

EXHIBIT 1

COLLECTIVE ACTION SETTLEMENT AGREEMENT

This Collective Action Settlement Agreement, including Exhibits A - G hereto (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among Freddy Fernandez, Giovanni Gonzalez, Neil Guzman, Freddy Vasquez and Luis Velasquez (collectively, the “Named Plaintiffs”) on behalf of themselves and the Settlement Collective as defined below on the one hand, and Kinray, Inc. (“Kinray”) and Cardinal Health, Inc. (“Cardinal”) (together “Defendants”) on the other hand. The Named Plaintiffs and Defendants are referred to herein collectively as the “Parties.”

NOW, THEREFORE, in consideration of the promises and agreements contained herein, and intending to be legally bound, the Parties agree and covenant as follows:

1. DEFINITIONS.

As used in this Agreement, the following definitions (in addition to those set forth elsewhere herein) shall apply:

A. “Amended Complaint” means the Fourth Amended Complaint for Settlement in the form appended hereto as **Exhibit A**.

B. “Approval Order” means the Order granting approval of the collective action settlement and for certification of the collective for settlement purposes only substantially in the form appended hereto as **Exhibit D** (as may be amended or modified by the Parties, through their counsel, in accordance with this Agreement).

C. “Bar Date” means the date that is thirty-five (35) days from the date the Settlement Administrator mails the Settlement Notice and Claim Form to the Settlement Collective.

D. “Claim Form” means the Claim Form in the form appended hereto as **Exhibit B**. Each Settlement Collective Member’s Claim Form will include the amount such Settlement Collective Member would be entitled to (subject to minor adjustments by Collective Counsel and/or the Settlement Administrator) if they submit the required information to become a Claiming Collective Member.

E. “Claiming Collective Member” means any Settlement Collective Member (and corresponding corporate entities, if any) who timely submits both a Claim Form and a fully completed and executed Form W-9 in accordance with the terms of this Agreement. In order to be considered timely, Settlement Collective Members’ Claim Forms and fully completed and executed Forms W-9 shall be postmarked by the Bar Date pursuant to Section 5.1(D) of this Agreement.

F. “Collective Counsel” means D. Maimon Kirschenbaum, Esq., Josef Nussbaum, Esq., and Lucas Buzzard, Esq. of Joseph & Kirschenbaum LLP.

G. “Collective Settlement Fund” means the fund described in Section 4 below, and which is intended to be a qualified settlement fund within the meaning of Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1.

H. “Exclusion Request” means a request to opt out of the Settlement Collective by a Settlement Collective Member pursuant to this Agreement.

I. “Freddy Fernandez’s Released Claims” means, with respect to Plaintiff Freddy Fernandez in his individual, as opposed to representative, capacity, any and all claims, actions, causes of action, administrative claims, demands, charges, debts, damages, penalties, interest, costs, attorneys’ fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, Plaintiff Fernandez, on behalf of himself and on behalf of any related or associated business entities (including any entity for or through which he has provided delivery services to Kinray), had, has or could have had against the Releasees by reason of any act, omission, harm, matter, cause, or event whatsoever, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law or contract, arising at any time in the Release Period, for any type of relief, including without limitation wages, pay, unpaid/unreimbursed costs, deductions, penalties, general damages, compensatory damages, liquidated damages, punitive damages, interest, attorneys’ fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief.

J. “Form W-9” means the current version of the Internal Revenue Service’s Form W-9 (Request for Taxpayer Identification Number and Certification).

K. “Litigation” means the action entitled *Fernandez, et al. v. Kinray, Inc., et al.*, Case No. 13-cv-4938, in the United States District Court, Eastern District of New York.

L. “Plaintiff Subject to Bankruptcy” means any individual listed on the Schedule of Plaintiffs Subject to Bankruptcy appended hereto as **Exhibit E**.

M. “Releasees” means, individually and collectively, Kinray, Inc., Cardinal Health, Inc., and their respective (a) consolidated subsidiaries, successors, predecessors, assigns, affiliates, parent companies, shareholders, officers, directors, agents, insurers, attorneys, and employees, and (b) past, present, and future shareholders, officers, directors, agents, employees, attorneys, and insurers (including but in no way limited to the individuals previously named as defendants in the Litigation).

N. “Release Period” refers to the time period from September 4, 2007 through the date of the Approval Order.

O. “Released Claims” means all claims released pursuant to this Agreement, including without limitation Freddy Fernandez’s Released Claims and the Settlement Collective Member Released Claims.

P. “Settlement” means collectively the rights and duties of the Parties under this Agreement and the processes for approval and payment to Claiming Collective Members described in this Agreement.

Q. “Settlement Administrator” means **Rust Consulting**, which the Parties designate as the qualified firm to be approved by the Court to administer the Settlement and the Collective Settlement Fund as described in Section 5.4 of this Agreement.

R. “Settlement Collective” means collectively the 115 persons who have filed Consents to Join the Litigation and whose names are included on the Schedule of Settlement Collective Members appended hereto as **Exhibit C** (as may be amended or modified by the Parties, through their counsel, to correct errors or omissions therein), as well as any related partnership, limited liability company, sole proprietorship, corporation, or other business structure for which any such person was an authorized officer, agent or owner.

S. “Settlement Collective Member” means any member (whether individual or business entity) of the Settlement Collective.

T. “Settlement Collective Member Released Claims,” as to all Settlement Collective Members in this Litigation who do not submit a valid Exclusion Request, means all claims, actions, causes of action, administrative claims, demands, debts, damages, penalties, costs, interest, attorneys’ fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, which: (i) are owned or held by any Named Plaintiff, Settlement Collective Member and/or any corporation, limited liability company, sole proprietorship, or any other business entity affiliated with any such Named Plaintiff and/or Settlement Collective Member, as against Releasees, jointly or severally, (ii) arise under any statutory or common law claim which was or could have been asserted in the Litigation or, whether or not asserted, could have been brought arising out of or related to the allegations of misclassification of Named Plaintiffs and Settlement Collective Members as independent contractors set forth in the Complaints filed in the Litigation, and (iii) pertain to any time in the Release Period. The Released Claims include but are not limited to claims under the Fair Labor Standards Act, New York Labor Law (including but not limited to Articles 6, 19 and 25-C thereof, and the New York State Department of Labor regulations, 12 NYCRR 142-1.1, et seq.), the Declaratory Judgment Act, 28 U.S.C. § 2201; and common law claims for fraud, breach of contract, rescission, unjust enrichment, or declaratory judgment.

U. “Settlement Notice” means the proposed Notice of Settlement Rights and Obligations to Opt-In Plaintiffs in the form appended hereto as **Exhibit F**, to be approved by the Court and mailed to each Settlement Collective Member, in accordance with Section 5 of this Agreement.

V. “Trustees” means, collectively, the bankruptcy trustees for the Plaintiffs Subject to Bankruptcy.

2. **The Parties’ Disputes and the Litigation**

A. Certain disputes and differences have arisen between the Parties concerning Kinray’s alleged classification of the Settlement Collective Members as independent contractors instead of employees. Named Plaintiffs allege that based upon this employment classification, they and the members of the Settlement Collective were, among other things,

unlawfully deprived of the benefits of various wage-and-hour laws, were not paid all wages due, and bore expenses that should have been borne by Defendants.

B. On August 15, 2017, Defendants filed a motion for summary judgment in the Litigation as to the Settlement Collective, which was denied by an Order dated March 28, 2018.

C. The Parties attended non-binding mediation with Magistrate Judge Steven M. Gold on June 20, 2018. The matter was not resolved at this mediation.

D. The Parties attended a second mediation session with Stephen Sonnenberg, Esq. on April 8, 2019. The Parties continued their settlement discussions through Mediator Sonnenberg after that mediation session, and entered into a proposed collective action settlement shortly thereafter.

E. This Agreement is made in consideration of the facts and recitals set forth herein. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of all the disputed claims at issue in the Lawsuit and that it is the desire and intention of each of the Parties to effect a final and complete resolution of the Lawsuit and of the Released Claims, including all costs and attorneys' fees incurred.

F. Named Plaintiffs and Collective Counsel: (1) have examined and considered the benefits to be provided to the Settlement Collective under the Settlement; (2) have considered the applicable law and the claims that have been and could have been asserted in the various Complaints filed in the Litigation arising out of or relating to the allegations of misclassification of the members of the Settlement Collective as independent contractors; and (3) believe the Settlement to be fair, reasonable, and adequate, and in the best interest of the Settlement Collective, taking into account the benefits provided to the members of the Settlement Collective through the terms of the Settlement Agreement, the decisions rendered in the Litigation, the risks of continued litigation, and the length of time that would be required to complete the litigation and any appeals.

G. The Parties believe that the Settlement is fair, reasonable, and adequate. The Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors, and will materially benefit the members of the Settlement Collective. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Litigation through further discovery and trial, and any further appeals following trial. Accordingly, the Parties desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or relating to the Litigation.

3. **REQUIRED EVENTS.**

3.1 **Conditions Precedent.** The events set forth below in subsections (A) and (B) of this Section 3.1 are conditions precedent to this Agreement becoming effective.

A. Approval by the Court of the Settlement and entry of the Approval Order substantially in the form appended hereto as Exhibit D;

B. The time to take an appeal of the Approval Order or any Order in the Litigation has expired and no such appeal has been noticed, and any right to take any such appeal has been waived or otherwise lost; or if an appeal has been taken, 35 days have elapsed since each such appeal has been finally adjudicated and the Approval Order or other Order has been upheld in all respects by each such final adjudication, and either the time for initiation of the next step in the appellate process (e.g., a petition for writ of certiorari) has expired without any action by appellant(s) or the next step in the appellate process was invoked and has been concluded without any impact on the Approval Order or other Order;

C. Execution by the Settlement Administrator of a written acknowledgement and acceptance of its duties in the form appended as **Exhibit G** hereto.

3.2 The Approval Order. The Approval Order to be submitted in accordance with Section 3.3 hereof shall by its terms and its incorporation of this Agreement accomplish all of the following:

A. Approve the Settlement as fair, reasonable, and adequate to the Collective Members.

B. Adopt the terms of the Settlement Agreement.

C. Approve Collective Counsel's reasonable litigation costs, expenses and attorneys' fees.

D. Approve reasonable compensation and costs to the Settlement Administrator.

E. Approve the form, content and method of notice to be given to Settlement Collective Members as set forth in Section 3.4 below.

F. Retain the Court's jurisdiction over the administration of the Settlement and enforcement of this Agreement.

3.3 Procedures for Settlement Approval.

A. Within three (3) days after this Agreement is fully executed, Collective Counsel and Counsel for Defendants will execute and file a form consenting to proceed with the motion for approval of this Settlement before United States Magistrate Judge Steven M. Gold.

B. In conjunction with signing the Agreement, Named Plaintiffs and Collective Counsel will assist Defendants in causing the Litigation to be dismissed with prejudice through a joint submission requesting judicial approval of the Settlement pursuant to the Fair Labor Standards Act (FLSA), which will be prepared by Collective Counsel. As soon as practicable after execution of this Settlement Agreement, Collective Counsel will submit to the Court a motion for approval of the Settlement and entry of the Approval Order.

C. For settlement purposes only, Defendants stipulate to the certification of a settlement collective action pursuant to 29 U.S.C. § 216(b) in the Litigation, with the understanding that if this Settlement Agreement is not approved, this Paragraph and the Settlement Agreement, as well as any claims certified pursuant to this Paragraph, are void ab initio;

D. Collective Counsel will promptly submit to the Court in concurrence with a motion for approval of the Settlement an Amended Complaint, without material variation from Exhibit A, that will amend the complaint in the Litigation pursuant to Subsection (B) above, understanding that, in the event the Court finally approves the Settlement and the Amended Complaint, said Amended Complaint shall be deemed timely filed and the operative complaint in the Litigation, and that in the event the Court does not approve the proposed Settlement or the Amended Complaint, this Paragraph, the Amended Complaint for Settlement and the Settlement shall be void ab initio.

E. Named Plaintiffs, Collective Counsel, and Defendants will cooperate and use their best efforts to accomplish the above. If the Court fails to enter the Approval Order substantially in the form appended hereto as Exhibit D, Named Plaintiffs, Collective Counsel, and Defendants will use best efforts to amend the Approval Order, consistent with this Agreement, to cure any defect(s) identified by the Court. If, despite such efforts, the Court does not enter an Order approving the Settlement, the Parties will return to their prior positions in the Litigation in accordance with Section 14.1(D) of this Agreement and the Amended Complaint, this Agreement and the Settlement all shall be void ab initio.

3.4 Procedures After Settlement Approval.

A. Within ten (10) days from the date that the Court enters the Approval Order substantially in the form appended hereto as Exhibit D, the Settlement Administrator will mail the Settlement Notice, Claim Form, and Form W-9 to all Settlement Collective Members.

B. Settlement Collective Members will be provided with thirty-five (35) days from the date of the mailing in subsection (A) of this Section 3.4 to either (i) submit a Claim Form and become or Claiming Collective Member, or (ii) submit an Exclusion Request and opt-out of the Settlement. The last day of this thirty-five (35) day period is the Bar Date. Claim Forms or Exclusion Requests must be postmarked by the Bar Date to be considered timely under this Agreement.

4. **PAYMENTS TO THE COLLECTIVE SETTLEMENT FUND**

4.1 The Settlement Payment. The maximum amount that Defendants will pay pursuant to terms set forth in this Agreement is Seven Million Five Hundred Thousand Dollars (\$7,500,000.00, the "Settlement Payment").

A. No later than thirty (30) business days after the Court enters the Approval Order, Defendants shall transfer one half of the Settlement Payment (i.e., \$3,750,000.00) to the Collective Settlement Fund.

B. No later than forty (40) days following the Bar Date, Defendants shall transfer the remainder of the Settlement Payment to the Collective Settlement Fund, less the

portions corresponding to (i) any Settlement Collective Member who submits a valid Exclusion Request (including such Settlement Collective Member’s *pro rata* share of attorneys’ fees); and (ii) any Plaintiff Subject to Bankruptcy who does not participate in the Settlement in conformity with Section 5.2(D) (including such Plaintiff Subject to Bankruptcy’s *pro rata* share of attorneys’ fees).

C. Defendants’ obligation to make the Settlement Payment is contingent on the Court’s approval of the Settlement, including without limitation, the release of claims pursuant to Section 9 of this Agreement, and entry of the Approval Order substantially in the form appended hereto as Exhibit D. Under no circumstances shall Defendants be required to pay more under this Settlement than the amount of the Settlement Payment as set forth herein. The Settlement Payment is inclusive of Collective Counsel’s fees described more fully in Section 8 of this Agreement.

D. For the avoidance of doubt the following chart summarizes the timeline of events pursuant to this Agreement following the Court’s entry of the Approval Order:

Date	Event
No later than 10 days after entry of Approval Order	Settlement Administrator to mail Settlement Notice, Claim Form and a blank Form W-9 to each Settlement Collective Member
30 days after entry of Approval Order	Defendants to pay \$3,750,000.00 to the Collective Settlement Fund
35 days from mailing of Settlement Notices and Claim Forms	Bar Date
75 days from mailing of Settlement Notices and Claim Forms	Defendants to pay remainder of the Settlement Payment to the Collective Settlement Fund (less any amounts set forth in Section 4.1.B)
30 business days after Defendants pay remainder of Settlement Payment	Settlement Administrator to mail settlement checks to Claiming Collective Members

4.2 The Net Settlement Fund. The Net Settlement Fund shall be equal to the Settlement Payment less:

A. The total amount allocated as reasonable litigation costs, expenses and attorneys’ fees as set forth in Section 8.1 hereof;

B. \$40,000 as payment to Plaintiff Freddy Fernandez in consideration for releasing any and all retaliation claims alleged in the Litigation (the “Retaliation Settlement”); and

C. Court approved reasonable costs of administration.

5. **PAYMENTS TO CLAIMING COLLECTIVE MEMBERS**

5.1 **Calculation of Payments to Claiming Collective Members.**

A. Estimated payment calculations for the Settlement Collective Members are set forth in the Schedule of Settlement Collective Members appended hereto as Exhibit C. These payment amounts were calculated by Collective Counsel based on the number of weeks and hours that Settlement Collective Members allege to have provided services to Kinray and Cardinal Health.

B. To account for any errors and omissions, in calculating the payment amounts set forth in Exhibit C, Collective Counsel allocated \$100,000 from the Net Settlement Fund to be used to resolve any disputes that may arise concerning the distribution of funds or payment calculations. Following the Bar Date, the final payment amounts for Claiming Collective Members (with the exclusion of those Settlement Collective Members receiving the Minimum Payment set forth in subsection C below) will be recalculated to include, on a *pro rata* basis, any amounts remaining from the \$100,000 that was reserved.

C. The minimum payment allocated to each Settlement Collective Member is \$2,500 (the "Minimum Payment"). Thus, if any Settlement Collective Member's share calculated pursuant to this Section 5.1 is less than the Minimum Payment, such share shall be increased to \$2,500, and all shares above the Minimum Payment reduced *pro rata* to account for this increase.

D. Settlement Collective Members who wish to participate in the settlement as Claiming Collective Members must submit a Claim Form and a fully completed and executed Form W-9 that is postmarked within thirty-five (35) days after the Settlement Administrator mails the Settlement Notice and Claim Forms to Settlement Collective Members pursuant to Section 5.4(A) of this Agreement.

5.2 **Return of Funds to Defendants.**

A. If any Claiming Collective Member does not collect his or her settlement award by cashing the settlement check sent to him or her by the Settlement Administrator within ninety (90) days after the date the check is issued, and does not request reissuance of the settlement award pursuant to Subsection (B) below, then such Claiming Collective Member's claims are waived, and the funds corresponding to that Claiming Collective Member returned to Defendants within one hundred and twenty (120) days after the date the check is issued.

B. If a Claiming Collective Member informs the Settlement Administrator within sixty (60) days after the date the check is issued that his or her settlement check was misplaced, lost in the mail, or otherwise could not be cashed, the Settlement Administrator shall cancel the original settlement check and issue a replacement settlement check to the Claiming Collective Member, and the funds corresponding to such Claiming Collective Member shall not be returned to Defendants.

C. The portion of the Net Settlement Fund corresponding to any Settlement Collective Member who submits a valid Exclusion Request (including such Settlement Collective Member's *pro rata* share of attorneys' fees) shall be returned to Defendants to the extent not previously deducted pursuant to Section 4.1(B) hereof.

D. The portion of the Net Settlement Fund corresponding to any Plaintiff Subject to Bankruptcy whose Trustee does not agree to resolution of such Plaintiff Subject to Bankruptcy's claims pursuant to the terms set forth herein (including such Plaintiff Subject to Bankruptcy's *pro rata* share of attorneys' fees) shall be returned to Defendants, to the extent not previously deducted pursuant to Section 4.1(B) hereof. A Plaintiff Subject to Bankruptcy's Trustee may communicate their agreement to resolve a Plaintiff Subject to Bankruptcy's claims by communicating their consent in any written form, including without limitation by emailing Collective Counsel or by signing the Claim Form.

5.3 Collective Counsel's Settlement Administration Duties. Collective Counsel shall be solely responsible for the following functions in accordance with the terms of this Agreement, and with the Approval Order:

A. Submitting the Named Plaintiffs' executed Form W-9's to the Settlement Administrator;

B. Submitting Settlement Collective Members' last known addresses to the Settlement Administrator;

C. Submitting payment calculations for each Settlement Collective Member to the Settlement Administrator and Defendants, including Settlement Collective Members' final payment calculations as set forth in Section 5.1(B) above.

5.4 Settlement Administrator's Duties. The Settlement Administrator shall be solely responsible for the following functions in accordance with the terms of this Agreement, and with the Approval Order:

A. As soon as practicable, but no later than ten (10) days after the Court's entry of the Approval Order (unless otherwise ordered by the Court), mailing, by first-class United States Mail, the Settlement Notice, Claim Form, and a blank Form W-9 to each Settlement Collective Member, as set forth in Section 3.4.

B. Providing regular reports to the Parties, but no less frequently than one report every two weeks, regarding:

- i. The status of the mailing of the Settlement Notices and Claim Forms to Settlement Collective Members;
- ii. The identity and number of Settlement Collective Members who submit an Exclusion Request,
- iii. The identity and number of Claiming Collective Members; and

- iv. The distribution and redemption of the settlement checks.
- C. Processing any challenges to the payment calculations.
- D. Within seven (7) days following the Bar Date, providing to Defendants a list of every Settlement Collective Member who timely submitted an Exclusion Request;
- E. Providing Collective Counsel with electronic copies of all individual Claims Forms mailed to Settlement Collective Members.
- F. Submitting the Named Plaintiffs' and Claiming Collective Members' taxpayer identification numbers, as provided in the executed Form W-9's, to the Internal Revenue Service taxpayer identification number matching service, and obtaining (prior to issuing payment) a corrected Form W-9 from each Named Plaintiff and/or Claiming Collective Member whose taxpayer identification number does not result in a match in the above-referenced IRS process.
- G. Translating the Settlement Notice and Claim Form into Spanish and providing such translation to the Parties prior to mailing to review and confirm the accuracy thereof.
- H. Mailing, by first-class United States Mail, settlement checks to Claiming Collective Members in accordance with the payment calculations provided to the Settlement Administrator by Collective Counsel.
- I. Transmitting, by wire transfer, payment(s) for attorneys' fees and costs to Collective Counsel.
- J. Mailing, by first-class United States Mail, the Retaliation Settlement to Plaintiff Freddy Fernandez.
- K. Transmitting to Defendants, by wire transfer, components of the Settlement Payment to be returned to Defendants under this Agreement.
- L. Establishing, designating, and maintaining the Collective Settlement Fund as a "qualified settlement fund" under Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1, for the purpose of resolving the contested claims of Named Plaintiffs and the Settlement Collective.
- M. Maintaining the assets of the Collective Settlement Fund in a non-interest-bearing escrow account segregated from the assets of Rust Consulting, Inc. and any of its shareholders, officers, directors, agents, employees, and/or attorneys.
- N. Obtaining an employer identification number (EIN) for the Collective Settlement Fund pursuant to Treasury Regulation § 1.468B-2(k)(4).

O. Preparing and filing federal income tax returns in the name of the Collective Settlement Fund, as well as any other tax filings the Collective Settlement Fund must make under federal, state, or local law.

P. Cooperating with Defendants to jointly file a relation-back election under Treasury Regulation § 1.468B-1(j)(2), if necessary, to treat the Collective Settlement Fund as coming into existence as of the earliest possible date.

Q. Paying and depositing the federal taxes owed by the Collective Settlement Fund under Treasury Regulation § 1.468B-2, as well as any state or local taxes owed by the Collective Settlement Fund.

R. Preparing, filing, and issuing all necessary tax reporting forms in the name of the Collective Settlement Fund, including IRS Forms 1099 regarding the distribution of payments to Claiming Collective Members, Collective Counsel, and Named Plaintiffs.

S. Providing Defendants with copies of all tax reporting and filings made for the Collective Settlement Fund, including copies of the checks and IRS Forms 1099 issued to Claiming Collective Members, Collective Counsel, and Named Plaintiffs, and any other documentation to show that the tax reporting and filings were timely transmitted to the claimants and the applicable taxing authorities.

T. Paying any additional tax liabilities (including penalties and interest) that arise from the establishment and administration of the Collective Settlement Fund. Any such tax payment shall be made solely from the assets of the Collective Settlement Fund without any recourse against Defendants for additional monies.

U. Providing the Final Accounting to Defendants and Collective Counsel.

5.5 Access to the Settlement Administrator. The Parties will have equal access to the Settlement Administrator and, upon request of Counsel, the Settlement Administrator will provide any information that was prepared in administration of this Settlement.

5.6 Payments to Claiming Collective Members. Within thirty (30) business days of Defendants' deadline to make the payment pursuant to Section 4.1(B) hereof, the Settlement Administrator shall mail, by first-class United States Mail, to Claiming Collective Members checks in the amounts determined by Collective Counsel pursuant to Section 5.1 of this Agreement and drawn on the account of the Collective Settlement Fund.

5.7 Settlement Administrator's Acceptance of Duties and Compensation. The Settlement Administrator will sign an agreement acknowledging its responsibilities under this Agreement and setting forth the price of its services, to be approved by the Court as part of the Approval Order. If Defendants or Collective Counsel reasonably believe or suspect that the Settlement Administrator is failing to perform its duties, Defendants or Collective Counsel, as the case may be, shall have a right to petition the Court for a remedy.

6. **SETTLEMENT NOTICE**

The Parties agree that the Settlement Notice provides information sufficient to inform the Settlement Collective Members of the material terms of this Settlement, the appropriate means for obtaining additional information regarding this Agreement and the status of the Litigation, the appropriate means for and information about obtaining a Settlement Collective Member's share of the Net Settlement Fund pursuant to the Settlement, and the appropriate means to exclude oneself from the Settlement Collective.

7. **COSTS OF NOTICE AND CLAIMS ADMINISTRATION**

All fees and expenses incurred in administering this Agreement, including payments made for the services of the Settlement Administrator for the duties set forth in Section 5.4 above, shall be paid from the Collective Settlement Fund. Unless otherwise specifically agreed in writing, Defendants shall not be responsible for any cost that may be incurred by, on behalf of, or at the direction of the Named Plaintiffs or Collective Counsel in (a) defending the Agreement or the Settlement against any challenge to them, (b) defending against any challenge to any order or judgment entered pursuant to the Agreement, or (c) for any other reason.

8. **ATTORNEYS' FEES AND RETALIATION SETTLEMENT**

8.1 **Collective Counsel's Attorneys' Fees and Costs.**

A. Collective Counsel shall petition the Court for an award of no more than one-third of the Settlement Payment after deducting Court approved expenses costs. Defendants shall not oppose Collective Counsel's request for attorneys' fees and costs. The attorneys' fees Collective Counsel will seek shall cover all legal services provided by Collective Counsel in the past and future to the members of the Settlement Collective in connection with the Litigation, the settlement of the Litigation, any appeal in connection with the Settlement, implementation of the Settlement, or otherwise.

B. The Settlement Administrator shall, within seven (7) days of Defendants' deadline to make the payment pursuant to Subsection 4.1(B) hereof, transmit by wire amounts awarded as attorneys' fees to Collective Counsel. Collective Counsel shall provide to the Settlement Administrator in a timely manner all information needed to wire the attorneys' fees, including Form W-9's and wire transfer information. The Settlement Administrator shall have no obligation to make payments under this Section until such information is received.

C. Upon transferring the Settlement Payment to the Collective Settlement Fund, Defendants will have no further responsibility or liability to Collective Counsel or to any other counsel for any Settlement Collective Member for any amount of attorneys' fees or costs for work performed or expenses incurred in connection with the Litigation. In the event any claim for attorneys' fees or costs in connection with the Litigation is made by any counsel other than Collective Counsel, the Parties agree that Defendants have no obligation of any kind to satisfy any such claim. In the event of any claim for attorneys' fees or costs brought against Defendants in connection with the Litigation, Collective Counsel agrees to indemnify Defendants against any payment on claims for fees or costs made by other counsel for work performed in connection with the Litigation. Collective Counsel represent that there are no liens related to any

fees associated with the claims of the Settlement Collective Members as of the execution date of this Agreement. Any dispute between Collective Counsel and any other attorney(s) regarding attorneys' fees or costs will not interfere with the Settlement, the provisions of this Settlement Agreement, the dismissal of the Litigation, or the releases obtained pursuant to the Settlement Agreement. Upon transferring the Settlement Payment to the Collective Settlement Fund Defendants will be released from liability for statutory attorneys' fees.

8.2 Retaliation Settlement.

A. Defendants shall not oppose Named Plaintiff Freddy Fernandez's request for an award of \$40,000 in consideration for providing Defendants with the release set forth in Sections 1.J and 9.C.

B. The Settlement Administrator shall, within seven (7) days of Defendants' deadline to make the payment pursuant to Subsection 4.1(B) hereof, mail, by first-class United States Mail, to Named Plaintiff Freddy Fernandez a check drawn on the account of the Collective Settlement Fund in the amount approved by the Court,

9. RELEASE

A. Each and every Settlement Collective Member who does not timely submit a valid Exclusion Request will be bound by the release of all Settlement Collective Member Released Claims, regardless of whether they submit a Claim Form.

B. Any Settlement Collective Member who timely submits a valid Exclusion Request in accordance with the terms of this Agreement shall not release any claims under this Agreement.

C. By executing this Agreement, Named Plaintiffs, on behalf of themselves and each and every Settlement Collective Member (including their affiliated business entities, if any) who does not submit a valid Exclusion Request, acknowledge that, upon entry of the Final Approval Order by the Court, the Litigation shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims, including Settlement Collective Member Released Claims and Freddy Fernandez's Released Claims (as defined herein), shall thereby be conclusively settled, compromised, satisfied, and released as to the Releasees.

D. Named Plaintiffs, on behalf of themselves and each and every Settlement Collective Member (including their affiliated business entities, if any) hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, that they may have against Releasees. In furtherance of such intention, the release herein given to the Releasees by the Settlement Collective and Named Plaintiff Freddy Fernandez shall be and remain in effect as a full and complete release of all Released Claims.

E. Notwithstanding the above, the Court shall retain jurisdiction over the Parties, the Settlement Collective and the Settlement with respect to the future performance of

the terms of this Settlement Agreement, and to assure that all payments and other actions required by the Settlement are properly carried out.

10. **COVENANT NOT TO SUE AND NON-DISPARAGEMENT**

A. Named Plaintiffs, on behalf of themselves and each and every Settlement Collective Member (and any and all affiliated business entities) who does not submit a valid Exclusion Request: (i) covenant and agree that neither Named Plaintiffs nor any Settlement Collective Member, nor any of Named Plaintiffs' or Settlement Collective Members' affiliated business entities (if any), nor anyone authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Settlement, against Releasees, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by Releasees, or any of them, in connection with the Released Claims; (ii) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of any of them; and (iii) agree that this Settlement shall be a complete bar to any such action.

B. Named Plaintiffs, the Settlement Collective, Collective Counsel, Defendants' in-house counsel, and Defendants' undersigned outside counsel will not issue or cause to be issued any press release directed to any media representative regarding the Litigation or the Settlement, except as required by law.

C. Named Plaintiffs, on behalf of themselves and the Settlement Collective (and any and all affiliated business entities) agree that neither Named Plaintiffs nor any Settlement Collective Member, nor any of Named Plaintiffs' or Settlement Collective Members' affiliated business entities (if any), nor anyone authorized to act on behalf of any of them will not, in any manner, make any comments or statements to the press or any individual or entity not affiliated with Kinray or an entity that engages any of the Named Plaintiffs or Settlement Collective Members who deliver Kinray products, or perform any acts, directly or indirectly, that are disparaging, derogatory or that could adversely affect the reputation or interests of (i) Kinray and/or its products or services, including, without limitation, delivery services provided to Kinray customers by any third party, (ii) Cardinal and/or its products or services, including, without limitation, delivery services provided to Cardinal customers by any third party, and/or (iii) any of the Releasees. Reciprocally, Defendants agree that the respective directors and officers of Kinray and Cardinal will not make any comments or perform any acts, directly or indirectly, that are disparaging, derogatory or that may tend to injure the business or reputation of Named Plaintiffs or any Settlement Collective Member. Nothing in this Section shall preclude any party from making truthful statements, or restrict any Settlement Collective Member from utilizing the dispute resolution protocol set forth in Section 12 below.

11. **REPRESENTATIONS AND WARRANTIES**

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

A. Named Plaintiffs, the Settlement Collective, Collective Counsel, Defendants' in-house counsel, and Defendants' undersigned outside counsel will not issue or cause to be issued any press release directed to any media representative regarding the Litigation or the Settlement, except as required by law.

or post any information on any website

B. Each of the Parties has had the opportunity to receive, and has received, independent legal advice from his or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income-tax consequences of this Settlement, and fully understands and accepts the terms of this Settlement.

C. Named Plaintiffs represent and warrant that (i) no portion of any (x) claim, right, demand, action, or cause of action against any of the Releasees that Named Plaintiffs are releasing in this Agreement, and (y) payment to which Named Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Named Plaintiffs in any manner; and (ii) no persons other than the Named Plaintiffs and the Settlement Collective have any legal or equitable interest in the claims, demands, actions, or causes of action to be released in this Agreement.

D. Any other person or entity (including, but not limited to, insurers, lien holders, business partners, related or associated business entities, or other creditors) that has any judgments, liens, subrogation interests, or related claims which arise out of the Released Claims or the damages alleged by the Named Plaintiffs and the Settlement Collective as a result of the Released Claims must be satisfied from the payments to Claiming Collective Members as detailed in Section 5 herein. Named Plaintiffs and each and every Claiming Collective Member agree that they are liable for, and will release, hold harmless, defend, and indemnify the Releasees from and against any and all Released Claims, known or unknown, that may be brought by any person, firm, corporation, or other entity, including any lien holders, against the Releasees for any such judgments, liens, interests, or claims that exist arising out of the Released Claims.

E. None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of any other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

F. Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that party and his or its attorneys.

G. The Parties believe that the Settlement is fair, reasonable, and adequate. The Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors, and will materially benefit the members of the Settlement Collective. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Litigation through further discovery and trial, and any further appeals following trial. Accordingly, the Parties desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or relating to the Litigation.

H. Each of the Parties has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, his or its attorneys.

I. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

J. Each of the Parties has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms.

K. It is understood and agreed that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting of this Agreement.

L. This Agreement constitutes and comprises the entire agreement among the Parties with respect to the subject matter hereof. It supersedes all prior and contemporaneous oral and written agreements and discussions, including but not limited to all Independent Contractor Agreements entered into by a Settlement Collective Member (or a business entity controlled by a Settlement Collective Member) with Kinray. It may be amended only by an agreement in writing, signed by all Parties hereto.

M. The Parties agree that any dispute regarding the interpretation or enforcement of the terms of this Agreement or in connection with the Settlement shall be resolved by the Court. All other disputes between the Parties shall be resolved in accordance with Section 13 hereof.

12. **RELATIONSHIP BETWEEN THE PARTIES FOLLOWING APPROVAL**

In recognition of the fact that certain Settlement Collective Members continue to provide delivery services and may, in part, provide delivery services of Kinray products through an intermediary, the Parties shall adhere to the following protocol in the event any Settlement Collective Member believes that, at any point after approval of this Agreement, Kinray or a related entity is exercising control over him or her potentially giving rise to a claim of misclassification as an independent contractor:

A. Kinray shall designate an employee who does not work directly in its Shipping and Receiving Department to serve as Contractor Ombudsperson. The Ombudsperson will be charged with initially analyzing, and seeking to resolve through mediated discussion, the dispute between the Settlement Collective Member and Kinray.

B. If such mediation is unsuccessful, the Settlement Collective Member may bring an individual claim to arbitration in accordance with Section 13 hereof.

13. **AGREEMENT TO ARBITRATE FUTURE DISPUTES**

13.1 **Binding Arbitration.**

A. The Parties agree that any claim, dispute, and/or controversy except as specifically excluded herein, that any Settlement Collective Member (including his or her related business entities) may have against Kinray, Cardinal and/or their affiliated companies and its and/or their directors, officers, managers, employees, and agents and their successors and assigns (each, an “Arbitration Defendant” and collectively “Arbitration Defendants”) or that one or more Arbitration Defendant may have against such Settlement Collective Member (including his or her related business entities), arising from, related to, or having any relationship or connection whatsoever with this Agreement or the relationship between the Parties, including services provided to Kinray and/or Cardinal by any Settlement Collective Member (or related entity), or any other association that a Settlement Collective Member may have with one or more Arbitration Defendant (“Covered Claims”) shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act (9 U.S.C. §§ 1, et seq.) (“FAA”) in conformity with the Commercial Arbitration Rules of the American Arbitration Association (“AAA” or “AAA Rules”), or any successor rules, except as otherwise agreed to by the parties and/or specified herein. Such arbitration shall be conducted before a single arbitrator unless all parties to the arbitration agree otherwise in writing. Copies of AAA’s Rules are available on AAA’s website (www.adr.org).

B. Arbitration filing fees and costs shall be allocated consistent with AAA Rules. Each party may be represented by legal counsel of their own choosing. Each party shall pay its own attorneys’ fees, provided that an Arbitrator may award attorney’s fees and costs to the prevailing party under any applicable statute or written agreement to the same extent that attorney’s fees and costs could be awarded in court. The arbitration shall be subject to the same burdens of proof and statutes of limitations as if the Covered Claims were being heard in court. The Arbitrator shall issue a written decision within forty-five (45) days of the later of: (1) the arbitration hearing; or (2) submission of the parties’ post-arbitration briefs. The Arbitrator’s written decision shall include findings of fact and conclusions of law. The Arbitrator shall have the authority to award the same damages and other relief that would have been available in court pursuant to applicable law had the Covered Claim been brought on an individual basis *in* such forum, including attorneys’ fees and costs. Subject to the parties’ right to appeal, the decision of the arbitrator will be final and binding. The Arbitrator shall not have the authority to add to, amend, or modify, existing law. No arbitration award or decision will have any preclusive effect as to any issues or claims in any dispute, arbitration, or court proceeding where any party was not a named party in the arbitration.

C. All Covered Claims against one or more Arbitration Defendant must be brought by such Settlement Collective Member on an individual basis only and not as a plaintiff or class member in any purported class, collective, representative, or multi-plaintiff action. Each and every Settlement Collective Member further agrees that if s/he is within any such class, collective, representative, or multi-plaintiff action, s/he will take all steps necessary to opt-out of the action or refrain from opting in or joining, as the case may be, and each and every Settlement Collective Member expressly waives any right to recover any relief from any such class, collective, representative, or multi-plaintiff action.

D. To the maximum extent permitted by law, each and every Settlement Collective Member explicitly waives any right to: (1) initiate or maintain any covered claim on a class, collective, representative, or multi-plaintiff basis either in court or arbitration; (2) serve or participate as a representative of any such class, collective, or representative action; (3) serve or participate as a member of any such class, collective, or representative action; or (4) recover any relief from any such class, collective, representative, or multi-plaintiff action.

E. Through the Approval Order, the Court presiding over the Litigation shall confirm and uphold the validity or enforceability of this prohibition against class, collective, representative, or multi-plaintiff action arbitration. Any future challenge to the validity or enforceability shall be decided by the Court presiding over the Litigation pursuant to its continued jurisdiction over this Agreement, and no arbitrator shall have any authority to consider or decide any issue concerning the validity or enforceability of such prohibition. Any issues concerning arbitrability of a particular issue or claim under this Arbitration Agreement (except for those concerning the validity or enforceability of the prohibition against class, collective, representative, or multi-plaintiff action arbitration and/or applicability of the FAA) shall be resolved by the arbitrator, not a court.

F. Nothing in this agreement to arbitrate is intended to affect or limit a Settlement Collective Member's right to file an administrative charge or otherwise seek relief from any administrative or federal or state government agencies (although if a Settlement Collective Member chooses to pursue a claim following the exhaustion of such administrative remedies, that claim would be subject to the provisions of this Section 13).

G. The Parties agree that arbitration proceedings are to be treated as confidential, and that the Parties will act to protect the confidentiality of the proceedings. The Parties agree that neither they nor their counsel will reveal or disclose the substance of the arbitration proceedings, or the result, except as required by subpoena, court order, or other legal process. If disclosure is compelled of one party by subpoena, court order or other legal process, or as otherwise required by law, the party agrees to notify the other party as soon as notice of such process is received and before disclosure takes place. The Parties may, however, disclose such information to their legal representatives, accountants or tax advisors as necessary so long as they agree to maintain such information in strict confidence. Defendants may also disclose such information to individuals in affiliated companies for legal reporting purposes and other legitimate business reasons.

H. Any request for arbitration must be in writing and provided to the other party and to AAA by certified or registered mail, return receipt requested, within the time period provided for by the statute(s) of limitations applicable to the claim(s) asserted. The request must set forth a statement of the nature of the dispute, including the alleged act or omission at issue; the names of all persons involved in the dispute; the amount in controversy, if any; and the remedy sought.

I. This agreement to arbitrate shall be governed by the FAA and New York law to the extent such law is not inconsistent with the FAA or to the extent the FAA is determined not to apply.

14. MISCELLANEOUS

14.1 Option to Nullify Agreement.

A. At the Named Plaintiffs' option, expressed in written notice to Defendants' counsel, this Agreement shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court materially alters any of the terms of this Agreement to the detriment of Named Plaintiffs or the Settlement Collective, except that a Court ruling regarding Collective Counsel's attorneys' fees and costs or the proposed Retaliation Settlement shall not be a basis for withdrawal.

B. At Defendants' option, expressed in written notice to Collective Counsel, this Agreement shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court materially alters any of the terms of this Agreement to the detriment of Defendants. Any appeal by Collective Counsel of the attorneys' fees and costs awarded by the Court in connection with this Settlement shall not be a basis for any party to have this Agreement become null and void.

C. Defendants shall also have the option, which must be expressed in written notice to Collective Counsel, to nullify the Agreement, with no obligation on the part of any of the Parties to accrue, if more than three (3) Settlement Collective Members file timely Exclusion Requests. An Exclusion Request filed by a Plaintiff Subject to Bankruptcy' Trustee shall not count towards this total.

D. If this Agreement becomes null and void, the Parties shall move forward with the Litigation as though no settlement had been reached, all of the Parties to the Litigation being placed in the same position they were before this Settlement was proposed, negotiated and agreed upon, and Plaintiffs' motions for approval of this Settlement and for certification of the Settlement Collective shall be withdrawn.

14.2 Severability. None of the terms of this Agreement is severable from the others. However, if the Court should rule that any term is void, illegal, or unenforceable for any reason, Defendants, in their sole discretion, and Named Plaintiffs, in their sole discretion (but acting in accord with their duties and obligations to the Settlement Collective), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions ultimately approved by the Court.

14.3 Amendments. This Agreement may be amended only by written agreement signed by the Parties. Except as otherwise stated above, each of the parties, including Named Plaintiffs on behalf of themselves and the Settlement Collective, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Agreement are hereafter found to be other than as now believed or assumed by that party to be true or applicable, this Agreement shall nevertheless remain effective.

14.4 Binding Nature. This Agreement is binding on, and shall inure to the benefit of, the parties to the Litigation and the Settlement Collective and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors,

administrators, insurers, and successors in interest. All Releasees other than Kinray and Cardinal, which are signatories, are intended to be third-party beneficiaries of this Agreement.

14.5 Cooperation in Implementation. Defendants, Named Plaintiffs, and their respective counsel (including Collective Counsel) agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

14.6 Governing Law. This Agreement shall be construed and governed in accordance with the procedural and substantive law of the state of New York, except that all matters of federal law and the Collective Settlement Fund's compliance with Internal Revenue Code § 468B and the Treasury Regulations thereunder shall be governed by federal law.

14.7 No Admission of Liability. The Parties acknowledge that this Settlement is a compromise of disputed claims and that Defendants are not in any way admitting liability by entering into this Agreement. Defendants have at all times disputed, and continue to dispute, the allegations in the Litigation and deny any liability for any of the claims that have or could have been raised in the Litigation regarding the classification of the Named Plaintiffs and the members of the Settlement Collective as independent contractors, but believe that the Settlement as provided in this Agreement will avoid the substantial expense and disruption of continued litigation.

14.8 Income Tax Obligations. The Settlement Payment is allocated by the Parties to compensate for the reimbursement of expenses (whether deducted from contractual payments to Settlement Collective Members or paid separately by Settlement Collective Members), statutory penalties and interest. No representation has been made to the Named Plaintiffs, Settlement Collective Members, or their attorneys by Kinray and/or Cardinal regarding the taxability of any portion of the payments under this Agreement. Named Plaintiffs, Settlement Collective Members, and Collective Counsel are solely responsible for their own tax filing and payment obligations arising from this Agreement, except that the Settlement Administrator will provide Named Plaintiffs, Claiming Collective Members, and Collective Counsel with copies of IRS Forms 1099 for any payments the Settlement Fund makes to them under this Agreement. If any taxing authority imposes employment taxes because any portion of the Settlement Payment is determined to be taxable wages, Defendants agree that they will be responsible for the employer share of such taxes rather than Named Plaintiffs or Claiming Collective Members and that such tax liability will be administered by the Settlement Administrator. The Named Plaintiffs and Claiming Collective Members shall be responsible for the employee share of such taxes. Nothing in this Paragraph is intended to alter the duties of the Settlement Administrator set forth in this Agreement.

14.9 Signatures. This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. A signature, or copy of a signature, transmitted electronically, including by facsimile or email, shall serve as an original for all purposes.

Named Plaintiffs:

Freddy Fernandez:

Freddy Fernandez
Date: 08/01/2019

Giovanny Gonzalez:

Giovanny Gonzalez
Date: 8/01/2019

Neil Guzman:

Neil Guzman
Date: 7/31/2019

Freddy Vasquez:

Freddy Vasquez
Date: 8/01/2019

Luis Velasquez:

Luis E. Velasquez
Date: 08-31-19

Defendants:

Kinray, Inc.

By: *[Signature]*
Its: SVP Independent Sales
Date: 8-13-19

Cardinal Health, Inc.

By: *[Signature]*
Its: SVP, ABC and Secretary
Date: 8-13-19

APPROVED AND ACKNOWLEDGED: APPROVED AND ACKNOWLEDGED:

s/Josef Nussbaum

Collective Counsel

[Signature]
Counsel for Defendants

EXHIBIT A

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FREDDY FERNANDEZ, GIOVANNY GONZALEZ,
NEIL GUZMAN, FREDDY VASQUEZ, and LUIS
VELASQUEZ,

Plaintiffs,

-against-

KINRAY, INC., and CARDINAL HEALTH, INC.,

Defendants.

**FOURTH AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

1. Plaintiffs Freddy Fernandez, Giovanni Gonzalez, Neil Guzman, Freddy Vasquez, and Luis Velasquez (collectively “Plaintiffs”), by and through undersigned counsel, allege as follows:

INTRODUCTION

2. This Action is brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* and the New York Labor Law, to remedy widespread wage and hour violations by Kinray, Inc. and Cardinal Health, Inc (collectively “Defendants”) that have deprived Plaintiffs of overtime and other wages to which they are entitled.

3. Defendants misclassified Plaintiffs as independent contractors rather than

employees and failed to pay the required wages.

4. Under federal and New York State law, employees must be paid one and one-half times their regular rate of pay for all hours over 40 worked in a week.

5. Defendants also shifted their own costs of doing business to its workers by taking illegal deductions from Plaintiffs wages.

6. Through the conduct described in this Complaint, Defendants have violated federal and state law. Accordingly, Plaintiffs seek unpaid compensation, liquidated damages, reasonable attorneys' fees and costs, and all other available and appropriate relief to which they and the other Plaintiffs are entitled.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. § 1331.

8. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because these claims are so related to the claims in the FLSA action that they form part of the same case or controversy.

9. Defendants are subject to personal jurisdiction in New York.

10. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the acts or omissions giving rise to claims in this Second Amended Complaint took place in this judicial district.

PARTIES

11. Until December 21, 2010, Defendant Kinray, Inc. ("Kinray") was a corporation organized and existing under the laws of New York.

12. On December 21, 2010, Cardinal Health Inc. purchased Kinray Inc.

13. Kinray's gross revenue each year exceeded \$500,000.

14. Prior to December 21, 2010, Kinray was an employer of Plaintiffs within the meaning of the FLSA.

15. Defendant Cardinal Health, Inc. ("Cardinal") is a corporation organized and existing under the laws of Ohio and doing business in New York.

16. Cardinal's gross revenue each year exceeds \$500,000.

17. From December 21, 2010 to September 2015, Kinray/Cardinal was an employer of Plaintiffs within the meaning of the FLSA.

18. Plaintiffs worked for Kinray and Cardinal as delivery drivers ("Drivers") personally handling and delivering Defendants' prescription medications and pharmaceutical products at various time since September 4, 2007, which is six years before the date when the Complaint in this action was originally filed on September 4, 2013.

19. Some Plaintiff/Drivers held contracts with Kinray to provide delivery services for the Company (hereinafter "Routeholders"). Other Plaintiff/Drivers did not hold contracts with Kinray, but nevertheless provided delivery services for the company. (These Drivers are hereinafter referred to as "Helpers.")

20. Routeholders generally provided delivery services to pharmacies on a specific route on an ongoing (*i.e.*, daily) basis. Some Routeholders also occasionally provided delivery services to a single pharmacy outside of the specific contracted routes.

21. As set forth below, some Plaintiffs were employed as both Routeholders and Helpers during various times throughout their employment with Kinray.

PLAINTIFFS' COLLECTIVE ACTION ALLEGATIONS

22. Plaintiffs sue on behalf of themselves and all other similarly situated individuals who worked as delivery drivers for Kinray (the "Collective"). Plaintiffs are appropriate representatives of this collective action under 29 U.S.C. § 216(b).

23. Plaintiffs and the other delivery drivers are similarly situated in that they are all subject to Defendants' common policy of classifying them as independent contractors (when in fact the economic reality and the extent of control Defendants exerted over them rendered them employees). Defendants routinely require Plaintiffs to work weekly hours in excess of forty but do not pay overtime compensation at time and one-half their regular rate.

FACTS

24. Defendant Kinray was the largest privately-owned pharmaceutical wholesaler/distributor in the world, serving over 4,000 pharmacies in the Northeastern United States, with annual revenues of over five (5) billion dollars until it was purchased by Defendant Cardinal Health in 2010.

25. Cardinal Health is currently one of the world's largest businesses to operate as a pharmaceutical wholesaler/distributor.

26. Defendant Kinray hired Plaintiff Freddy Fernandez as a routeholder in or around 1996.

27. Plaintiff Fernandez made deliveries for Defendants in one or more weeks between 1996 and September 30, 2015.

28. Plaintiff Freddy Fernandez generally worked a morning route and an afternoon route on Monday through Friday during almost every week of his employment.

29. Defendant Kinray required Plaintiff Freddy Fernandez to report to its warehouse

at approximately 4:00 a.m. every morning Monday – Friday.

30. On the morning route Monday - Friday, Plaintiff Freddy Fernandez worked from approximately 4:00 a.m. until at least 12:00 p.m.

31. Kinray required Plaintiff Freddy Fernandez to report to its warehouse at approximately 1:30 p.m. for his afternoon route.

32. On the afternoon route Monday - Friday, Plaintiff Freddy Fernandez worked from approximately 1:30 p.m. until at least 7:00 p.m.

33. On Saturday, Plaintiff Freddy Fernandez generally worked a route every week since September 2007.

34. On Saturday, Plaintiff Freddy Fernandez worked from approximately 6:00 a.m. until at least 12:00 a.m.

35. Kinray required Plaintiff Freddy Fernandez to return empty containers and/or merchandise to a designated location after each and every day he worked.

36. Plaintiff Freddy Fernandez generally worked over eighty hours per week every week of his employment.

37. Kinray failed to pay Plaintiff Freddy Fernandez time-and-a-half his regular hourly rate for the thirty or more weekly overtime hours that he worked.

38. Defendant Kinray hired Plaintiff Giovanni Gonzalez in or around 1995.

39. Plaintiff Giovanni Gonzalez made deliveries for Defendants in one or more weeks between 1995 and September 30, 2015.

40. Plaintiff Giovanni Gonzalez generally worked a morning route and an afternoon route on Monday through Friday during almost every week of his employment.

41. Since September 2007, Kinray generally required Plaintiff Giovanni Gonzalez to

report to its warehouse at approximately 3:30 a.m. every morning Monday – Friday.

42. Since September 2007, on the morning route Monday - Friday, Plaintiff Giovanni Gonzalez generally worked from approximately 3:30 a.m. until at least 11:00 a.m.

43. Since September 2007, Kinray generally required Plaintiff Giovanni Gonzalez to report to its warehouse at approximately 3:00 p.m. for his afternoon route.

44. On the afternoon route Monday - Friday, Plaintiff Giovanni Gonzalez generally worked from approximately 3:00 p.m. until at least 7:00 p.m.

45. Kinray required Plaintiff Giovanni Gonzalez to return empty containers and/or merchandise to a designated location after each and every day he worked.

46. Plaintiff Giovanni Gonzalez generally worked over fifty-five hours per week since September 2007.

47. Kinray failed to pay Plaintiff Giovanni Gonzalez time-and-a-half his regular hourly rate for the fifteen or more weekly overtime hours that he worked.

48. Defendant Kinray hired Plaintiff Neil Guzman in or around May 2012.

49. Plaintiff Neil Guzman made deliveries for Defendants in one or more weeks between 2012 and September 30, 2015.

50. Plaintiff Neil Guzman generally worked a morning route and an afternoon route on Monday through Friday during almost every week of his employment.

51. From May 2012-July 2012, Kinray generally required Plaintiff Neil Guzman to report to its warehouse at approximately 8:30 a.m. every morning Monday – Friday.

52. From May 2012 - July 2012, on the morning route Monday - Friday, Plaintiff Neil Guzman generally worked from approximately 8:30 a.m. until at least 2:00 p.m.

53. Since March 2013, Kinray generally required Plaintiff Neil Guzman to report to

its warehouse at approximately 4:00 p.m. every morning Monday – Friday.

54. Since March 2013, on the morning route Monday - Friday, Plaintiff Neil Guzman generally worked from approximately 4:00 a.m. until at least 11:00 a.m.

55. From May 2012 - May 2013, Plaintiff Neil Guzman generally worked as an extra during the afternoon. He generally reported to the Kinray warehouse after his morning route and waits for Kinray to assign work to him.

56. On the afternoon route Monday - Friday, Plaintiff Neil Guzman generally worked from approximately 2:30 p.m. until at least 6:30 p.m.

57. Since May 2013, Plaintiff Neil Guzman generally worked an afternoon route. Kinray generally required that he report to their warehouse at approximately 2:30 p.m. for this route.

58. Monday-Friday, Plaintiff Neil Guzman's afternoon route generally lasts from approximately 2:30 p.m. until at least 7:00 p.m.

59. Since May 2013, Plaintiff Neil Guzman generally worked as an extra between his morning and afternoon routes, from approximately 11:00 a.m. to 2:30p.m.

60. Kinray required Plaintiff Neil Guzman to return empty containers and/or merchandise to a designated location after each and every day he worked.

61. On Saturday, Plaintiff Neil Guzman generally worked as an extra. He reported to the Kinray warehouse after his morning route and wait for Kinray to assign work to him.

62. On Saturday, Plaintiff Neil Guzman generally worked from approximately 5:00 a.m. until at least 1:30 p.m.

63. Plaintiff Neil Guzman generally worked over sixty hours per week from May 2012 to May 2013.

64. Plaintiff Neil Guzman generally worked over eighty hours per week, starting in May 2013.

65. Kinray failed to pay Plaintiff Neil Guzman time-and-a-half his regular hourly rate for the twenty or more weekly overtime hours that he worked.

66. Defendant Kinray hired Plaintiff Freddy Vasquez in or around 2003.

67. Plaintiff Freddy Vasquez made deliveries for Defendants in one or more weeks between 2003 and September 30, 2015.

68. Plaintiff Freddy Vasquez generally worked a morning route and an afternoon route on Monday through Friday during almost every week of his employment until November 2013.

69. From September 2007 until March 2011, Kinray generally required Plaintiff Freddy Vasquez to report to its warehouse at approximately 4:00 a.m. every morning Monday – Friday.

70. From September 2007 until November 2013, on the morning route Monday - Friday, Plaintiff Freddy Vasquez generally worked from approximately 4:00 a.m. until at least 11:30 p.m.

71. From September 2007 until March 2011, Kinray generally required Plaintiff Freddy Vasquez to report to its warehouse at approximately 12:00 p.m. for his afternoon route.

72. On the afternoon route Monday - Friday, Plaintiff Freddy Vasquez generally worked from approximately 1:00 p.m. until at least 5:30 p.m.

73. On Saturday, Plaintiff Freddy Vasquez generally worked one route every week from September 2007 until March 2011.

74. On Saturday, Plaintiff Freddy Vasquez generally worked from approximately 8:00

a.m. until at least 2:00 p.m.

75. Plaintiff Freddy Vasquez generally worked over sixty-five hours per week from September 2007 until November 2013.

76. Since November 2013, Plaintiff Freddy Vasquez worked as an extra.

77. Since November 2013, Plaintiff Freddy Vasquez generally arrived at the warehouse at approximately 4:00 a.m. and waited until work is assigned to him.

78. Since November 2013, Plaintiff Freddy Vasquez generally worked from approximately 4:00 a.m. until at least 6:30 p.m.

79. Since November 2013, Plaintiff Freddy Vasquez generally worked as an extra on Saturdays, from approximately 10:30 a.m. until at least 2:30 p.m.

80. Kinray required Plaintiff Freddy Vasquez to return empty containers and/or merchandise to a designated location after each and every day he worked.

81. Plaintiff Freddy Vasquez generally worked over sixty-five hours per week since September 2007.

82. Kinray failed to pay Plaintiff Freddy Vasquez time-and-a-half his regular hourly rate for the twenty-five or more overtime hours that he worked.

83. Defendant Kinray hired Plaintiff Luis Velasquez in or around 1985.

84. Plaintiff Luis Velasquez made deliveries for Defendants in one or more weeks between 1985 and September 30, 2015.

85. Plaintiff Luis Velasquez generally worked a morning route and an afternoon route on Monday through Friday during almost every week of his employment until October 2013.

86. From September 2007 to October 2013, Kinray generally required Plaintiff Luis Velasquez to report to its warehouse at approximately 3:30 a.m. every morning Monday –

Friday.

87. From September 2007 to October 2013, on the morning route Monday - Friday, Plaintiff Luis Vasquez worked from approximately 3:30 a.m. until at least 12:00 p.m.

88. Since September 2007, Kinray required Plaintiff Luis Vasquez to report to its warehouse at 12:30 p.m. for his afternoon route.

89. From September 2007 to October 2013, on the afternoon route Monday - Friday, Plaintiff Luis Velasquez worked from approximately 12:30 p.m. until at least 8:00p.m.

90. Since October 2013, on the afternoon route, Monday – Friday, Plaintiff Luis Velasquez works from approximately 12:30 p.m. until at least 3:00 p.m.

91. Kinray required Plaintiff Luis Velasquez to return empty containers and/or merchandise to a designated location after each and every day he worked.

92. Kinray failed to pay Plaintiff Luis Vasquez time-and-a-half his regular hourly rate for the thirty or more weekly overtime hours that she worked.

93. Kinray failed to record any of the hours that any of the Plaintiffs actually worked during the entire course of their employment.

94. Kinray failed to pay Plaintiffs time-and-a-half for the weekly hours they worked in excess of forty.

95. Plaintiffs' primary duty is to deliver merchandise to Defendants' customers.

96. Defendants required Plaintiffs to submit to Defendants' detailed credit history and criminal background investigations prior to hire.

97. Defendants required Plaintiffs to report to Defendants' warehouses at precise arrival times.

98. Defendants established delivery routes and issued Plaintiffs written "manifests"

specifying the identity, location and the precise time and sequence of each stop on each route, leaving Plaintiffs with no discretion to alter the assigned route regardless of traffic, convenience, cost or other circumstances.

99. Defendants disciplined Plaintiffs for tardy arrival at Defendants' warehouses and for making deliveries that varied from Defendants' directions.

100. Defendants classified Plaintiffs as "independent contractors" rather than employees.

101. The decision to classify Plaintiffs as independent contractors was made by Defendants centrally, and not on a person-by-person basis.

102. Plaintiffs were not in an independently established trade, occupation, profession or business.

103. Plaintiffs were not in business for themselves, but rather depended on Defendants' business for the opportunity to render delivery services to the Defendants' customers.

104. Defendants prohibited Plaintiffs from opportunities for profit or loss.

105. Defendants prohibited Plaintiffs from dealing directly with Defendants' customers to independently offer their delivery services.

106. Plaintiffs and depended upon Defendants to provide their entire compensation for their delivery services.

107. Plaintiffs worked continuously full-time for Defendants for many years providing delivery services which were neither temporary nor sporadic.

108. Plaintiffs worked daily, full-time for Defendants.

109. Plaintiffs worked in excess of 40 weekly hours without being paid one and one-half times their regular rate.

110. Plaintiffs used vehicles weighing less than 10,000 pounds.

111. Defendants punished Plaintiffs by taking deductions from their wages for broken, lost or stolen merchandise even when Defendants recouped these losses from insurance carriers.

112. Defendants did not provide Plaintiffs with the Wage Theft Prevention Act notices required by NYLL § 195.

113. Defendants' violations have been willful as Defendants intended to classify each Plaintiff as an independent contractor and intended to deny each Plaintiff overtime wages and other wage protections provided by the FLSA and NYLL.

FIRST CAUSE OF ACTION

**FLSA Overtime Violations, 29 U.S.C. §§ 201 *et seq.*
On behalf of Plaintiffs**

114. Plaintiffs re-allege and incorporate by reference the previous paragraphs as if they were set forth again herein.

115. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Complaint.

116. At all times relevant, Plaintiffs were employed by an entity engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. § 203(r).

117. At all times relevant, Plaintiffs members were or have been employees within the meaning of 29 U.S.C. §§ 203(e).

118. At all times relevant, Defendants have been employers of Plaintiffs and have been engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. § 203(d).

119. Defendants have failed to pay Plaintiffs overtime wages for hours that they worked in excess of 40 hours in a workweek.

120. Based on the foregoing, Defendants' conduct in this regard was a willful violation of the Fair Labor Standards Act and entitles Plaintiffs to compensation for all overtime hours worked, liquidated damages, attorneys' fees and court costs.

SECOND CAUSE OF ACTION

**New York State Overtime Violations, N.Y. Lab. L. §§ 650 *et seq.*, N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.2
On behalf of Plaintiffs**

121. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

122. At all relevant times, Defendants have been, and continue to be, employers of Plaintiffs, and Plaintiffs have been employees of Defendants, within the meaning of the NYLL §§ 190, 651(5), 652 and supporting New York State Department of Labor ("NYSDOL") regulations.

123. Plaintiffs were and are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked under the NYLL and supporting regulations.

124. Defendants have failed to pay Plaintiffs overtime wages for hours that they worked in excess of 40 hours in a workweek.

125. Through their knowing and intentional failure to pay Plaintiffs overtime for hours worked in excess of 40 in a workweek, Defendants have willfully violated the NYLL Article 19, §§ 650 *et seq.*, and supporting NYSDOL regulations.

126. Defendants failed to post, in a conspicuous place in their establishments, a notice issued by the NYSDOL summarizing minimum wage and overtime provisions, in violation of the NYLL and supporting NYSDOL Regulations including but not limited to 12 NYCRR § 142-2.8.

127. As a direct and proximate result of Defendants' unlawful conduct, as set forth

herein, Plaintiffs have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an amount to be established at trial, liquidated damages, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

THIRD CAUSE OF ACTION

**New York Notice Violations, NYLL §§ 195, 198
On behalf of Plaintiffs**

128. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

129. Defendants did not provide Plaintiff with the notices required by NYLL § 195.

130. As a result of Defendants' unlawful conduct, Plaintiffs are entitled to an award of damages pursuant to NYLL § 198, in amounts to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by N.Y. Lab. Law § 663.

FOURTH CAUSE OF ACTION

**New York Unlawful Deductions and Untimely Payment of Wages, NYLL §§ 191, 193
On behalf of Plaintiff and the Class**

131. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

132. Defendants have willfully reduced the wages of Plaintiffs by making unlawful deductions from their wages.

133. In addition, Defendants have required Plaintiffs to incur expenses for Defendants' benefit without reimbursement. The required and unreimbursed expenses incurred by Plaintiffs for the benefit of Defendants were unlawful deductions from the wages of Plaintiffs, in violation of NYLL Article 6, § 193.

134. Defendants willfully failed to pay Plaintiffs all commissions owed them in a timely manner, in violation of NYLL § 191.

135. Due to these violations, Plaintiffs are entitled to recover from Defendants deductions from their wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

FIFTH CAUSE OF ACTION
(FLSA- Retaliation- 29 USC § 215(a)(3))

136. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

137. On September 4, 2013, Plaintiff Freddy Fernandez filed his Complaint in this action alleging he was subject to Defendants' failure to properly classify him as an employee rather than as an independent contractor and failing to pay him earned overtime wages in violation of the overtime requirements of the FLSA.

138. Plaintiff Freddy Fernandez is the first named Plaintiff of this Action.

139. By filing his complaint alleging overtime violations, Plaintiff Freddy Fernandez engaged in activity specifically protected by §215(a)(3) of the FLSA.

140. On September 16, 2013, the Complaint *Fernandez et al. v. Kinray et al.* was served on Defendants.

141. On October 2, 2013, only two weeks later, Defendants abruptly and without prior notice, terminated Plaintiff Freddy Fernandez from his position as a route holder and delivery driver for Defendants' route WJ.

142. Defendants unlawfully retaliation against Plaintiff Freddy Fernandez because he engaged in activity specifically protected by the FLSA.

143. Defendants' termination of Plaintiff Freddy Fernandez's route caused him to lose a significant amount of income.

144. Defendants' retaliation violated the FLSA.

SIXTH CAUSE OF ACTION

(New York State Labor Law- Retaliation- New York Labor Law § 215 *et seq*)

145. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

146. On September 4, 2013, Plaintiff Freddy Fernandez filed his Complaint in this action alleging he was subject to Defendants' failure to properly classify him as an employee rather than as an independent contractor and failing to pay him earned overtime wages in violation of the overtime requirements of the NYLL.

147. Plaintiff Freddy Fernandez is the first named Plaintiff of this Action.

148. By filing his complaint alleging overtime violations, Plaintiff Freddy Fernandez engaged in activity specifically protected by §215of the NYLL.

149. On September 16, 2013, the Complaint *Fernandez et al. v. Kinray et al.* was served on Defendants.

150. On October 2, 2013, only two weeks later, Defendants abruptly and without prior notice, terminated Plaintiff Freddy Fernandez from his position as a route holder and delivery driver for Defendants' route WJ.

151. Defendants unlawfully retaliation against Plaintiff Freddy Fernandez because he engaged in activity specifically protected by the NYLL.

152. Defendants' termination of Plaintiff Freddy Fernandez's route caused him to lose a significant amount of income.

153. Defendants' retaliation violated the NYLL.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

- a. A declaratory judgment that the practices complained of herein are unlawful under state and federal law;
- b. An award of damages, according to proof, including liquidated damages, to be paid by Defendants;
- c. Penalties available under applicable law;
- d. Restitution of unpaid overtime compensation and illegal wage deductions;
- e. Pre-Judgment and Post-Judgment interest, as provided by law;
- f. Costs of the action incurred herein, including filing, service, and expert witness fees;
- g. Attorneys' fees including fees pursuant to 29 U.S.C. § 216, N.Y. Lab. L. § 663 and other applicable statutes; and
- h. Such other monetary injunctive and equitable relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to a jury trial.

Dated: , 2019
New York, NY

Respectfully submitted,

 /s/Josef Nussbaum

JOSEPH & KIRSCHENBAUM LLP

D. Maimon Kirschenbaum

Josef Nussbaum

Lucas C. Buzzard

32 Broadway, Suite 601

New York, NY 10004

Telephone: (212) 688-5640

Facsimile: (212) 688-2548

Attorneys for Plaintiffs

EXHIBIT B

CLAIM FORM

Fernandez, et al. v. Kinray, Inc., et al., No. 13-cv-4938 (E.D.N.Y.)

In order to claim a share of the collective action settlement in the above-referenced lawsuit filed against Kinray, Inc. and Cardinal Health, Inc. you must complete, sign, date and return to [NAME] the following two forms: (1) this Claim Form, and (2) the enclosed IRS Form W9. In order to receive your settlement amount, both these forms must be mailed to the address listed below no later than [BAR DATE - 35 days from date of mailing]:

TPA
Attention: [NAME]
Address
Address
Phone: xxx-xxx-xxxx
Fax: xxx-xxx-xxxx
claims@_____

Name

Signature

Address

Home Phone

Cell Phone

Email address

To receive your settlement payment, you must sign below and return the completed forms by mail, fax or email before [bar date]. Under the terms of the settlement in this case, your estimated individual settlement amount is approximately [redacted]. (This amount may be subject to minor adjustments by your lawyers and/or the Settlement Administrator.)

By signing below, you agree to the Agreement to Arbitrate Future Disputes described in the Notice that you received along with this Claim Form informing you about the terms of the Settlement.

Signature

Date

EXHIBIT C

LAST NAME	FIRST NAME	ESTIMATED INDIVIDUAL AMOUNT
Aguirre	Yolanda	\$ 24,368.26
Amaya	Esmeralda	\$ 63,244.13
Amaya	Norma	\$ 52,703.44
Amaya	Roberto	\$ 52,703.44
Araya	Hector	\$ 22,668.15
Arboleda	Harold	\$ 31,622.06
Arboleda	Luis H.	\$ 52,703.44
Arias	Jose	\$ 27,796.81
Bautista	Miguel	\$ 42,162.75
Bazurto	Nevil Jr	\$ 25,501.66
Bazurto	Nevil Sr	\$ 52,703.44
Becerra	Ligia	\$ 42,162.75
Betancourt	Oswaldo	\$ 31,622.06
Buitrago	Ramon	\$ 63,244.13
Calero	Roberto	\$ 2,500.00
Casassola	Rafael A.	\$ 32,188.77
Coello	Arturo	\$ 52,703.44
Coll	Claudia	\$ 63,244.13
Diaz	Diana	\$ 31,622.06
Diestra	Segundo	\$ 63,244.13
Disla	Temistocles	\$ 8,500.55
Dorado	Franky	\$ 52,136.74
Dorado	Paula	\$ 42,162.75
Escobar	Santiago	\$ 52,703.44
Espinoza	Daniela	\$ 30,602.00
Espinoza	Ruben	\$ 52,703.44
Fernandez	Arthur	\$ 38,535.85
Fernandez	Carlos	\$ 52,703.44
Fernandez	Cesar	\$ 52,703.44
Fernandez	Freddy	\$ 63,244.13
Fernandez	Janed	\$ 24,481.60
Ferraro	Iliana	\$ 21,081.38
Franco	Alexis	\$ 51,003.33
Galindo	Guillermo	\$ 17,001.11
Gamarra	Jorge	\$ 41,256.03
Garcia	Henry	\$ 52,703.44
Garcia	Raquel	\$ 38,082.49

LAST NAME	FIRST NAME	ESTIMATED INDIVIDUAL AMOUNT
Gomez	Carlos	\$ 42,162.75
Gomez	Julio	\$ 63,244.13
Gomez	Roberto	\$ 38,762.53
Gomez	Victor	\$ 52,703.44
Gonzalez	Giovanny	\$ 63,244.13
Gonzalez	Rocio	\$ 10,540.69
Gonzalez	Ronald	\$ 52,703.44
Guevara	Michel	\$ 63,244.13
Gutierrez	Marjorie	\$ 16,547.75
Guzman	Neil	\$ 28,561.86
Henao	Jorge	\$ 31,622.06
Huidobro	Alejandro	\$ 52,703.44
Hutchins	Perry	\$ 8,500.55
Insuela	Jose	\$ 52,703.44
Latorre	Martha	\$ 31,622.06
Londono	Omar	\$ 51,003.33
Lopez	Andres	\$ 40,349.30
Lopez	Juan Daniel	\$ 32,642.13
Lopez	Maria	\$ 42,162.75
Lozada	Julio	\$ 44,202.89
Lozano	Maria	\$ 52,703.44
Malagon	Jose	\$ 20,401.33
Martinez	Fred	\$ 63,244.13
Mejia	Wilson	\$ 25,501.66
Mena	Jorge	\$ 42,162.75
Mena	Juan	\$ 63,244.13
Mendoza	Fabian	\$ 8,840.58
Meneses Escobar	Juan Carlos	\$ 40,802.66
Mera	Digna	\$ 24,934.96
Montano	Douglas	\$ 48,963.20
Mora	Andres	\$ 31,622.06
Moreno	Pompeyo	\$ 41,369.37
Motta Lama	Sergio	\$ 31,622.06
Munoz	Javier	\$ 52,703.44
Narvaez	Henry	\$ 61,204.00
Navarette	Gabriel	\$ 17,001.11
Navarette	Luis F.	\$ 63,244.13

LAST NAME	FIRST NAME	ESTIMATED INDIVIDUAL AMOUNT
Ocampo	Orlando	\$ 23,234.85
Orozco	Hamerson	\$ 52,703.44
Paredes	Myriam	\$ 48,453.16
Perez	Henry	\$ 52,703.44
Pique	Maximino	\$ 42,162.75
Posada	Marcos	\$ 63,244.13
Powers	James	\$ 17,341.13
Puerto	Marian	\$ 17,681.15
Quiceno	Nydia	\$ 48,878.19
Ramirez	Sandra	\$ 42,162.75
Regan	James	\$ 17,001.11
Renteria	Adriana	\$ 63,244.13
Renteria	Eduardo	\$ 43,522.84
Renteria	Oscar Eduardo	\$ 43,522.84
Reyes	Hugo	\$ 52,703.44
Robalino	Jose	\$ 20,514.67
Robles	Angel	\$ 42,162.75
Rodriguez	Edgar	\$ 63,244.13
Rodriguez	Frank	\$ 32,642.13
Romero	Maria Elena	\$ 42,162.75
Salazar	Alvaro	\$ 52,703.44
Sanchez	Amin	\$ 9,520.62
Sanchez	Angelo	\$ 52,703.44
Sanchez	Cesar	\$ 32,188.77
Sanchinelli	William	\$ 62,734.10
SanMartin	Carlos	\$ 44,202.89
Santamaria	Carlos	\$ 42,162.75
Sornoza	Solanda	\$ 19,721.29
Suaza	Julian	\$ 30,602.00
Suaza	Natalia	\$ 25,501.66
Tello	Feliciano	\$ 31,622.06
Tello	Mario	\$ 42,162.75
Tinoco	Roger	\$ 52,703.44
Torres	Miguel	\$ 52,703.44
Vasquez	Freddy	\$ 63,244.13
Velasquez	Luis	\$ 63,244.13
Vergara	Gorge	\$ 52,136.74

LAST NAME	FIRST NAME	ESTIMATED INDIVIDUAL AMOUNT
Villalvir	Rigoberto	\$ 42,162.75
Villamarin	Edwin	\$ 63,244.13
Villamarin	Lucy	\$ 28,306.85
Villarejo	David	\$ 52,703.44

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FREDDY FERNANDEZ, GIOVANNY GONZALEZ,
NEIL GUZMAN, FREDDY VASQUEZ, and LUIS
VELASQUEZ,

Plaintiffs,

-against-

KINRAY, INC., and CARDINAL HEALTH, INC.,

Defendants.

13 CV 4938 (LDH)(SMG)

ORDER OF DISMISSAL WITH PREJUDICE

This matter having come before this Court on _____, 2019 on the joint application of Freddy Fernandez, Giovanni Gonzalez, Neil Guzman, Freddy Vasquez and Luis Velasquez (collectively, the “Named Plaintiffs”) and Kinray, Inc. (“Kinray”) and Cardinal Health, Inc. (“Cardinal”) (together with Kinray, “Defendants”) for approval of the collective action settlement reached between the Parties on the terms set forth in the Collective Action Settlement Agreement made and entered into as of _____, 2019 (the “Settlement Agreement”) by, between and among the Named Plaintiffs on behalf of themselves and the Settlement Collective (as defined in the Settlement Agreement) on the one hand, and Defendants on the other hand (the “Settlement”); and

This Court having considered the parties’ application, and it appearing that the Settlement is fair, reasonable and adequate as to the Named Plaintiffs and the Settlement Collective; and

Having reviewed both the letter motion filed by plaintiffs dated _____, Docket Entry ___, seeking approval of the settlement agreement reached by the parties as well as the settlement agreement, Docket Entry ___-;

I find that “the agreement reflects a reasonable compromise of disputed issues [rather]

than a mere waiver of statutory rights brought about by an employer's overreaching.” *Tuan Le v. SITA Info. Networking Computing USA, Inc.*, 2008 U.S. Dist. LEXIS 20786, 2008 WL 724155 (E.D.N.Y. Mar. 13, 2008)(internal quotations and citation omitted). *See also Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015). In reaching this conclusion, I have considered, among other things, (1) that the settlement amount provides plaintiffs with a recovery of a significant portion of the overtime wages they claim are due to them and eliminates the risks presented by continued litigation; (2) that the attorney's fees portion of the settlement is consistent with the terms of plaintiff's retainer agreement and is for an amount equal to one-third of the total amount of the settlement, net of attorneys' and settlement claims administrator's expenses; (3) that the release provided for in the agreement is limited in scope; and (4) that the settlement agreement does not impose a duty of confidentiality.

Accordingly, **IT IS HEREBY ORDERED**, that the Court adopts the terms of the Settlement Agreement and the Parties must abide by and carry out the terms of the Settlement Agreement;

IT IS HEREBY FURTHER ORDERED, the Plaintiffs' counsels' attorneys' fees and expenses as set forth in their approval letter are approved;

IT IS HEREBY FURTHER ORDERED, that Rust Consulting is approved to perform the settlement administration duties set forth in the Settlement Agreement and is entitled to reasonable compensation and costs;

IT IS HEREBY FURTHER ORDERED, that notice to the Settlement Collective Members of the Settlement shall be in the form of the proposed Notice of Settlement Rights and Obligations to Opt-in Plaintiffs appended to the Settlement Agreement as Exhibit F (“Settlement Notice”) and that the procedures and deadlines for Settlement Collective Members to return claim

forms or to submit a request to opt out of the Settlement set forth in the Settlement Notice and the Claim Form appended to the Settlement Agreement as Exhibit B are approved;

IT IS HEREBY FURTHER ORDERED, that all pending motions before the Court are terminated; and

IT IS HEREBY FURTHER ORDERED, that without affecting the finality of this Final Order and Judgment, the Court reserves continuing and exclusive jurisdiction over parties to the Settlement Agreement to administer, supervise, construe, and enforce the Settlement Agreement in accordance with its terms for the mutual benefit of the parties.

SO ORDERED on this ____ day of _____, 2019

Hon. Steven M. Gold, U.S.M.J.

EXHIBIT E

Rafael Casasola
Juan D. Lopez
Wilson Mejia
Deiber Julian Suaza
Natalia Suaza

EXHIBIT F

NOTICE OF SETTLEMENT RIGHTS AND OBLIGATIONS TO OPT-IN PLAINTIFFS

Fernandez, et al. v. Kinray, Inc., et al., 13 Civ. 4938,
United States District Court for the Eastern District of New York (the “Litigation”).

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR RIGHTS
MAY BE AFFECTED BY THE PROPOSED SETTLEMENT DESCRIBED IN
THIS NOTICE.**

TO: ALL INDIVIDUALS WHO OPTED IN TO THIS ACTION BY FILING A “CONSENT
TO JOIN” WITH THE COURT AND WERE NOT SUBSEQUENTLY DISMISSED

A settlement of the Litigation (the “Settlement”) has been reached in which Kinray, Inc. (“Kinray”) and Cardinal Health, Inc. (“Cardinal”) (together, “Defendants”) will set up a settlement fund from which all individuals who have opted-in to the Litigation and were not subsequently dismissed (“Settlement Collective Members”) will be eligible to receive payment to resolve their claims alleging that Defendants misclassified them as independent contractors.

If this Notice was mailed to you, you are eligible to receive a share of the settlement fund. The Settlement affects your rights whether you act or don’t act. Read this Notice carefully to consider your options.

If you submit the enclosed Claim Form and a fully completed and executed IRS Form W-9 by **[Bar Date-35 days from date of mailing]** you will receive payment as part of this Settlement. You must submit the Claim Form to receive payment.

You may opt-out of the Settlement and continue to pursue your own lawsuit concerning the same allegations at issue in the Litigation. However, if more than 3 individuals so opt-out, the Settlement will be void and the Litigation will continue. If you do not wish to be part of the Settlement you must send a letter stating that you wish to opt out of the settlement and do not wish to be bound by the settlement in *Fernandez, et al. v. Kinray, Inc., et al.*, 13 Civ. 4938. Your letter must be signed by you, contain your name and address, and be mailed to **[name]**, the third party administrator, on or before **[35 days from mailing]** at the following address:

OPT OUT Requests – Fernandez, et al. v. Kinray, Inc.,
et al.
THIRD PARTY ADMINISTRATOR
[ADDRESS]

If you do nothing, you will not receive any funds that are available under the Settlement, but you will still release any claims related to misclassification that you may have against Defendants. Under the terms of the Settlement, all Settlement Collective Members who do not exclude themselves from the Settlement will be releasing Defendants and related parties from all claims that were asserted or could have been asserted in the Litigation relating to allegations of misclassification as an independent contractor, as set forth more fully in the Collective Action Settlement Agreement approved by the Court on **[REDACTED]** (the “Settlement Agreement”).

PURPOSE OF THIS NOTICE

This Notice is given pursuant to the Fair Labor Standards Act (“FLSA”) to provide notice to you of the settlement of the above referenced FLSA Collective action. The Litigation was commenced on September 4, 2013 by Freddy Fernandez, Giovanni Gonzalez and Luis Velasquez. The Litigation sought to recover unpaid overtime wages, and related damages. You are receiving this Notice because you previously submitted a “Consent to Join” form, which your attorneys have filed with the Court, and were not subsequently dismissed from the Litigation.

THE SETTLEMENT

The Settlement was negotiated by Freddy Fernandez, Giovanni Gonzalez, Neil Guzman, Freddy Vasquez and Luis Velasquez (collectively, the “Named Plaintiffs”). Defendants continue to deny the allegations and any/all liability. After weeks of negotiation, Named Plaintiffs and Defendants (together, the “Parties”) have agreed to settle this Litigation. Pursuant to the Settlement, Defendants have agreed to pay a total settlement amount of up to Seven Million Five Hundred Thousand Dollars \$7,500,000 (the “Settlement Amount”), which is based on the claims in the case and the potential damages, as well as Defendants’ defenses and the risks associated with further litigation. The Settlement Amount includes payments to all Settlement Collective Members who timely submit the enclosed Claim Form and a fully completed and executed IRS Form W-9, and \$40,000 to Named Plaintiff Freddy Fernandez in consideration for releasing any and all retaliation claims alleged in the Litigation, and attorneys’ fees and costs of up to one-third of the Settlement Amount to D. Maimon Kirschenbaum, Esq., Josef Nussbaum, Esq., and Lucas Buzzard, Esq. of Joseph & Kirschenbaum LLP (“Collective Counsel”). Settlement Collective Members will each have 35 days to submit a Claim Form to receive their respective share of the settlement. Each Settlement Collective Member who timely submits a Claim Form and a fully completed and executed IRS Form W-9 (collectively, the “Claiming Collective Members”) will have 90 days to cash his/her individual check, after which each un-cashed check shall be null and void. If you fail to timely submit a Claim Form, or submit a Claim Form but your check becomes null and void before cashing, your claims will still be released if you did not opt-out.

Collective Counsel estimates that after attorney’s fees, administrative expenses, and payment to Named Plaintiff Freddy Fernandez are deducted from the Settlement Amount, you are eligible to receive approximately \$ [REDACTED], based on the number of weeks and hours in which services were provided to Kinray within the applicable period. There is a minimum payment of \$2,500 dollars for any Claiming Collective Member. You will receive an IRS Form 1099 for the amount of any settlement payment you are sent. You should consult with an accountant or other tax advisor about the tax consequences of your settlement proceeds.

BACKGROUND TO THE SETTLEMENT

Prior to entering into the Settlement Agreement, Collective Counsel conducted an investigation relating to the events and transactions underlying the Named Plaintiffs’ and Settlement Collective Members’ claims. Collective Counsel’s decision to enter into the Settlement Agreement was made with knowledge of the underlying facts and circumstances and the strengths and weaknesses of those claims, including information obtained through extensive discovery in the Litigation. In determining to settle the Litigation, Collective Counsel has analyzed the evidence adduced during

pretrial proceedings and settlement negotiations, and has taken into account the substantial expense and length of time necessary to prosecute the Litigation through trial, post-trial motions and likely appeals, taking into consideration the significant uncertainties in predicting the outcome of this complex litigation. The Parties also participated in numerous and extensive negotiations, in which all terms of the Settlement Agreement were mutually agreed upon by the Parties. Collective Counsel has determined that the Settlement described herein confers substantial benefits upon the Settlement Collective Members. Based upon consideration of these factors, and others, Collective Counsel has concluded that it is in the best interest of the Settlement Collective Members to settle the Litigation on the terms described herein, and that this Settlement and the Settlement Agreement is fair, reasonable and adequate.

Defendants deny all allegations of wrongdoing or liability whatsoever. Defendants desire to settle and terminate all existing or potential claims against them which were, or could have been, asserted in the Litigation, without in any way acknowledging any fault or liability, in order to eliminate the expense and uncertainty of protracted litigation.

YOUR OBLIGATIONS

If you do not properly opt out of the Settlement, you will be bound by the release of all Settlement Collective Member Released Claims as set forth in the Settlement Agreement, which includes claims under the FLSA and the New York Labor Law. You also agree not to issue or cause to be issued any press release directed to any media representative regarding the Litigation or the Settlement, except as required by law and not to, in any manner, make any comments or statements to the press or any individual or entity not affiliated with Kinray or an entity that engages any of the Named Plaintiffs or Settlement Collective Members who deliver Kinray products, or perform any acts, or perform any acts, directly or indirectly, that are disparaging, derogatory or that could adversely affect the reputation or interests of (i) Kinray and/or its products or services, including, without limitation, delivery services provided to Kinray customers by any third party, (ii) Cardinal and/or its products or services, including, without limitation, delivery services provided to Cardinal customers by any third party, and/or (iii) any of the Releasees. Reciprocally, Defendants agree that the respective directors and officers of Kinray and Cardinal will not make any comments or perform any acts, directly or indirectly, that are disparaging, derogatory or that may tend to injure your business or reputation. Nothing in this Section shall preclude any party from making truthful statements.

AGREEMENT TO ARBITRATE FUTURE DISPUTES

A. The Parties agree that any claim, dispute, and/or controversy, except as specifically excluded herein, that any Settlement Collective Member (including his or her related business entities) may have against Kinray, Cardinal and/or their affiliated companies and its and/or their directors, officers, managers, employees, and agents and their successors and assigns (each, an "Arbitration Defendant" and collectively "Arbitration Defendants") or that one or more Arbitration Defendant may have against such Settlement Collective Member (including his or her related business entities), arising from, related to, or having any relationship or connection whatsoever with the Settlement, the Settlement Agreement or the relationship between the Parties, including services provided to Kinray and/or Cardinal by any Settlement Collective Member (or related entity), or any other association that a Settlement Collective Member may have with one or more

Arbitration Defendant (“Covered Claims”) shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act (9 U.S.C. §§ 1, et seq.) (“FAA”) in conformity with the Commercial Arbitration Rules of the American Arbitration Association (“AAA” or “AAA Rules”), or any successor rules, except as otherwise agreed to by the parties and/or specified herein. Such arbitration shall be conducted before a single arbitrator unless all parties to the arbitration agree otherwise in writing. Copies of AAA’s Rules are available on AAA’s website (www.adr.org).

B. Arbitration filing fees and costs shall be allocated consistent with AAA Rules. Each party may be represented by legal counsel of their own choosing. Each party shall pay its own attorneys’ fees, provided that an Arbitrator may award attorney’s fees and costs to the prevailing party under any applicable statute or written agreement to the same extent that attorney’s fees and costs could be awarded in court. The arbitration shall be subject to the same burdens of proof and statutes of limitations as if the Covered Claims were being heard in court. The Arbitrator shall issue a written decision within forty-five (45) days of the later of: (1) the arbitration hearing; or (2) submission of the parties’ post-arbitration briefs. The Arbitrator’s written decision shall include findings of fact and conclusions of law. The Arbitrator shall have the authority to award the same damages and other relief that would have been available in court pursuant to applicable law had the Covered Claim been brought on an individual basis *in* such forum, including attorneys’ fees and costs. Subject to the parties’ right to appeal, the decision of the arbitrator will be final and binding. The Arbitrator shall not have the authority to add to, amend, or modify, existing law. No arbitration award or decision will have any preclusive effect as to any issues or claims in any dispute, arbitration, or court proceeding where any party was not a named party in the arbitration.

C. All Covered Claims against one or more Arbitration Defendant must be brought by such Settlement Collective Member on an individual basis only and not as a plaintiff or class member in any purported class, collective, representative, or multi-plaintiff action. Each and every Settlement Collective Member further agrees that if s/he is within any such class, collective, representative, or multi-plaintiff action, s/he will take all steps necessary to opt-out of the action or refrain from opting in or joining, as the case may be, and each and every Settlement Collective Member expressly waives any right to recover any relief from any such class, collective, representative, or multi-plaintiff action.

D. To the maximum extent permitted by law, each and every Settlement Collective Member explicitly waives any right to: (1) initiate or maintain any covered claim on a class, collective, representative, or multi-plaintiff basis either in court or arbitration; (2) serve or participate as a representative of any such class, collective, or representative action; (3) serve or participate as a member of any such class, collective, or representative action; or (4) recover any relief from any such class, collective, representative, or multi-plaintiff action.

E. Through the Approval Order (as defined in the Settlement Agreement), the Court presiding over the Litigation shall confirm and uphold the validity or enforceability of this prohibition against class, collective, representative, or multi-plaintiff action arbitration. Any future challenge to the validity or enforceability shall be decided by the Court presiding over the Litigation pursuant to its continued jurisdiction over the Settlement Agreement, and no arbitrator shall have any authority to consider or decide any issue concerning the validity or enforceability of such prohibition. Any issues concerning arbitrability of a particular issue or claim under this

Arbitration Agreement (except for those concerning the validity or enforceability of the prohibition against class, collective, representative, or multi-plaintiff action arbitration and/or applicability of the FAA) shall be resolved by the arbitrator, not a court.

F. Nothing in this agreement to arbitrate is intended to affect or limit a Settlement Collective Member's right to file an administrative charge or otherwise seek relief from any administrative or federal or state government agencies (although if a Settlement Collective Member chooses to pursue a claim following the exhaustion of such administrative remedies, that claim would be subject to the provisions of this Section 13).

G. The Parties agree that arbitration proceedings are to be treated as confidential, and that the Parties will act to protect the confidentiality of the proceedings. The Parties agree that neither they nor their counsel will reveal or disclose the substance of the arbitration proceedings, or the result, except as required by subpoena, court order, or other legal process. If disclosure is compelled of one party by subpoena, court order or other legal process, or as otherwise required by law, the party agrees to notify the other party as soon as notice of such process is received and before disclosure takes place. The Parties may, however, disclose such information to their legal representatives, accountants or tax advisors as necessary so long as they agree to maintain such information in strict confidence. Defendants may also disclose such information to individuals in affiliated companies for legal reporting purposes and other legitimate business reasons.

H. Any request for arbitration must be in writing and provided to the other party and to AAA by certified or registered mail, return receipt requested, within the time period provided for by the statute(s) of limitations applicable to the claim(s) asserted. The request must set forth a statement of the nature of the dispute, including the alleged act or omission at issue; the names of all persons involved in the dispute; the amount in controversy, if any; and the remedy sought.

I. This agreement to arbitrate shall be governed by the FAA and New York law to the extent such law is not inconsistent with the FAA or to the extent the FAA is determined not to apply.

PROHIBITION AGAINST RETALIATION

Defendants are prohibited by law from retaliating against you for participating in this Settlement.

ADDITIONAL INFORMATION

For more detailed information concerning the matters involved in the Litigation, please contact your attorneys, Joseph & Kirschenbaum, as follows:

Josef Nussbaum, Esq.
Joseph & Kirschenbaum LLP.
32 Broadway #601
New York, NY 10006
Telephone: (212) 688-5640
Jnussbaum@jk-llp.com

THIS NOTICE HAS BEEN AUTHORIZED BY THE COURT

This notice and its contents have been authorized by Magistrate Judge Steven M. Gold of the U.S. District Court, Eastern District of New York, presiding by consent of the Parties pursuant to 28 U.S.C. § 636.

Do not call or write the Court to obtain copies of documents or to ask questions about the settlement.

Dated: _____, 2019

EXHIBIT G

ACKNOWLEDGEMENT AND ACCEPTANCE OF DUTIES

I, _____, state that:

1. I am the _____ of _____, which has been designated pursuant to the annexed Collective Action Settlement Agreement as the qualified firm to be approved by the Court to administer the settlement of the litigation entitled *Fernandez, et al. v. Kinray, Inc., et al.*, 13 Civ. 4938 in the United States District Court for the Eastern District of New York (the “Litigation”).

2. I have received a copy of the Collective Action Settlement Agreement (“Settlement Agreement”) entered into by the parties in the Litigation on _____.

3. I have carefully read and understand the provisions of Section 5.4 of the Settlement Agreement.

4. I acknowledge and accept that as the designated Settlement Administrator under the Settlement Agreement, _____ shall be solely responsible for carrying out the functions set forth in Section 5.4 of the Settlement Agreement in connection with the settlement of the Litigation.

Dated: _____

Signature

Printed Name

Title