 Attorneys for Defendant  
ALTEC INDUSTRIES, INC.

8 JOSHUA S. FALAKASSA, CA Bar No. 295045  
josh@falakassalaw.com  
9 FALAKASSA LAW, P.C.  
1901 Avenue of the Stars, Suite 450  
10 Los Angeles, California 90067  
Telephone: (818) 456-6168  
11 Facsimile: (888) 505-0868

12 Attorney for Plaintiff ROBERT MANN

13 MEHRDAD BOKHOUR, CA Bar No. 285256  
mehrddad@bokhourlaw.com  
14 BOKHOUR LAW GROUP, P.C.  
1901 Avenue of the Stars, Suite 450  
15 Los Angeles, California 90067  
Telephone: (310) 975-1493  
16 Facsimile: (310) 675-0861

17 Attorneys for Plaintiff ROBERT MANN

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **FOR THE COUNTY OF SOLANO**

20 ROBERT EARL MANN, on behalf of himself  
and all other similarly situated,  
21  
22 Plaintiff,  
23  
24 vs.  
25 ALTEC INDUSTRIES, INC., an Alabama  
Corporation; and DOES 1-50, inclusive,  
26  
27 Defendant.  
28

Case No. FCS054121

**JOINT STIPULATION OF CLASS  
ACTION AND PAGA SETTLEMENT**

Action Filed: December 26, 2019  
Trial Date: None Set

1 This Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement  
2 Agreement”) is entered into by and between Plaintiff Robert Earl Mann (individually and on behalf  
3 of the Settlement Class, as defined below), and Defendant Altec Industries, Inc. (“Defendant”).  
4 Plaintiff and Defendant (collectively, the “Parties”) enter into this Agreement to effectuate a full  
5 and final settlement and dismissal of all claims brought against Defendant in *Robert Earl Mann v.*  
6 *Altec Industries, Inc.*, Superior Court of the State of California, County of Solano, Case No.  
7 FCS054121.

8 **A. Definitions**

9 1. “Action” or “Lawsuit” means and refers to the putative class action lawsuit entitled  
10 *Robert Earl Mann v. Altec Industries, Inc.*, filed on December 26, 2019 in the Superior Court for  
11 the State of California, County of Solano, and assigned the Case Number FCS054121, pending  
12 before the Honorable E. Bradley Nelson.

13 2. “Class” or “Class Members” means all current and former non-exempt employees  
14 who worked for Defendant within the State of California at any time during the Class Period  
15 (defined below).

16 3. “Class Counsel” refers to Joshua Falakassa, Esq. of Falakassa Law, P.C. and  
17 Mehrdad Bokhour of Bokhour Law, P.C.

18 4. “Class Data” means – to the extent possible – a complete list of all Class Members  
19 that Defendant will diligently and in good faith compile from its records and provide to the  
20 Settlement Administrator within fourteen (14) calendar days after entry of the Preliminary  
21 Approval Order. The Class Data shall be on one spreadsheet, in a format to be provided by the  
22 Settlement Administrator, and shall include the Class Members’ full names; last known addresses;  
23 telephone numbers; Social Security Numbers; and the start dates and end dates of employment with  
24 Defendant; and any other relevant information needed by the Settlement Administrator to calculate  
25 settlement payments.

26 5. “Class Members” means all current and former hourly-paid or non-exempt  
27 employees who worked for Defendant within the State of California at any time during the period  
28

1 from December 26, 2015 (four years prior to the filing of the Action) through March 19, 2021 or  
2 the date when the Court enters the Preliminary Approval Order, whichever occurs first.

3 6. “Class Period” is deemed to be the period covering December 26, 2015 through  
4 March 19, 2021.

5 7. “Class Representative” or “Plaintiff” means and refers to Robert Earl Mann.

6 8. “Compensable Workweeks” means the number of weeks during which Class  
7 Members worked for Defendant as hourly non-exempt employees for at least one (1) shift during  
8 the Class Period, which will be calculated by the Settlement Administrator using the start and end  
9 dates of employment in non-exempt positions contained in the Class Data (as aggregated for any  
10 multiple employment periods), and dividing by seven (7), and rounding up to the nearest whole  
11 number. Using the Class Data, the Settlement Administrator will have the sole and exclusive  
12 responsibility for determining the number of Compensable Workweeks. “Complaint” means the  
13 First Amended Class Action and Representative Action Complaint filed by Plaintiff Robert Earl  
14 Mann on August 31, 2020 in this Action.

15 9. “Court” means the Superior Court for the State of California, County of Solano.

16 10. “Defendant” means and refers to Altec Industries, Inc.

17 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to Michael D.  
18 Wilson, Jr., Esq. and Carolyn B. Hall, Esq. of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

19 12. “Effective Date” means the later of the following: (i) if no objections to the  
20 Settlement have been filed, or timely objections have been filed and are then withdrawn, then the  
21 date the Court enters judgment granting Final Approval; (ii) if an objection to the Settlement has  
22 been filed and is not withdrawn, then the date on which time expires to file an appeal of the Court’s  
23 grant of Final Approval of the Settlement; or if an objection was filed and a Notice of Appeal of  
24 the Court’s granting of Final Approval of the Settlement was timely filed, then the date the appeal  
25 is finally resolved, with the Court’s grant of Final Approval unaffected.

26 13. “Final Approval” means that the Final Approval Order and Judgment have been  
27 entered by the Court.

28

1           14.    “Individual Settlement Payment” means the amount payable from the Net  
2 Settlement Amount to each Settlement Class Member ascribed to it in Paragraph 42(c) below.

3           15.    “LWDA Payment” means the payment to be made to the California Labor and  
4 Workforce Development Agency (“LWDA”) for its 75% share of the PAGA Payment.

5           16.    “Maximum Settlement Amount” means the maximum amount of One Million Four  
6 Hundred Fifty Thousand Dollars (\$1,450,000.00) that Defendant will pay in full and complete  
7 settlement of this Action, which shall include all Individual Settlement Payments, Class  
8 Representative Service Award, Class Counsel Award, LWDA Payment and Settlement  
9 Administration Costs.

10          17.    “Net Settlement Amount” means the Maximum Settlement Amount, less: (a) the  
11 Class Counsel Award; (b) the Class Representative Service Award; (c) the LWDA Payment; and  
12 (d) Settlement Administration Costs, ascribed to it in Paragraph 42(b) below.

13          18.    “Notice Packet” means the Notice of Class Action Settlement to be mailed to the  
14 Class Members, in a form substantially similar to the form attached hereto as “Exhibit 1.”

15          19.    “Notice Response Deadline” is 45 calendar days from the date the Notice Packet is  
16 mailed to the Settlement Class Members.

17          20.    “Objecting Class Member” means a Class Member, other than Plaintiff, who  
18 submits a valid and timely objection to the terms of this Settlement Agreement, pursuant to  
19 Paragraph 61(c) below.

20          21.    “PAGA” means the California Labor Code Private Attorneys General Act of 2004.

21          22.    “PAGA Payment” means the amount of \$25,000.00 which is allocated to civil  
22 penalties pursuant to PAGA. “Parties” or “Settling Parties” mean named Plaintiff Robert E. Mann,  
23 the Class Members, and Defendant, collectively.

24          23.    “Payment Ratio” means the respective Compensable Workweeks for each  
25 Settlement Class Member divided by the total Compensable Workweeks for all Settlement Class  
26 Members.

27          24.    “Preliminary Approval Date” means the date the Court approves the Settlement  
28 Agreement, and any exhibits thereto, and enters the Preliminary Approval Order.

1           25.    “Preliminary Approval Order” means the judicial order to be entered by the Court,  
2 upon the application or motion of the Plaintiff, preliminarily approving this Settlement and  
3 providing for the issuance of the Notice Packet to the Settlement Class, an opportunity to opt out of  
4 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a hearing  
5 on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.  
6 Defendant will not object to Plaintiff’s motion for preliminary approval but will be provided with  
7 an opportunity to review, comment upon and approve the motion before it is filed.

8           26.    “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator  
9 for the benefit of the Settlement Class.

10          27.    “Released Claims” refers to all causes of action and factual or legal theories that  
11 were alleged in the operative Complaint or reasonably could have been alleged based on the facts  
12 and legal theories contained in the operative Complaint, including all of the following claims for  
13 relief: (a) failure to provide all wages due, including minimum wage, straight time, overtime,  
14 bonus overtime, time-and-a-half, double time, reporting time pay, off-the-clock pay, and all other  
15 potential wages; (b) failure to provide proper meal periods, and to properly provide premium pay in  
16 lieu thereof; (c) failure to provide proper rest breaks, and to properly provide premium pay in lieu  
17 thereof; (d) waiting time penalties for untimely pay during employment and untimely final pay; (e)  
18 improper and/or inaccurate wage statements; (f) failure to reimburse business expenses; (g) failure  
19 to keep complete or accurate payroll records; (h) unfair business practices; (i) civil penalties under  
20 the California Labor Code Private Attorneys General Act (“PAGA”); (j) any other claims or  
21 penalties under the wage and hour laws plead in the Action; and (k) all damages, penalties, interest  
22 and other amounts recoverable under said causes of action under California and federal law, to the  
23 extent permissible, including but not limited to the California Labor Code as to the facts alleged in  
24 the Action, the applicable Wage Orders as to the facts alleged in the Action, and the California  
25 Unfair Competition Law (collectively, the “Released Claims”). The period of the Release shall  
26 extend to the limits of the Covered Period. The res judicata effect of the Judgment will be the same  
27 as that of the Release.

28

1           28.    “Release” shall mean the release and discharge of the Released Claims by Plaintiff  
2 and all of the Settlement Class Members, and their assignees, as set forth in Sections D and E  
3 below.

4           29.    “Released Parties” means Defendant and its past, present and/or future, direct and/or  
5 indirect, officers, directors, members, managers, employees, agents, representatives, attorneys,  
6 insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates,  
7 divisions, predecessors, successors, assigns, and joint venturers, and all persons acting under, by,  
8 through, or in concert with any of them, and each of them.

9           30.    “Release Period” shall be the time period governing the Released Claims, which  
10 shall be from December 26, 2015 through March 19, 2021.

11          31.    “Request for Exclusion” means a formal request to be excluded from the Settlement  
12 as described in detail in Paragraph 61(a) below.

13          32.    “Service Award” or “Class Representative Service Payment” means the amount  
14 approved by the Court to be paid to the Class Representative, Robert Earl Mann, in addition to his  
15 Individual Settlement Amount as a Settlement Class Member, in exchange for executing a general  
16 release of Defendant.

17          33.    “Settlement Administrator” means and refers to a mutually agreed upon settlement  
18 administrator by the Parties, who will provide the Notice Packet to the Class Members and  
19 distribute the Settlement Amounts as described in this Settlement Agreement. Defendant and  
20 Defense Counsel shall not bear any responsibility for errors or omissions in the calculation or  
21 distribution of the settlement payments or development of the list of recipients of settlement  
22 payments.

23          34.    “Settlement Administration Costs” means the costs payable from the Maximum  
24 Settlement Amount to the Settlement Administrator for administering this Settlement, including,  
25 but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting,  
26 distributing the Net Settlement Payment, and providing necessary reports and declarations, as  
27 requested by the Parties. The Settlement Administration Costs shall be paid from the Maximum  
28

1 Settlement Amount, including, if necessary, any such costs more than the amount represented by  
2 the Settlement Administrator as being the maximum costs necessary to administer the Settlement.

3 35. "Settlement Class Members" or "Settlement Class" means all Class Members after  
4 excluding any person who intends to opt-out of the Settlement and submits a timely and valid  
5 Request for Exclusion as provided in this Agreement. The Settlement Class Members will release  
6 all of the Released Claims; be bound by all terms of the Settlement and any final judgment entered  
7 in this Action based on the Settlement; and be issued an Individual Settlement Payment.

8 **B. General Terms**

9 36. Plaintiff filed a putative wage and hour class action complaint in the Court against  
10 Defendant Altec Industries, Inc. on December 26, 2019, which alleged claims for: (a) failure to pay  
11 minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure  
12 to provide rest breaks, (e) failure to timely pay final wages pursuant to California Labor Code §§  
13 201–203, (f) failure to provide accurate itemized wage statements, (g) failure to reimburse business  
14 expenses, (h) unfair and unlawful competition. The Complaint was amended on or around  
15 August 31, 2020 to allege related claims under PAGA.

16 37. Defendant denies that it has engaged in any unlawful activity or wrongdoing of any  
17 kind associated with the claims alleged in the Action and Complaint; denies that it failed to comply  
18 with the law in any respect; disputes the damages and penalties claimed by the Class  
19 Representative; denies that it has any liability to anyone on the claims asserted in the Lawsuit.  
20 Defendant contends, among other things, that at all times it complied with the California Labor  
21 Code and the Industrial Wage Commission Orders.

22 38. The Class Representative believes he can proceed with his representative and class  
23 claims, that the Action is meritorious, and that class certification is appropriate.

24 39. The Parties have conducted a thorough investigation into the facts of the Action.  
25 This includes conducting an extensive exchange of informal discovery, including Defendant's  
26 written policies and practices and the production of a sampling of payroll and timekeeping records  
27 for Class Members. Class Counsel is both knowledgeable about and has done extensive research  
28 with respect to the applicable law and potential defenses to the claims of the Class Members. Class

1 Counsel has diligently pursued an investigation of the Class Members’ claims against Defendant.  
2 Based on the foregoing data and on their own independent investigation and evaluation, Class  
3 Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms  
4 set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of  
5 the Class Members in light of all known facts and circumstances, including the risk of significant  
6 delay and uncertainty associated with litigation, various defenses asserted by Defendant, and  
7 numerous potential appellate issues.

8 40. On January 19, 2021, Plaintiff and Defendant participated in a private mediation  
9 before Mark Rudy, Esq. (“Mediator”), a highly experienced and knowledgeable wage and hour  
10 class action mediator.

11 41. The Parties agree that the Parties’ Settlement, this Settlement Agreement, and any  
12 acts to be performed or judgments to be entered pursuant to the terms of the Settlement and  
13 Settlement Agreement shall not be construed as an admission by Defendant of any wrongdoing,  
14 violation of any statute or law, or liability on the claims or allegations in the Action.

15 42. Stipulation for Class Certification. For settlement purposes only, Defendant will  
16 provisionally stipulate that the Class Members described herein who do not request exclusion from  
17 the Settlement Class may be conditionally certified as a settlement class. This provisional  
18 stipulation to certification is in no way an admission that class action certification is proper and  
19 shall not be admissible in this or in any other action except for the sole purposes of enforcing this  
20 Agreement. Should the Court fail to issue Final Approval for any reason, the Parties’ provisional  
21 stipulation to class certification as part of the Settlement Agreement shall become null and void ab  
22 initio and shall have no bearing on, but remains protected by California Evidence Code Section  
23 1152 and shall not be admissible in connection with, the issue of whether certification would be  
24 appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it  
25 will continue to oppose class certification and contest the substantive merits of the case should the  
26 Court fail to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will  
27 continue to pursue class certification and a trial should the Court fail to issue Final Approval.

28



1 **C. Terms of Settlement**

2 43. The financial terms of the Settlement are as follows:

3 (a) Maximum Settlement Amount: The Parties agree to settle this Action for  
4 One Million Four Hundred Fifty Thousand Dollars and Zero Cents (\$1,450,000.00) (“the  
5 Maximum Settlement Amount”). The Maximum Settlement Amount is the maximum amount that  
6 will be paid, and includes Individual Settlement Amounts, attorneys’ fees of Class Counsel, costs  
7 and expenses, the Service Payment to the Class Representative, all Settlement Administration  
8 Costs, and payment to the California Labor & Workforce Development Agency (“LWDA”) for  
9 PAGA penalties. However, Defendant shall be required to separately pay the employer’s share of  
10 payroll taxes due on the Individual Settlement Amounts.

11 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the  
12 Maximum Settlement Amount less attorneys’ fees and litigation costs as approved and awarded by  
13 the Court, the Service Payment to the Class Representative as awarded by the Court, the Settlement  
14 Administration Costs, and payment to the LWDA for PAGA penalties. In the event that the Court  
15 reduces the attorneys’ fees, costs, expenses or Service Award, the amount of any such reduction  
16 shall be placed in the Net Settlement Amount and allocated to the Settlement Class.

17 (c) Individual Settlement Payments for the Settlement Class: The Individual  
18 Settlement Payment shall be paid from the Net Settlement amount and shall be paid pursuant to the  
19 formula set forth herein.

20 i. Calculation of Estimated Individual Settlement Payments. Using the  
21 Class Data, the Settlement Administrator will calculate the total Compensable Workweeks for all  
22 Class Members. The respective Compensable Workweeks for each Class Member will be divided  
23 by the total Compensable Workweeks for all Class Members, resulting in the “Payment Ratio” for  
24 each Class Member. Each Class Member’s Payment Ratio will then be multiplied by the estimated  
25 Net Settlement Amount to calculate each Class Member’s estimated Individual Settlement  
26 Payment.

27 ii. Calculation of Individual Settlement Payments. Using the Class  
28 data, or using the Compensable Workweeks that were disputed and subsequently approved, while

1 also accounting for any timely submitted Requests for Exclusion, the Settlement Administrator will  
2 calculate the total Compensable Workweeks for all Settlement Class Members. The respective  
3 Compensable Workweeks for each Settlement Class Member will be divided by the total  
4 Compensable Workweeks for all Settlement Class Members, resulting in the Payment Ratio for  
5 each Settlement Class Member. Each Settlement Class Member's Payment Ratio will then be  
6 multiplied by the Net Settlement Amount to calculate each Settlement Class Member's Individual  
7 Settlement Payment.

8 (d) Allocation of Individual Settlement Amounts: The Individual Settlement  
9 Amounts will be allocated based on the allegations in the Action as follows: twenty percent (20%)  
10 will be paid as wages subject to withholding of all applicable local, state and federal taxes; and  
11 eighty percent (80%) will be paid as interest and other payments from which no taxes will be  
12 withheld. To the extent required, the Settlement Administrator will issue to each Settlement Class  
13 Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the  
14 wage allocation and a Form 1099 with respect to the penalties and interest allocations.

15 (e) Service Payment to Class Representative: The amount, if any, awarded to  
16 the Class Representative as a Service Payment will be set by the Court in its discretion, not to  
17 exceed \$10,000. Defendant agrees not to oppose this request. The Service Payment to Plaintiff  
18 will be paid out of the Settlement Amount and Plaintiff will be issued an IRS Form 1099 in  
19 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all  
20 applicable taxes on the Service Payment. The Parties agree that any amount less than the requested  
21 amount awarded as the Service Payment to Plaintiff shall not be a basis for Plaintiff or Class  
22 Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the  
23 Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to  
24 the Settlement Class Members.

25 (f) Attorneys' Fees and Costs: Defendant agrees to not oppose a request by  
26 Class Counsel to the Court for an award of attorneys' fees of up to one third (33.33%) (i.e., up to  
27 \$483,333.33) of the Maximum Settlement Amount, plus reasonable litigation costs not to exceed  
28 \$20,000, to be paid from the Maximum Settlement Amount. Defendant agrees not to oppose any

1 contention by Class Counsel that attorneys' fees should be based on the common fund theory.  
2 Should the Court approve a lesser amount than what is sought by Class Counsel, the difference  
3 shall be added to the Net Settlement Amount to be distributed to the Settlement Class Members.  
4 Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to  
5 rescind the Settlement Agreement or otherwise void the Settlement. The Settlement Administrator  
6 shall issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs  
7 awarded by the Court.

8 (g) Settlement Administration Costs: The fees and other charges of the  
9 Settlement Administrator will be paid from the Maximum Settlement Amount. The Parties agree  
10 that reasonable settlement administration costs of no more than \$12,500 will be deducted from the  
11 Maximum Settlement Amount.

12 (h) PAGA Penalties: The Parties agree that \$25,000 is allocated to PAGA  
13 Penalties, and is to be paid from the Maximum Settlement Amount, subject to Court approval. Of  
14 this amount, \$18,750 (75%) shall be paid to the LWDA in satisfaction of Plaintiff's claims for  
15 penalties under the Private Attorney General Act of 2004 ("PAGA") and \$6,250 (25%) will be  
16 included in the Net Settlement Amount, payable to the Settlement Class Members.

17 (i) Tax Liability: Class Counsel and Defendant make no representation as to  
18 the tax treatment or legal effect of payments called for hereunder, and Plaintiff and the Settlement  
19 Class Members are not relying on any statement or representation by Class Counsel or Defendant  
20 in this regard. Plaintiff and Settlement Class Members understand and agree that they will be  
21 solely responsible for the payment of any taxes and penalties assessed on their respective payments  
22 described herein. The amount of federal income tax withholding will be based upon a flat  
23 withholding rate for supplemental wage payments in accordance with Treasury Regulations §  
24 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made  
25 pursuant to applicable state and/or local withholding codes or regulations. Forms W-2 and/or  
26 Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code  
27 of 1986 (the "Code") and consistent with this Settlement Agreement. If the Code, the regulations  
28 promulgated thereunder, or other applicable tax law, is changed after the date of this Settlement

1 Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant  
2 into compliance with any such changes.

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

27 44. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under no  
28 circumstances will any portion of the Maximum Settlement Amount revert to Defendant.

1 Settlement Class Members will not have to make a claim in order to receive an Individual  
2 Settlement Payment. Distributions, in the form of Individual Settlement Payments, will be made  
3 directly to each Settlement Class Member. Any unclaimed funds in the Settlement Administrator's  
4 account as a result of a failure to timely cash a settlement check shall be held by the Settlement  
5 Administrator as detailed in Paragraph 68 of this Settlement Agreement.

6 45. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable and  
7 will so represent same to the Court.

8 46. Conditions Precedent. This Settlement will become final and effective only upon  
9 the occurrence of all of the following events:

- 10 (a) The Court enters an order granting preliminary approval of the Settlement;
- 11 (b) The Court enters a Final Approval Order and Judgment; and
- 12 (c) The Effective Date occurs.
- 13 (d) Defendant does not invoke its right to revoke the Settlement as described in

14 paragraph 61 herein.

15 **D. Release by the Settlement Class**

16 47. Upon entry of the Final Approval Order and funding of the Maximum Settlement  
17 Amount, all Settlement Class Members will forever completely release and discharge the Released  
18 Parties from the Released Claims for the Release Period.

19 48. Plaintiff and Defendant intend that the Settlement described in this Settlement  
20 Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or  
21 action, arbitration, demand, or other action of any kind, by each and all of the Settlement Class  
22 Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released  
23 Claims.

24 49. The Class Representative, on behalf of himself and the Settlement Class,  
25 acknowledges and agrees that the claims asserted in the Action, including, but not limited to claims  
26 for unpaid wages and untimely payment of wages, are highly disputed, and that the payments set  
27 forth herein constitute payment of all sums allegedly due to him and the Settlement Class. The  
28 Class Representative, on behalf of himself and the Settlement Class, acknowledges and agrees that

1 California Labor Code Section 206.5 is not applicable to the Parties hereto in light of the disputed  
2 nature of the claims. Section 206.5(a) provides in pertinent part as follows:

3 An employer shall not require the execution of a release of a claim or  
4 right on account of wages due, or to become due, or made as an advance  
5 on wages to be earned, unless payment of those wages has been made.

6 **E. Release by Class Representative**

7 50. Without limiting the scope of this Agreement, Named Plaintiff Robert Earl Mann  
8 agrees that this Agreement constitutes a knowing and voluntary waiver of any and all rights or  
9 claims that exist or that he may claim to have under the ADEA, as amended by the Older Workers'  
10 Benefit Protection Act of 1990 (29 U.S.C. § 621 et seq.). Named Plaintiff Robert Earl Mann  
11 acknowledges all of the following:

12 (a) The consideration provided pursuant to this Agreement, including the  
13 possibility of a service award, is in addition to any consideration that he would otherwise be  
14 entitled to receive;

15 (b) Named Plaintiff Robert Earl Mann has been and is advised in writing to  
16 consult with an attorney prior to signing this Agreement;

17 (c) Named Plaintiff Robert Earl Mann has been provided a full and ample  
18 opportunity to study this Agreement, including a period of at least twenty-one (21) calendar days  
19 within which to consider it;

20 (d) To the extent that Named Plaintiff Robert Earl Mann takes fewer than  
21 twenty-one (21) calendar days to consider this Agreement prior to signing it, he acknowledges that  
22 he had sufficient time to consider this Agreement with legal counsel and that he expressly,  
23 voluntarily, and knowingly waives the full twenty-one (21) calendar-day period;

24 (e) Named Plaintiff Robert Earl Mann agrees that any changes made to the  
25 Agreement during the twenty-one (21) day period (whether material or immaterial) do not restart  
26 the running of the twenty-one (21) day period; and

27 (f) Named Plaintiff Robert Earl Mann is aware of his right to revoke this waiver  
28 of claims under the ADEA any time within the seven (7) calendar-day period following the date of

1 full execution of this Agreement and that the waiver of claims under the ADEA shall not become  
2 effective or enforceable until the seven (7) calendar-day revocation-period expires. Should Named  
3 Plaintiff Robert Earl Mann revoke the waiver of claims under the ADEA, he shall not request, and  
4 will not be entitled to receive, his Class Representative Service Payment referred to in paragraph  
5 33, although the remainder of the terms of this Agreement shall become effective and enforceable  
6 as of the date the Parties sign this Agreement.

7 (g) To be effective, timely notice of revocation of the waiver of ADEA claims  
8 must be made in writing and delivered to Defendant through its counsel, Michael D. Wilson, Jr.,  
9 Esq., at Ogletree Deakins Nash Smoak & Stewart, P.C., One Embarcadero Center, Suite 900, San  
10 Francisco, California 94111, no later than the seventh (7th) day after the Preliminary Approval  
11 Date. Named Plaintiff Robert Earl Mann agrees to keep written documentation proving that he  
12 revoked this Agreement as provided in this paragraph, either by keeping the documents attesting to  
13 the delivery of the revocation, or verification that the fax was, in fact, received. In the event  
14 Plaintiff Robert Earl Mann revokes the waiver of ADEA claims, he understands and agrees that he  
15 will not be entitled to a Class Representative Service Payment or Service Award.

16 51. With the exception of Class Representative's workers' compensation claim and any  
17 claims arising from his charges of workplace discrimination/harassment, the Class Representative  
18 does hereby, for himself and for his respective spouses, heirs, successors, beneficiaries, devisees,  
19 legatees, executors, administrators, trustees, conservators, guardians, personal representatives and  
20 assigns forever and completely release and discharge the Released Parties from any and all  
21 charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages,  
22 actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back  
23 wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest,  
24 attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the  
25 Preliminary Approval Date, whether known or unknown, suspected or unsuspected, including but  
26 not limited to all claims arising out of, based upon, or relating to Class Representative's  
27 employment with Defendant Altec Industries, Inc. or the remuneration for or termination of such  
28 employment.

1           52.     With the exception of Class Representative’s workers’ compensation claim and any  
2 claims arising from his charges of workplace discrimination/harassment, Class Representative  
3 expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil  
4 Code of the State of California and does so understanding and acknowledging the significance of  
5 the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

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

10 **F.     Interim Stay of Proceedings**

11           53.     Pending completion of all of the prerequisites necessary to effectuate this  
12 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action  
13 except such as are necessary to effectuate the Settlement.

14 **G.     Notice Process**

15           54.     Appointment of Settlement Administrator. The Parties will agree to the  
16 appointment of a settlement administrator to perform the duties of the Settlement Administrator,  
17 including calculating estimated and final Individual Settlement Amounts based on the Class Data.  
18 mailing the Notice Packet, using standard devices to obtain forwarding addresses, independently  
19 reviewing and verifying documentation associated with any claims or opt-out requests, resolving  
20 any disputes regarding the calculation or application of the formula for determining the Individual  
21 Settlement Amounts, drafting and mailing the settlement checks to Settlement Class Members,  
22 issuing W-2 and 1099 Tax Forms, and performing such other tasks as set forth herein or as the  
23 Parties mutually agree or that the Court orders.

24           55.     Disputes Regarding Settlement Administration. The Settlement Administrator shall  
25 have the initial responsibility of resolving all disputes that arise during the settlement  
26 administration process, including, without limitation, disputes (if any) regarding the calculation of  
27 Individual Settlement Shares, the allocation of W-2 wages, and the number of Compensable  
28 Workweeks. Where the information submitted by Defendant from its records differs from the



1 information submitted by the Class Member, the Settlement Administrator shall communicate with  
2 the Class Member, Class Counsel, and Defense Counsel to discuss and resolve the dispute,  
3 including providing all available relevant information to all counsel. The Parties will resolve all  
4 disputes jointly, which shall be final and binding on any Class Member disputes and shall  
5 thereafter instruct the Settlement Administrator how to proceed in processing the disputed claim. If  
6 the Parties cannot reach an agreement, disputes shall be referred to the Settlement Administrator  
7 for a final determination, and the Settlement Administrator's determination shall be binding upon  
8 the Class Member and the Parties. The Settlement Administrator shall also be responsible for  
9 issuing to Plaintiff, Class Members, and Class Counsel any W-2, 1099, or other Tax Forms as may  
10 be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator  
11 shall also be responsible for establishing a Qualified Settlement Fund, establishing all necessary tax  
12 accounts, and forwarding all payroll taxes and penalties to the appropriate government authorities.  
13 If the Settlement Administrator cannot resolve the dispute, it shall be referred to the Court, if  
14 necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement  
15 Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations  
16 contemplated by this Settlement Agreement have been fully carried out. The Settlement  
17 Administrator shall keep the Parties timely apprised of the performance of all Settlement  
18 Administrator responsibilities. Defendant and Defendant's Counsel shall have no responsibility for  
19 validating and ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class  
20 Counsel, Defendant and Defendant's Counsel shall not bear any responsibility for errors and  
21 omissions in the calculation or distribution of the Individual Settlement Payments or any other  
22 distribution of monies contemplated by this Agreement.

23       56.    Class Data. Within fourteen (14) calendar days after entry of the Preliminary  
24 Approval Order, Defendant shall provide to the Settlement Administrator – in a format to be  
25 provided by the Settlement Administrator – on one spreadsheet a list of all Class Members,  
26 including the Class Members' full names, last known addresses, telephone numbers, social security  
27 numbers, and the start dates and end dates of employment with Defendant; and any other relevant  
28 information needed by the Settlement Administrator, so that the Settlement Administrator can

1 calculate the amount of Compensable Workweeks used to calculate settlement payments. The  
2 Settlement Administrator will run a check of the Class Members' addresses against those on file  
3 with the U.S. Postal Service's National Change of Address List. A search of this database provides  
4 updated addresses for any individual who has moved in the previous (4) years and notified the U.S.  
5 Postal Service. The Class Data provided to the Settlement Administrator is highly confidential and  
6 will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to  
7 Defendant's express written consent, or by order of the Court.

8         57. Notice Packet. The Notice Packet shall contain the Notice of Class Action  
9 Settlement in a form substantially similar to the form attached hereto as Exhibit 1, as approved by  
10 the Court, and shall be sent by the Settlement Administrator to the Class Members, by first class  
11 mail, in English and Spanish, within twenty-one (21) calendar days following the Settlement  
12 Administrator's receipt of the Class Data. The Settlement Administrator shall use standard  
13 devices, including a skip trace, to obtain forwarding addresses of Class Members if any envelopes  
14 are returned.

15         58. Returned Notice Packets. Any Notice Packets returned to the Settlement  
16 Administrator as non-delivered on or before the Notice Response Deadline as defined at Paragraph  
17 20 of this Settlement Agreement shall be re-mailed to the forwarding addresses affixed thereto. If  
18 no forwarding address is provided, the Settlement Administrator will take steps to ensure that the  
19 Notice Packet is received by all Class Members, including the utilization of the National Change of  
20 Address Database maintained by the U.S. Postal Service and shall make reasonable efforts,  
21 conducting a "skip-trace" to obtain an updated mailing address for a Class Member and, if  
22 applicable to update the mailing addresses within five (5) business days of receiving the returned  
23 Notice Packet. If the Settlement Administrator learns of a failed mailing and obtains a forwarding  
24 or updated address for that Class Member, the Notice Packet will be re-mailed to that Class  
25 Member within three (3) business days of receipt of the updated address. The address identified by  
26 the Settlement Administrator as the current mailing address shall be presumed to be the best  
27 mailing address for each Class Member. The re-mailed Notice Packet shall be identical to the  
28 original Notice Packet, except that it shall notify the Class Member that the exclusion (opt-out)

1 request or objection must be returned by the Notice Response Deadline or fifteen (15) calendar  
2 days after the postmark date of the re-mailed Notice Packet, whichever is later. The Settlement  
3 Administrator shall maintain records concerning all returned Notice Packets with forwarding  
4 addresses; re-mailed Notice Packets (including the dates and updated addresses utilized); any and  
5 all adjusted Notice Response Deadlines; all forwarding addresses obtained identifying how the  
6 updated address was obtained; and all skip-traces performed.

7         59.     Presumption Regarding Receipt of Notice Packet. It will be conclusively presumed  
8 that if an envelope has not been returned within forty-five (45) days of the mailing, the Class  
9 Member received the Notice Packet.

10         60.     Disputes Regarding Class Data. Class Members are deemed to participate in the  
11 Settlement unless they validly and timely opt-out. The Notice Packet will inform each Class  
12 Member of his/her estimated Individual Settlement Amount and the number of weeks he/she  
13 worked during the Class Period. Class Members may dispute their Compensable Workweeks if  
14 they feel they worked more weeks for Defendant during the Class Period than the Defendant's  
15 records show by submitting evidence to the Settlement Administrator within the forty-five (45) day  
16 Notice Response Period. Defendant's records will be presumed determinative absent reliable  
17 documentary evidence to rebut the records, but the Settlement Administrator will evaluate any  
18 evidence submitted by a Class Member and provide the evidence submitted to Class Counsel and  
19 Defense Counsel who agree to meet and confer in good faith about the evidence to determine the  
20 Class Member's actual number of Compensable Workweeks and estimated Individual Settlement  
21 Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the  
22 dispute to the Settlement Administrator to render a final decision. Class Members will have until  
23 the Notice Response Deadline to dispute Weeks Worked, object, or opt out, unless that deadline is  
24 extended by the Court.

25         61.     Declaration of Due Diligence. The Settlement Administrator shall provide counsel  
26 for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing, a  
27 declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.  
28

1           62.    Class Members' Rights. Class Members will be advised of the Settlement, the  
2 ability to object to the Settlement, and the ability to opt-out or request exclusion from the  
3 Settlement Class in the Notice Packet. The Notice Packet will inform the Class Members of the  
4 Court-established deadlines for filing objections or requesting exclusion from the Settlement Class  
5 in accordance with the following guidelines:

6                   (a)    Requests for Exclusion from Settlement Class. The Notice of Class Action  
7 Settlement contained in the Notice Packet shall state any Class Member, other than Plaintiff, may  
8 request to be excluded from the Settlement Class by submitting a "Request for Exclusion" to the  
9 Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request  
10 for Exclusion should state:

11                                "I WISH TO BE EXCLUDED FROM THE SETTLEMENT  
12 CLASS IN THE MANN V. ALTEC INDUSTRIES, INC.  
13 LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE  
14 EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT  
RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS  
LAWSUIT."

15           Any Request for Exclusion must include the full name, address, telephone number, last four  
16 digits of the social security number or date of birth, and signature of the Settlement Class Member  
17 requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement  
18 Administrator at the specified address. Any such Request for Exclusion must be made in  
19 accordance with the terms set forth in the Notice Packet. A Request for Exclusion will be timely  
20 only if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.  
21 Any Class Member who timely requests exclusion in compliance with these requirements: (i) will  
22 not have any rights under this Settlement Agreement, including the right to object, appeal or  
23 comment on the Settlement; (ii) will not be entitled to receive any payments under this Settlement  
24 Agreement; and (iii) will not be bound by this Settlement Agreement, or the Judgment. The Parties  
25 to this Settlement Agreement agree that they will not solicit or encourage Class Members to opt-  
26 out or object to this Settlement Agreement. If greater than five (5) percent of the Class Members  
27 opt out or object to this Settlement Agreement or a number of Class Members whose share of the  
28 Net Settlement Amount is 5% or more, Defendant will have the right – in its sole discretion -- to  
rescind and terminate the Settlement without prejudice to its pre-settlement positions and defenses

1 in the litigation. If Defendant exercises the option to terminate this Settlement, Defendant shall  
2 provide written notice of Class Counsel, and the Parties shall proceed in all respects as if this  
3 Agreement had not been executed.

4 (b) Binding Effect on Settlement Class Members. Except for those Class  
5 Members who exclude themselves in compliance with the Request for Exclusion procedures set  
6 forth above, all Class Members will: (i) be deemed to be Settlement Class Members for all  
7 purposes under this Settlement Agreement; (ii) will be bound by the terms and conditions of this  
8 Settlement Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise  
9 provided herein, will be deemed to have waived all objections and oppositions to the fairness,  
10 reasonableness, and adequacy of the Settlement.

11 (c) Objections to Settlement. The Notice of Class Action Settlement contained  
12 in the Notice Packet shall state that any Class Member, other than Plaintiff, who does not seek to  
13 exclude herself/himself from the Settlement (i.e., Settlement Class Members) may object to the  
14 terms of this Settlement (“Objecting Settlement Class Member”). To object, a Settlement Class  
15 Member shall inform the Settlement Administrator, in writing, of his or her objection which must  
16 be postmarked by the Notice Response Deadline at the address set forth in the Notice Packet. Such  
17 objection shall include the full name, address, telephone number, and dates of employment with  
18 Defendant of the Objecting Settlement Class Member; the case name and number; the basis for the  
19 objection, including any legal support and each specific reason in support of the objection, as well  
20 as any documentation or evidence in support thereof; and, if the Objecting Settlement Class  
21 Member is represented by counsel, the name and address of her or his counsel. The Settlement  
22 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel via email  
23 within three (3) calendar days of receipt, and the Settlement Administrator shall attach any  
24 objections to its declaration of due diligence, which is to be filed with the Court prior to the Final  
25 Approval Hearing. Any Objecting Settlement Class Member remains eligible to receive monetary  
26 compensation from the settlement. Plaintiff and Defendant shall not be responsible for any fees,  
27 costs, or expenses incurred by any Objecting Settlement Class Member and/or his or her counsel  
28 related to any objections to the Settlement. Submitting an objection does not preserve the right to

1 appeal a final judgment.

2 (d) Failure to Object. Any Settlement Class Member who desires to object but  
3 fails to timely submit a written objection waives any right to object and will be foreclosed from  
4 making any objection to the Settlement. Any other person who does not timely and properly  
5 become a party of record by intervening or filing a motion to vacate the Judgment waives any and  
6 all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and  
7 appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under  
8 California Code of Civil Procedure Section 473, and extraordinary writs.

9 (e) Responses to Objections. Counsel for the Parties may file a response to any  
10 objections submitted by Objecting Settlement Class Members at least five (5) court days before the  
11 date of the Final Approval Hearing.

12 63. Class Members will have until the Notice Response Deadline to object or submit a  
13 Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement Administrator  
14 shall disclose jointly to Class Counsel and Defendant's counsel any objections or Requests for  
15 Exclusion that were timely submitted on a weekly basis, and upon the request of Class Counsel or  
16 Defense Counsel.

17 64. Funding of the Settlement Amount. Defendant shall make a one-time deposit into  
18 the QSF of the Maximum Settlement Amount, as described in Paragraph 43(a) that is necessary to  
19 make all payments required under this Settlement Agreement, within ten (10) calendar days after  
20 the Final Effective Date.

21 Defendant shall also be solely responsible for the amount owed for the employer's share of  
22 payroll taxes due on the wage portion of the Individual Settlement Amounts (as calculated by the  
23 Settlement Administrator). The Settlement Administrator shall deposit the payments into an  
24 interest-bearing qualified settlement account ("Qualified Settlement Fund") with an FDIC insured  
25 banking institution from which the Settlement Administrator will have authority to distribute  
26 money in accordance with the terms of this Settlement Agreement. In the event this Settlement  
27 Agreement becomes null and void, all monies deposited by Defendant into the Qualified  
28 Settlement Fund including any interest accrued, shall be returned to Defendant.

1           65.     Distribution of Funds. No later than fourteen (14) calendar days after the deposit of  
2 each payment into the Qualified Settlement Fund, the Settlement Administrator will mail the  
3 payments to the Settlement Class Members, the payment for the attorneys' fees and costs to Class  
4 Counsel, any Service Payment to the Class Representative, the payment to the LWDA for PAGA  
5 penalties, and will pay itself the Settlement Administration Costs. In the event that any settlement  
6 check is returned to the Settlement Administrator within 180 days of mailing, the Settlement  
7 Administrator will, within five (5) business days of receipt of the returned settlement check,  
8 perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the  
9 results. If a new address is located by these means, the Settlement Administrator will have ten (10)  
10 business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff,  
11 nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged  
12 signatures on settlement checks, or unauthorized negotiation of settlement checks. Without  
13 limiting the foregoing, in the event a Settlement Class Member notifies the Settlement  
14 Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement  
15 Administrator shall immediately stop payment on such check. If the check in question has not  
16 been negotiated prior to the stop payment order, the Settlement Administrator will issue a  
17 replacement check.

18           66.     No Additional Benefits Based on Settlement Payment. The receipt of funds under  
19 the Settlement shall not entitle any Settlement Class Member to additional compensation or  
20 benefits of any kind under any of Defendant's compensation or benefits plans, nor will it entitle  
21 any Settlement Class Member to any increased retirement or 401(k) plan benefits of any kind.

22           67.     Deadline for Cashing Settlement Checks. Settlement Class Members shall have 180  
23 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any  
24 Settlement Class Member's check is not cashed within that period, the check will be void and the  
25 Settlement Administrator shall issue the unclaimed funds, plus any accrued interest that has not  
26 otherwise been distributed will be paid to the California State Controller's Unclaimed Property  
27 Fund in the name of the Settlement Class Member such that the Settlement Class Member may  
28 claim the money until such time as the money escheats to the State pursuant to the Unclaimed

1 Property Law, California Civil Code Section 15000 et seq. The Release will be binding upon all  
2 Settlement Class Members, including those who do not cash their checks within the 180-day  
3 period. The Parties agree that this disposition results in no “unpaid cash residue,” or “unclaimed or  
4 abandoned funds” under California Civil Procedure Code Section 384, as amended effective  
5 January 1, 2019, as the entire Net Settlement Amount will be paid out to the Settlement Class  
6 Members, whether or not they all cash their payment checks. Therefore, Defendant will not be  
7 required to pay any interest on said amount.

8 **H. Duties of the Parties Prior to the Court’s Approval**

9 68. Promptly after execution of this Settlement Agreement, Plaintiff will move the  
10 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order  
11 accomplishing the following:

- 12 (a) Scheduling the Final Approval Hearing on the issue of whether this  
13 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members  
14 and a hearing on fees, costs and the Service Payment;
- 15 (b) Approving as to form and content the proposed Notice Packet, attached  
16 hereto as Exhibit 1;
- 17 (c) Directing the mailing of the Notice Packet by first class mail to the Class  
18 Members;
- 19 (d) Preliminarily approving this Settlement Agreement; and
- 20 (e) Preliminarily certifying the class for purposes of this Settlement.

21 **I. Duties of the Parties Following Court’s Final Approval**

22 69. In connection with the Final Approval Hearing provided for in this Settlement  
23 Agreement, Class Counsel shall submit a proposed Final Approval Order:

- 24 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable  
25 and adequate, and directing consummation of its terms and provisions as expressed in this  
26 Settlement Agreement;
- 27 (b) Approving Class Counsel’s application for an award of attorneys’ fees and  
28 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,



1 and the payment to the Settlement Administrator for costs of administering the settlement,  
2 consistent with the terms and provisions herein; and

3 (c) Entering judgment approving the Settlement, thereby permanently barring  
4 all Settlement Class Members from prosecuting any Released Claims against any of the Released  
5 Parties.

6 **J. Voiding the Settlement Agreement**

7 70. If the Court fails or refuses to issue the Final Approval Order or fails to approve any  
8 material condition of this Settlement Agreement which effects a fundamental change of the  
9 Settlement Agreement, the entire Settlement Agreement shall be rendered voidable and  
10 unenforceable as to all Parties herein at the option of any Party but remains protected by California  
11 Evidence Code Section 1152.

12 71. If the Settlement Agreement is voided or fails for any reason, Plaintiff and  
13 Defendant will have no further obligations under the Settlement Agreement, including any  
14 obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have  
15 been owed under this Settlement Agreement.

16 **K. Other Terms**

17 72. Waiver. The waiver by one Party of any breach of this Settlement Agreement by  
18 another Party shall not be deemed a waiver of any other prior or subsequent breach of this  
19 Settlement Agreement by any Party.

20 73. Parties' Authority. The signatories hereto represent that they are fully authorized to  
21 enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

22 74. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to  
23 accomplish the terms of this Settlement Agreement including, but not limited to, execution of such  
24 documents and taking such other actions as may reasonably be necessary to implement the terms of  
25 this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts,  
26 including all efforts contemplated by this Settlement Agreement and any other efforts that may  
27 become necessary by order of the Court or otherwise, to effectuate this Settlement Agreement and  
28 the terms set forth herein. As soon as practicable after execution of this Settlement Agreement,

1 Class Counsel shall, with the assistance and cooperation of Defendant and Defendant’s counsel,  
2 take all necessary steps to secure the Court’s preliminary and final approval of the Settlement, and  
3 the final entry of judgment.

4 75. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they  
5 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer,  
6 or encumber to any person or entity any portion of any liability, claim, demand, action, cause of  
7 action or rights released and discharged by this Settlement Agreement.

8 76. No Admission. Defendant denies any and all liability to Plaintiff and/or any  
9 Settlement Class Member in this Action, as to any and all causes of action that were asserted or  
10 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and  
11 compromise the matters at issue in the Complaint in order to avoid further substantial expense and  
12 the inconvenience and distraction of protracted and burdensome litigation. Defendant also has  
13 taken into account the uncertainty and risks inherent in litigation, and without conceding any  
14 infirmity in the defenses that it asserted or could assert against Plaintiff and/or any Settlement  
15 Class Member, has determined that it is desirable and beneficial that the claims of Plaintiff and the  
16 Settlement Class be settled in the manner and upon the terms and conditions set forth in this  
17 Settlement Agreement.

18 77. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval  
19 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be  
20 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part  
21 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this  
22 Settlement Agreement with the intention of avoiding further disputes and litigation with the  
23 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and  
24 it, along with all related documents such as the notices, and motions for preliminary and final  
25 approval, shall, pursuant to California Evidence Code Section 1152 and/or Federal Rule of  
26 Evidence 408, be inadmissible as evidence in any proceeding, except an action or proceeding to  
27 approve the Settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for  
28

1 class certification as part of this Settlement Agreement is for settlement purposes only and if for  
2 any reason the Settlement is not approved, the stipulation will be of no force or effect.

3 78. Notices. Unless otherwise specifically provided herein, all notices, demands or other  
4 communications given hereunder shall be in writing and shall be deemed to have been duly given  
5 as of the third business day after (i) emailing and (ii) mailing by United States registered or  
6 certified mail, return receipt requested, addressed:

7 To the Settlement Class:

8 Mehrdad Bokhour, Esq.  
9 mehrdad@bokhourlaw.com  
10 Bokhour Law Group, P.C.  
11 1901 Avenue of the Stars, Suite 450  
12 Los Angeles, CA 90067  
13 Tel: (310) 975-1493; Fax: (310) 675-0861

14 Joshua Falakassa, Esq.  
15 josh@falakassalaw.com  
16 Falakassa Law, P.C.  
17 1901 Avenue of the Stars, Suite 450  
18 Los Angeles, CA 90067  
19 Tel.: (818) 456-6168; Fax: (888) 505-0868

20 To Defendant's Counsel:

21 Michael D. Wilson, Esq.  
22 Carolyn B. Hall, Esq.  
23 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
24 One Embarcadero Center, Suite 900  
25 San Francisco, CA 94111  
26 Tel: (415) 536-3458; Fax: (415) 442-4870

27 79. Construction. The Parties hereto agree that the terms and conditions of this  
28 Settlement Agreement are the result of lengthy, intensive arms'-length negotiations among the  
Parties and that this Settlement Agreement shall not be construed in favor of or against any Party  
based on the extent to which any Party or his or its counsel participated in the drafting of this  
Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory  
rule of construction that ambiguities should be construed against the drafter of an agreement and  
further agree, covenant, and represent that the language in all parts of this Settlement Agreement  
shall be in all cases construed as a whole, according to its fair meaning.

1           80.    Captions and Interpretations. Paragraph titles or captions contained herein are  
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or  
3 describe the scope of this Settlement Agreement or any provision hereof. Each term of this  
4 Settlement Agreement is contractual and not merely a recital.

5           81.    Modification. This Settlement Agreement may not be changed, altered, or modified,  
6 except in writing and signed by all Parties hereto, and approved by the Court. This Settlement  
7 Agreement may not be discharged except by performance in accordance with its terms or by a  
8 writing signed by all of the Parties hereto.

9           82.    Dispute Resolution. Prior to instituting legal action to enforce the provisions of this  
10 Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, a  
11 Party shall provide written notice to all other Parties pursuant to the notice provisions of paragraph  
12 81 and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to  
13 seek the help of the Mediator to resolve any dispute they are unable to resolve informally. During  
14 this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply  
15 to any legal action or other proceeding instituted by any person or entity other than Plaintiff or  
16 Defendant.

17           83.    Choice of Law. This Settlement Agreement shall be governed by and construed,  
18 enforced, and administered in accordance with the laws of the State of California, without regard to  
19 its conflicts-of-law rules.

20           84.    Integration Clause. This Settlement Agreement contains the entire agreement among  
21 the Parties relating to the Complaint, the Action, the Released Claims, and the Settlement, and all  
22 prior or contemporaneous agreements, understandings, representations, and statements, whether  
23 oral or written and whether by a Party or such Party's legal counsel, and are merged herein. No  
24 rights hereunder may be waived except in a writing signed by the Party purporting to waive such  
25 right or rights.

26           85.    Binding On Assigns. This Settlement Agreement shall be binding upon and inure to  
27 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,  
28 successors and assigns.

1           86.     Signatures of All Class Members Unnecessary to be Binding. It is agreed that,  
2 because the members of the Settlement Class are numerous, it is impossible or impractical to have  
3 each Settlement Class Member execute this Settlement Agreement. The Notice will advise all  
4 Settlement Class Members of the binding nature of the release provided herein and such Release  
5 shall have the same force and effect as if this Settlement Agreement were executed by each  
6 Settlement Class Member.

7           87.     Enforcement and Continuing Jurisdiction of the Court. To the extent consistent with  
8 class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to  
9 California Code of Civil Procedure Section 664.6. The Court shall retain continuing jurisdiction  
10 over this Action and over all Parties and Settlement Class Members, to the fullest extent to enforce  
11 and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed  
12 breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs  
13 to the prevailing party in any motion or action taken and based on an alleged violation of any  
14 material term of the Settlement Agreement.

15           88.     Voluntary Agreement. The Parties acknowledge that they have entered into this  
16 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,  
17 duress, or undue influence of any Party, and not in reliance on any promises, representations, or  
18 statements made by the other Parties other than those contained in this Settlement Agreement. Each  
19 of the Parties hereto expressly waives any right he/it might ever have to claim that this Settlement  
20 Agreement was in any way induced by fraud.

21           89.     Opportunity to Consult with Counsel. Prior to execution of this Settlement  
22 Agreement, each Party has read this entire Settlement Agreement and has been given the  
23 opportunity to consult with independent counsel of their choosing and to have such independent  
24 counsel advise as to the meaning of this Settlement Agreement and its legal effect.

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

1           91.    Publicity. Plaintiff Robert Earl Mann and Class Counsel agree not to disclose or  
2 publicize the Settlement, including the fact of the Settlement, its terms or contents and the  
3 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person  
4 or entity, except the Labor and Workforce Development Agency (in conformity with PAGA) and  
5 Class Members and as shall be contractually required to effectuate the terms of the Settlement as  
6 set forth herein. For the avoidance of doubt, this section means that Plaintiff Robert Earl Mann and  
7 Class Counsel agree not to issue press releases, communicate with or respond to any media or  
8 publication entities, publish information in any manner or form, whether printed or electronic, on  
9 any medium or otherwise communicate, whether by print, video, website, recording or any other  
10 medium, with any person or entity, concerning the Settlement, including the fact of the Settlement,  
11 its terms or contents and the negotiations underlying the Settlement, except as shall be  
12 contractually required to effectuate the terms of the Settlement as set forth herein. However, for  
13 the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions,  
14 Class Counsel may disclose the names of the Parties in this Action, the venue, the case number or  
15 this action, and the fact that this Action was settled on a class-wide basis (but not any other  
16 settlement details).

17           92.    No Unalleged Claims. Plaintiff Robert Earl Mann and Class Counsel represent that,  
18 as of the date of execution of this Settlement, they have no current intention of pursuing any claims  
19 against Defendant in any judicial, administrative or arbitral forum including, but not limited to, any  
20 and all claims relating to or arising from Robert Earl Mann’s employment with Defendant (not  
21 expressly set forth in this Agreement with the exception of Class Representative’s workers’  
22 compensation claim and any claims arising from his charges of workplace  
23 discrimination/harassment ), and that Class Counsel is not currently aware of any facts of legal  
24 theories upon which any claims or causes of action could be brought against Defendant, excepting  
25 those facts or legal theories alleged in the Complaint. Plaintiff Robert Earl Mann and Class  
26 Counsel further represent and agree that they do not currently know of or represent any person who  
27 have expressed any interest in pursuing litigation or seeking any recovery against Defendant. The  
28 Parties further acknowledge, understand and agree that this representation is essential to this

1 Agreement and that this Agreement would not have been entered into were it not for this  
2 representation. Nothing in this paragraph will be construed as a restraint on the right of any  
3 counsel to practice.

4 93. Notice of Settlement to the LWDA. Plaintiff Robert Earl Mann hereby represents  
5 that he will provide notice of this Agreement and proposed settlement to the Labor Workforce  
6 Development Agency ("LWDA") at the time the motion for preliminary approval is filed, as  
7 required by California Labor Code Section 2699(1)(2).

8 94. Counterparts. This Settlement Agreement may be executed in counterparts, and  
9 when each Party has signed and delivered at least one such counterpart, each counterpart shall be  
10 deemed an original, and, when taken together with other signed counterparts, shall constitute one  
11 fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties.  
12 Electronic signatures shall have the same force and effect as an original.

13 **IT IS SO AGREED.**

14  
15 DATED: March \_\_\_\_\_, 2021

**PLAINTIFF/CLASS REPRESENTATIVE:**

16  
17  
18 \_\_\_\_\_  
Robert Earl Mann, Plaintiff

19 DATED: March 30<sup>th</sup>, 2021

**ALTEC INDUSTRIES, INC.**

20  
21 By: Aldo L. Vase  
22 Its: General Counsel

23 **APPROVED AS TO FORM:**

24 DATED: March \_\_\_\_\_, 2021

**CLASS COUNSEL:**  
**FALAKASSA LAW, P.C.**

25  
26  
27 \_\_\_\_\_  
28 Joshua Falakassa, Esq.  
Attorney for Plaintiff Robert Mann

1 Agreement and that this Agreement would not have been entered into were it not for this  
2 representation. Nothing in this paragraph will be construed as a restraint on the right of any  
3 counsel to practice.

4 93. Notice of Settlement to the LWDA. Plaintiff Robert Earl Mann hereby represents  
5 that he will provide notice of this Agreement and proposed settlement to the Labor Workforce  
6 Development Agency ("LWDA") at the time the motion for preliminary approval is filed, as  
7 required by California Labor Code Section 2699(1)(2).

8 94. Counterparts. This Settlement Agreement may be executed in counterparts, and  
9 when each Party has signed and delivered at least one such counterpart, each counterpart shall be  
10 deemed an original, and, when taken together with other signed counterparts, shall constitute one  
11 fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties.  
12 Electronic signatures shall have the same force and effect as an original.

13 **IT IS SO AGREED.**

14 3/11/2021  
15 DATED: March \_\_\_\_\_, 2021

**PLAINTIFF/CLASS REPRESENTATIVE:**

16 DocuSigned by:  
17 *Robert Mann*  
18 01BA26EB741242E  
Robert Earl Mann, Plaintiff

19 DATED: March \_\_\_\_\_, 2021

**ALTEC INDUSTRIES, INC.**

21 By: \_\_\_\_\_  
22 Its:

23 **APPROVED AS TO FORM:**

24 3/11/2021  
25 DATED: March \_\_\_\_\_, 2021

**CLASS COUNSEL:**  
**FALAKASSA LAW, P.C.**

26 DocuSigned by:  
27 *Joshua Falakassa*  
28 15A628B2C5A149C...  
Joshua Falakassa, Esq.  
Attorney for Plaintiff Robert Mann



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: March \_\_\_\_\_, 2021

**CLASS COUNSEL:**  
BOKHOUR LAW GROUP, P.C.

---

Mehrdad Bokhour, Esq.  
Attorney for Plaintiff Robert Mann

DATED: March 30, 2021

**COUNSEL FOR ALTEC INDUSTRIES, INC.**  
OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.



---

Carolyn B. Hall  
Michael D. Wilson, Jr.

Attorneys for Defendant  
ALTEC INDUSTRIES, INC.

46248896.4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3/9/2021  
DATED: March \_\_\_\_\_, 2021

**CLASS COUNSEL:**  
BOKHOUR LAW GROUP, P.C.

DocuSigned by:  
*Mehrdad Bokhour*  
D8B3643F271946E...  
Mehrdad Bokhour, Esq.  
Attorney for Plaintiff Robert Mann

DATED: March \_\_\_\_\_, 2021

**COUNSEL FOR ALTEC INDUSTRIES, INC.**  
OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

\_\_\_\_\_  
Carolyn B. Hall  
Michael D. Wilson, Jr.  
  
Attorneys for Defendant  
ALTEC INDUSTRIES, INC.

46248896.2