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Attorneys for Plaintiff OMAR VEJAR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

OMAR VEJAR, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

FINELINE WOODWORKING, INC., a
California Corporation, FINELINE
ARCHITECTURAL MILLWORK, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 30-2021-01208607-CU-OE-CXC

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT**

Date: September 9, 2022
Time: 10:00 a.m.

Judge: Hon. Randall J. Sherman
Dept.: CX105

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am counsel of record for
5 Plaintiff OMAR VEJAR (hereafter "Plaintiff" or "Class Representative") in this wage and hour class
6 action filed against Defendant FINELINE WOODWORKING, INC., and Defendant
7 ARCHITECTURAL MILLWORK, INC. (hereinafter collectively "Defendants").

8 2. This declaration is being submitted in support of Plaintiff's Motion for Final Approval of
9 Class Action and PAGA Settlement.

10 3. Attached hereto as **Exhibit "A"** are true and correct copies of the fully executed
11 Stipulation for Settlement of Class and PAGA Action Claims and Release of Claims (hereinafter
12 collectively "Settlement Agreement").

13 4. Attached hereto as **Exhibit "B"** is a true and correct copy of the conformed May 20,
14 2022, Preliminary Approval Order.

15 5. Attached hereto as **Exhibit "C"** is a true and correct copy of the March 4, 2022, proof of
16 filing the proposed Settlement with the LWDA.

17 6. Attached hereto as **Exhibit "D"** is true and correct copy of the August 16, 2022, proof of
18 filing this motion seeking final approval of this Settlement with the LWDA.

19 **I. INTRODUCTION**

20 7. An objective evaluation of the proposed settlement of \$264,000.00 ("Gross Settlement
21 Amount") confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable.
22 The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
23 experienced counsel, and presided over by Hon. Carl J. West (Ret.), a respected jurist experienced in
24 wage and hour class and PAGA actions. After deducting any Court-approved attorneys' fees and costs,
25 class representative incentive payments, administration costs, and the payments to the Labor &
26 Workforce Development Agency ("LWDA"), the net settlement fund shall be distributed to the
27 Settlement Class based on the number of Workweeks they worked while employed by Defendants

1 during the relevant time period. ***The Class greeted news of the Settlement with 98.9% approval.*** There
2 are two opt-outs and zero objections to the Settlement. The high approval by the Settlement Class
3 evidences the clear fairness and reasonableness of the Settlement.

4 8. This Settlement provides substantial recovery for Defendants' alleged wage and hour
5 violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount
6 of approximately \$131,300.00. This will result in an average Individual Settlement Payment of **\$725.41**
7 and high payment of **\$2,647.78**.

8 9. The relief offered by the Settlement is immediate and is particularly impressive when
9 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
10 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
11 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
12 litigation.

13 10. As discussed below, the proposed Settlement satisfies all criteria for final settlement
14 approval under California law and falls well within the range of reasonableness. Accordingly, the Class
15 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement
16 and, entry of the proposed Final Approval Order and Judgment.

17 II. OVERVIEW OF THE LITIGATION

18 11. Defendants are California corporations that provide complete interior and exterior finish
19 carpentry packages for custom home builders, designers, and homeowners throughout California,
20 including Orange County, where Plaintiff worked. Plaintiff worked for Defendants as a non-exempt
21 employee from September 2019 to July 2020. At all times during his employment, Plaintiff earned an
22 hourly wage and was entitled to legally compliant meal and rest periods, and minimum, regular, and
23 overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendants'
24 written policies and procedures contained in, among other documents, Defendants' Employee
25 Handbook.

26 12. Generally, Plaintiff claims that Defendants failed to pay him minimum wages, failed to
27 provide compliant meal and rest periods, failed to provide accurate itemized wage statements, failed to

1 reimburse mandatory business expenses, and failed to pay all wages due at the time of his separation.
2 Defendants forcefully deny liability for each of Plaintiff's claims. Further, Defendants assert that they
3 fully complied with all applicable employment laws and raised several other significant defenses to
4 Plaintiff's claims, including, but not limited to, facially compliant meal and rest period policies and lack
5 of any evidence of overtime and minimum wage violations.

6 13. On April 23, 2021, Plaintiff filed a Notice of Violations ("PAGA Notice") with the Labor
7 and Workforce Development Agency ("LWDA") and served the same on Defendants. Plaintiff's PAGA
8 Notice set forth the facts and theories supporting Defendants' alleged violations of various California
9 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
10 pursue claims under the California Labor Code Private Attorneys General Act, Cal. Lab. Code sections
11 2698, *et seq.* ("PAGA").

12 14. On June 29, 2021, Plaintiff filed a class action complaint in the Orange County Superior
13 Court, Case Number 30-2021-01208607-CU-OE-CXC for: (1) Unfair Competition in Violation of
14 Business and Professions Code §§ 17200, *et seq.*; (2) failure to pay minimum wages in violation of
15 California Labor Code §§ 1194, 1197, and 1197.1; (3) failure to pay overtime wages in violation of
16 California Labor Code §§ 510 *et seq.*; (4) failure to provide required meal periods in violation of
17 California Labor Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of
18 California Labor Code §§ 226.7 and 512; (6) failure to provide accurate itemized wage statements in
19 violation of California Labor Code § 226; (7) failure to reimburse employees for required expenses in
20 violation of California Labor Code § 2802; (8) failure to provide wages when due in violation of
21 California Labor Code §§ 201, 202, and 203; and (9) violations of the Private Attorneys General Act
22 ("PAGA").

23 15. Plaintiff propounded written discovery on Defendants, and after serving the discovery,
24 the Parties agreed to mediation the action. To prepare for mediation, the Parties agreed to informally
25 produce certain documents and data points subject to the mediation privilege, including but not limited
26 to, a sample of the Class Members' time and payroll data. As discussed *infra*, Plaintiff's counsel
27 retained the Berger Consulting Group ("BCG"), to analyze Defendants' time and payroll data.

1 16. On January 26, 2022, the Parties participated in a mediation presided over by Hon. Carl
2 J. West, a respected jurist experienced in wage and hour class and PAGA actions. The mediation
3 concluded with a settlement, after both sides agreed to a Mediator's proposal which was subsequently
4 memorialized in the form of a Memorandum of Understanding ("MOU"). Thereafter, the Parties
5 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.

6 17. The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred
7 Sixty-Four Thousand Dollars (\$264,000.00) based on a total estimated 13,108 Workweeks worked by
8 the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual
9 Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class
10 Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration
11 Costs incurred in this action.

12 18. As explained in further detail below, the Settlement is fair, adequate, and reasonable to
13 the class and should be granted final approval. This is evidenced by the unanimous approval of the
14 Settlement by the Settlement Class and absence of any objections to the Settlement.

15 19. Further supporting final approval, the average Individual Settlement Payment of **\$725.41**
16 is comparable to settlement payments in similar wage and hour class actions. This result is particularly
17 favorable considering that liability and certification were far from certain. Given the complexities of
18 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
19 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
20 final approval.

21 **III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

22 **A. Adequate Investigation**

23 20. Months before filing the Action, Class Counsel began its pre-filing investigation into
24 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
25 Plaintiff. As part of the interview process, Plaintiff produced numerous documents related to his
26 employment, including portions of Defendant's handbooks, compensation policies, and time and
27

1 payroll records. At the conclusion of the interviews, Class Counsel determined that each of Plaintiffs'
2 complaints justified further inquiry.

3 21. Class Counsel subsequently requested Plaintiff's employee file from Defendants. In
4 response, Defendants produced hundreds of pages of documents, including but not limited to, copies of
5 Plaintiff's hiring documents, payroll and time records, performance reviews, and separation documents.
6 Class Counsel reviewed and analyzed the documents and determined the documents appeared to
7 substantiate Plaintiff's claim that Defendants failed to, among other things, pay for all time worked and
8 to provide compliant meal and rest periods. Shortly thereafter, Class Counsel initiated the actions which
9 are before the Court now.

10 22. In light of the many anticipated factual disputes, the parties agreed early in the litigation
11 that it would be in the best interest of both parties to mediate the matter. To prepare for mediation, Class
12 Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendants'
13 liability exposure to the Class Members. In response to Class Counsel's request, Defendants produced
14 the time and payroll records for the Class Members, and aggregate workweek and pay period data for
15 the Settlement Class. In total, Defendants produced approximately 5,532 pages containing unique time
16 and payroll data for Class Counsel to analyze.

17 23. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
18 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
19 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
20 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
21 differently, BCG is uniquely qualified to analyze Defendants' time and payroll data.

22 24. BCG analyzed Defendants' time and payroll data to assist in the development of various
23 damage models. Among other things, BCG determined the approximate number of work shift, work weeks,
24 pay periods, average rate of pay, average length of shift and average number of hours worked per week and
25 pay period during the Class Period. BCG also estimated the number of missed or late meal and rest periods,
26 the amount of paid missed meal period premiums paid during the Class Period.

25. In advance of mediation, Class Counsel created a damage model predicated on BCG analysis. Class Counsel's model calculated Defendants' potential liability exposure while accounting for the uncertainties of continued litigation. This damage model informed and guided Class Counsel during the mediated settlement discussions.

26. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment file; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Members' time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases, as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the parties have agreed.

27. Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

B. The Parties Settled Following Mediation

28. On January 26, 2022, the Parties participated in a mediation presided over Hon. Carl J. West (Ret.), a respected jurist experienced in wage and hour class and PAGA actions. Judge West helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge West's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective

1 evaluations of the damages. After several hours of arm's length and adversarial negotiations, the
2 mediation concluded with a settlement based on a Mediator's proposal which was subsequently
3 memorialized in the form of an MOU. The Parties then drafted and negotiated a long-form settlement
4 agreement. The amount of the service awards was not negotiated until after the parties agreed to the
5 Gross Settlement Amount and many other terms.

6 **C. Class Counsel is Experienced in Similar Litigation**

7 29. Plaintiff is represented by competent and experienced counsel to pursue his claims. I
8 established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing
9 aggrieved employees and consumers throughout California in wage and hour class actions and complex
10 multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade,
11 Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney), Sydney Castillo-Johnson (Associate
12 Attorney), Tesla Stone (Paralegal), Jennifer Hemming (Legal Secretary), and Sara Christensen (Legal
13 Assistant).

14 30. I am qualified to represent the Plaintiff, the State of California, and the Aggrieved
15 Employees. I have extensive experience with wage and hour class and representative actions litigation
16 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort
17 litigation experience and complex construction product liability experience. I can, will and have
18 adequately represented the interests of the Plaintiff, the State of California, and the Aggrieved
19 Employees throughout this action.

20 31. I have represented consumers and employees in California class actions, and complex
21 multi-party product liability actions exclusively for more than 14 years. I have been in practice as a
22 plaintiffs' civil litigation attorney since April 2007.

23 32. I have significant class counsel and collective action counsel experience. I served as class
24 and/or collective (PAGA) counsel in the following matters:

- 25 a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No.
26 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar
27 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The
28

1 Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA
2 counsel for the State of California.

3 b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914
4 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA
5 settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC
6 acted as class counsel for the settlement class and as representative PAGA counsel the
7 State of California and the Aggrieved Employees.)

8 c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-
9 CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million
10 dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums
11 and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

12 d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-
13 20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and
14 appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action
15 settlement.)

16 e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No.
17 CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and
18 PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed
19 the JCL Law Firm, APC as Class Counsel)

20 f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case
21 No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson
22 approved \$550 billing rate in a representative California Labor Code Private Attorney
23 General Act settlement).

24 g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case
25 No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA
26 settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as
27

class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)

i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)

j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)

l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)

m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)

n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of

1 PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC
2 acted as lead counsel.)

3 o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-
4 2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement
5 for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead
6 counsel.)

7 p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of
8 California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class
9 certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as
10 Class Counsel.)

11 q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court
12 Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law
13 Firm, APC, as Class Counsel and granted final approval for an unlawful housing class
14 action settlement arising out of Civil Code Section 1940.1.)

15 r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-
16 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as
17 class counsel and granted final approval of wage and hour class action for unpaid
18 overtime.)

19 s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case
20 No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm,
21 APC, as Class Counsel and granted preliminary approval for the wage and hour class
22 action settlement involving nearly 900 current and former employees. Final approval
23 scheduled for October 4, 2019)

24 t. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No.
25 CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC,
26 as Class Counsel and granted final approval for a wage and hour class action settlement
27 for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
28

- u. *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- v. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- w. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- x. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- y. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

33. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

34. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

35. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

D. The Gross Settlement Amount is Fair and Reasonable

36. Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount of Two Hundred Sixty-Four Thousand Dollars (\$264,000.00) represents a discount on Defendants' potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class.

37. As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The

various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendants' liability exposure for the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents between approximately 10.3% and 14.2% of Defendants' *class-wide* liability exposure as estimated by Class Counsel at the time of mediation.

38. Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.

E. The Strength of Plaintiff's Case and Risks of Continued Litigation

39. Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one its defenses, Defendants could defend the action or, at least, drastically undercut Plaintiff's claims.

40. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following

1 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
2 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
3 certification of driver meal and rest period claims based on the predominance of individual issues).
4 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
5 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
6 settlement.

7 41. Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
8 recognizes that Defendants have factual and legal defenses that, if successful, would potentially defeat
9 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
10 drastically affect the value of Plaintiff's claims and, in fact, already has.

11 42. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
12 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
13 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
14 that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post
15 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
16 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
17 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
18 an uncertain result three or more years in the future.

19 43. Class Representative and Class Counsel recognize the expense and length of a trial
20 against Defendants through possible appeals which could take another three years. In arriving at their
21 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
22 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful
23 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in
24 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
25 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
26 ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial
27 monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative
28

1 and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest
2 of the Class, is fair, reasonable, and adequate, and should be granted final approval.

3 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

4 44. Here, Plaintiff and Defendants negotiated a good faith PAGA Settlement in the amount
5 of \$10,000 which is 3.78% of the Gross Settlement Amount. As illustrated above, this amount falls
6 well within the range of approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA
7 Settlement (\$7,500) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five
8 percent (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA
9 penalties approved by courts and should be approved.

10 45. Further on March 4, 2022, Class Counsel gave the LWDA notice of this Settlement and
11 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
12 the LWDA. On August 16, 2022, Plaintiff gave the LWDA notice of this motion seeking final approval
13 of this settlement.

14 I declare under the penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct. Executed this 16th day of August 2022, at San Diego, California.

16 **JCL LAW FIRM, APC**

17 By: 
18 Jean-Claude Lapuyade

EXHIBIT A

ZAKAY LAW GROUP, APLC

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

OMAR VEJAR, on behalf of himself and on
behalf of all persons similarly situated,

PLAINTIFF,

vs.

FINELINE WOODWORKING, INC., a
California corporation; FINELINE
ARCHITECTURAL MILLWORK, INC., a
California Corporation; and DOES 1-50,
Inclusive;

DEFENDANTS.

Case No.: 30-2021-01208607-CU-OE-CXC

[Action Filed 06/29/2021]

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

Judge: Honorable Randall J. Sherman
Dept.: CX-105

This Stipulation for Settlement of Class and PAGA Action Claims and Release of Claims is entered into by and between plaintiff OMAR VEJAR (hereinafter, “Plaintiff”), an individual, on behalf of the Settlement Class, and in his representative capacity on behalf of the State of California and the Aggrieved Employees, on the one hand, and Defendants FINELINE WOODWORKING, INC. and FINELINE ARCHITECTURAL MILLWORK, INC., (hereinafter collectively, “Defendants”), on the other hand:

I. DEFINITIONS

- A. “Action” shall mean the putative class action lawsuit entitled *Vejar v. Fineline Woodworking, Inc., et al.*, Orange County Superior Court, Case No. 30-2021-01208607-CU-OE-CXC, filed June 29, 2021.
- B. “Aggrieved Employees” shall mean all employees who are or previously were employed by Fineline Woodworking Inc., or Fineline Architectural Millwork, Inc., and who were classified as non-exempt employees during the PAGA Period.
- C. “Agreement” or “Settlement Agreement” means this Stipulation for Settlement of Class Action and Release of Claims.
- D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and Shani Zakay of Zakay Law Group, APLC.
- E. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Settlement Class in the Action, consisting of attorneys’ fees not to exceed one-third of the \$264,000.00 Gross Settlement Amount (defined below), currently estimated to be \$88,000.00, plus costs of up to \$15,000.00. Attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC).
- F. “Class Data” means information regarding Class Members (defined below) that Defendants will in good faith compile from records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall

1 include: each Class Member's full name; last known address; Social Security
2 Number; and the time period during which the Class Member performed work for
3 Defendants.

4 G. "Class Members" or the "Class" means all employees who are or previously were
5 employed by defendant Fineline Woodworking, Inc., or Fineline Architectural
6 Millwork, Inc., in California and who were classified as non-exempt employees
7 during the Class Period.

8 H. "Class Period" means the period between June 29, 2017 to the earlier of March 26,
9 2022 or Preliminary Approval of this Settlement by the Court.

10 I. "Class Representative Service Award" means the amount that the Court authorizes to
11 be paid to the Class Representative, in addition to his Individual Settlement Payment
12 and his pro-rata share of the PAGA Settlement, in recognition of his efforts and risks
13 in assisting with the prosecution of the Action and in exchange for executing a
14 General Release of Claims, including a California *Civil Code* Section 1542 waiver
15 from the named Plaintiff.

16 J. "Class Representative" shall mean plaintiff, OMAR VEJAR.

17 K. "Court" means the Superior Court for the State of California, County of Orange,
18 currently presiding over the Action.

19 L. "Defendants" shall mean Fineline Woodworking, Inc., a California corporation, and
20 Fineline Architectural Millwork, Inc., a California corporation.

21 M. "Effective Date" means the earliest date, following entry by the Court of an Order
22 and Judgment finally approving this Settlement, upon which one of the following
23 have occurred: (i) if no objection is filed to the settlement and no objector appears at
24 the hearing on final approval, the date of the Court's entry of the Order granting final
25 approval, (ii) if an objection is filed to the settlement, or an objector appears at the
26 hearing on final approval, then the later of the following: (a) the expiration of all
27 potential appeal periods without a filing of a notice of appeal of the final approval
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Order or Judgment; (b) final affirmance of the final approval Order and Judgment by an appellate court as a result of any appeal(s); or (c) final dismissal or denial of all such appeals (including but not limited to any petition for review, rehearing, certiorari, etc.) such that the final approval Order and Judgment is no longer subject to further judicial review.

N. “Funding Date” shall mean the date Defendants transfer the Gross Settlement Amount into the QSF (defined below) in accord with the terms of this Agreement and shall occur within thirty (30) calendar days after the Court enters an Order granting preliminary approval of this Settlement.

O. “Individual Settlement Payment” means the amount payable from the Net Settlement Amount (defined below) to each Settlement Class Member and excludes any amounts distributed to Aggrieved Employees pursuant to PAGA.

P. “Net Settlement Amount” or “NSA” means the Gross Settlement Amount, less Class Counsel Award, Class Representative Service Award, PAGA Settlement (defined below), and Settlement Administrator (defined below) costs.

Q. “Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

R. “PAGA” means the California *Labor Code* Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

S. “PAGA Payment Ratio” means the respective pay periods during the PAGA Period for each Aggrieved Employee divided by the sum-total of the pay periods for all Aggrieved Employees during the PAGA Period.

T. “PAGA Period” means the period between April 23, 2020 to the earlier of March 26, 2022 or Preliminary Approval of this Settlement by the Court.

U. “PAGA Settlement” shall mean Ten Thousand Dollars (\$10,000) to be allocated from the Gross Settlement Amount.

- 1 V. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
2 Plaintiff or Defendants, individually.
- 3 W. "Payment Ratio" means the respective Workweeks for each Class Member divided
4 by the sum total Workweeks for all Class Members.
- 5 X. "Plaintiff" shall mean OMAR VEJAR.
- 6 Y. "QSF" means the Qualified Settlement Fund established, designated and maintained
7 by the Settlement Administrator to fund the Gross Settlement Amount.
- 8 Z. "Released Class Claims" means all class claims alleged in the operative Complaint
9 which accrued during the Class Period, and expressly excluding all other claims,
10 including claims for vested benefits, wrongful termination, unemployment insurance,
11 disability, Social Security, workers' compensation, and class claims outside of the
12 Class Period.
- 13 AA. "Released PAGA Claims" means all PAGA claims alleged in the operative Complaint
14 and Plaintiff's PAGA notice to the LWDA which accrued during the PAGA Period,
15 and expressly excluding all other claims, including claims for vested benefits,
16 wrongful termination, unemployment insurance, disability, Social Security, workers'
17 compensation, and PAGA claims outside of the PAGA Period.
- 18 BB. "Released Parties" shall mean Defendants and each of their predecessors, principals,
19 successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies,
20 enterprises, ventures, partners, insurers, investors, attorneys, officers, shareholders,
21 directors, agents, representatives, employees, and each of them.
- 22 CC. "Response Deadline" means the date forty-five (45) days after the Settlement
23 Administrator mails Notice Packets to Class Members and the last date on which
24 Class Members may submit requests for exclusion or objections to the Settlement.
- 25 DD. "Settlement" means the disposition of the Action pursuant to this Agreement.
- 26 EE. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
27 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
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1 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
2 Code section 468B and Treasury Regulation section 1.468B-1, a deposit account into
3 which the amount of the Gross Settlement Amount is deposited for the purpose of
4 resolving the claims of Settlement Class Members. The Settlement Administrator
5 shall maintain the funds in the deposit account until distribution. *All accrued interest*
6 *shall be paid and distributed to the Settlement Class Members as part of their*
7 *respective Individual Settlement Payment.*

8 FF. "Settlement Class Members" or "Settlement Class" means all Class Members who
9 have not submitted a timely and valid Request for Exclusion by the Response
10 Deadline as provided in this Agreement.

11 GG. "Gross Settlement Amount" means Two Hundred Sixty-Four Thousand Dollars
12 (\$264,000.00), which Defendants must pay into the QSF in connection with this
13 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
14 Representative Service Award, the Class Counsel Award, the PAGA Settlement, and
15 the Settlement Administration Costs, and *exclusive* of the employer's share of payroll
16 taxes, if any, triggered by any payment under this Settlement.

17 HH. "Workweeks," for purposes of calculating the distribution of the Net Settlement
18 Amount, means the number of weeks of employment during the Class Period that
19 each Class Member was employed by Defendants in California, excluding weeks
20 during which the Class Member did not perform any work for Defendants.

21 II. "PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved
22 Employee Payment, as defined herein, means the number of pay periods of
23 employment during the PAGA Period that each Aggrieved Employee worked in
24 California.

25 **II. RECITALS**

26 A. On April 23, 2021, Plaintiff filed a Notice of Violations with the Labor and Workforce
27 Development Agency (LWDA), and served the same on Defendants.

1 B. On June 29, 2021, Plaintiff filed the Action, asserting causes of action for:

- 2 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;
- 3 2. Failure to pay minimum wages, in violation of California Labor Code sections
- 4 1194, 1197 and 1197.1;
- 5 3. Failure to pay overtime wages, in violation of California Labor Code sections
- 6 510 *et seq*;
- 7 4. Failure to provide required meal periods, in violation of California Labor
- 8 Code sections 226.7 and 512 and the applicable IWC wage order;
- 9 5. Failure to provide required rest periods, in violation of California Labor Code
- 10 sections 226.7 and 512 and the applicable IWC wage order;
- 11 6. Failure to provide accurate itemized wage statements, in violation of
- 12 California Labor Code section 226;
- 13 7. Failure to reimburse Plaintiff for required expenses, in violation of California
- 14 Labor Code section 2802;
- 15 8. Failure to provide wages when due, in violation of California Labor Code
- 16 sections 201, 202 and 203; and
- 17 9. Violation of the Private Attorneys General Act [Labor Code section 2698].

18 C. The Class Representative believes he has meritorious claims based on the
19 aforementioned alleged violations of the California *Labor Code*, and the Industrial
20 Wage Commission Orders, that class certification is appropriate because the
21 prerequisites for class certification can be satisfied in the Action, and that the Action
22 is manageable as a PAGA representative Action.

23 D. Defendants deny any liability or wrongdoing of any kind associated with the claims
24 alleged in the Action, dispute that any wages, damages and penalties claimed by the
25 Class Representative are owed, and further contend that, for any purpose other than
26 settlement, the Action is not appropriate for class or representative action treatment.

Defendants contend, among other things, that at all times they complied with the California *Labor Code* and the Industrial Wage Commission Orders.

E. The Class Representative is represented by Class Counsel. Class Counsel conducted an investigation into the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through informal discovery, and reviewing documents and information provided by Defendants pursuant to informal requests for information to prepare for mediation. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendants is fair, reasonable and adequate, and is in the best interest of the Settlement Class, in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendants, uncertainties regarding class certification, and numerous potential appellate issues. Although they deny any liability, Defendants are agreeing to this Settlement solely to avoid the inconveniences and cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

F. On January 26, 2022, the Parties participated in mediation presided over by Hon. Carl J. West (Ret.), a respected jurist experienced in wage and hour class and PAGA actions. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal which was subsequently memorialized in the form of a Memorandum of Understanding ("MOU").

G. This Agreement replaces and supersedes the MOU and any other agreements, understandings, or representations between and among the Parties. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that the claims in the Action of Plaintiff or the Class Members have merit or that Defendants bear any liability to Plaintiff or the Class Members on those claims or any other

claims, or as an admission by Plaintiff that Defendants' defenses in the Action have merit.

H. 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. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

I. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserve all available defenses to the claims in the Action.

Based on these Recitals, which are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendants.

1. Settlement Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendants and the Released Parties will pay the sum of the Individual Settlement Payment, the Class Representative Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement Administration Costs, as specified in this Agreement, in the Gross Settlement Amount of Two Hundred Sixty-Four Thousand Dollars (\$264,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendants. Other than the Defendants' share of employer payroll taxes and as provided for in Section III(A)(2) below, if any, Defendants shall not be required to pay more than the Gross Settlement Amount.

- 1 2. Class Size. At the time of mediation, Defendants estimated that the Settlement
2 Class was comprised of 185 individuals who collectively worked
3 approximately 13,108 Workweeks (“Projected Workweeks”) during the Class
4 Period. Accordingly, this figure will be used in the moving papers on the
5 motion for preliminary approval of the settlement. No more than five days
6 before the court hearing on said motion, Defendants will submit a
7 supplemental filing providing an updated number of applicable Class
8 Members and workweeks they worked during the applicable Class Period. If
9 the workweek number increases by more than 10% of the estimate stated
10 herein, the Settlement Amount will increase proportionally for the number of
11 workweeks over 110% of 13,108 (14,419).
- 12 3. Settlement Payment. Defendants are jointly and severally liable for payment
13 of the Gross Settlement Amount. Defendants shall pay the Gross Settlement
14 Amount to the Settlement Administrator on the Funding Date.
- 15 4. Defendants’ Share of Payroll Taxes. Defendants’ share of employer side
16 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
17 to the appropriate federal and state agencies in accordance with federal and
18 California law on the subject, together with the Gross Settlement Amount.
- 19 B. Release by Settlement Class Members. As of the Effective Date, in exchange for the
20 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
21 release the Released Parties from the Released Class Claims for the Class Period.
- 22 C. Release by the Aggrieved Employees. As of the Effective Date, in exchange for the
23 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
24 California release the Released Parties from the PAGA Released Claims for the PAGA
25 Period.
- 26 D. General Release by Plaintiff. As of the Effective Date, for the consideration set forth
27 in this Agreement, Plaintiff waives, releases, acquits and forever discharges the
28

1 Released Parties from any and all claims, whether known or unknown, which exist or
2 may exist on his behalf as of the date of this Agreement, including but not limited to
3 any and all tort claims, contract claims, wage claims, wrongful termination claims,
4 disability claims, benefit claims, public policy claims, retaliation claims, statutory
5 claims, personal injury claims, emotional distress claims, invasion of privacy claims,
6 defamation claims, fraud claims, quantum meruit claims, and any and all claims
7 arising under any federal, state or other governmental statute, law, regulation or
8 ordinance, including, but not limited to, claims for violation of the Fair Labor
9 Standards Act, the California *Labor Code*, the Wage Orders of California's Industrial
10 Welfare Commission, other state wage and hour laws, the Americans with
11 Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
12 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the
13 California Fair Employment and Housing Act, the California Family Rights Act, the
14 Family Medical Leave Act, California's Whistleblower Protection Act, California
15 Business & Professions Code Section 17200 et seq., and any and all claims arising
16 under any federal, state or other governmental statute, law, regulation or ordinance.
17 Plaintiff also waives and relinquishes any and all claims, rights or benefits that he
18 may have under California *Civil Code* § 1542, which provides as follows:

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

25 Thus, notwithstanding the provisions of section 1542, and to implement a full and
26 complete release and discharge of the Released Parties, Plaintiff expressly
27 acknowledges this Settlement Agreement is intended to include in its effect, without
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1 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
2 the time of signing this Settlement Agreement, and that this Settlement Agreement
3 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
4 has read this Settlement Agreement, including this waiver of California Civil Code
5 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
6 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically
7 about the waiver of section 1542, and that Plaintiff understands this Settlement
8 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
9 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
10 discover facts different from or in addition to those Plaintiff now knows or believes to
11 be true regarding the matters released or described in this Settlement Agreement, and
12 even so Plaintiff agrees that the releases and agreements contained in this Settlement
13 Agreement shall remain effective in all respects notwithstanding any later discovery
14 of any different or additional facts. Plaintiff expressly assumes any and all risk of any
15 mistake in connection with the true facts involved in the matters, disputes, or
16 controversies released or described in this Settlement Agreement or with regard to any
17 facts now unknown to Plaintiff relating thereto.

18 E. Conditions Precedent: This Settlement will become final and effective only upon the
19 occurrence of all of the following events:

- 20 1. The Court enters an Order granting preliminary approval of the Settlement;
- 21 2. The Court enters an Order granting final approval of the Settlement and a Final
22 Judgment;
- 23 3. If an objector appears at the final approval hearing, the expiration of the time
24 for appeal of the Final Judgment and Order Granting Final Approval of Class
25 Action Settlement; or, if an appeal is timely filed, there is a final resolution of
26 any appeal from the Judgment and Order Granting Final Approval of Class
27 Action Settlement; and

1 4. Defendants fully fund the Gross Settlement Amount.

2 F. Nullification of Settlement Agreement. If this Settlement Agreement is not
3 preliminarily or finally approved by the Court, fails to become effective, or is reversed,
4 withdrawn or modified by the Court, or in any way prevents or prohibits Defendants
5 from obtaining a complete resolution of the Released Claims, or if Defendants fail to
6 fully fund the Gross Settlement Amount:

7 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
8 and shall not be admissible in any judicial, administrative, or arbitral
9 proceeding for any purpose, or with respect to any issue, substantive or
10 procedural;

11 2. The conditional class certification (obtained for any purpose) shall be void *ab*
12 *initio* and of no force or effect, and shall not be admissible in any judicial,
13 administrative, or arbitral proceeding for any purpose, or with respect to any
14 issue, substantive or procedural;

15 3. None of the Parties to this Settlement will be deemed to have waived any
16 claims, objections, defenses or arguments in the Action, including with respect
17 to the issue of class certification;

18 4. Any amounts deposited by Defendants into the QSF, plus any interest accrued,
19 shall be returned to Defendants within five (5) business days of Defendants'
20 written request for repayment upon the Settlement Administrator; and

21 5. If Defendants fail to fully fund the Gross Settlement Amount, Defendants
22 shall bear the sole responsibility for any cost to issue or reissue any curative
23 notice to the Settlement Class Members and all Settlement Administration
24 Costs incurred to the date of nullification.

25 G. Certification of the Settlement Class. The Parties stipulate to conditional class
26 certification of the Class for the Class Period for purposes of settlement only. In the
27 event that this Settlement is not approved by the Court, fails to become effective, or is
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1 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
2 Defendants from obtaining a complete resolution of the Released Claims, the
3 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
4 no force or effect, and shall not be admissible in any judicial, administrative, or arbitral
5 proceeding for any purpose, or with respect to any issue, substantive or procedural.

6 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
7 effect of the payments called for, and Class Members and/or Aggrieved Employees are
8 not relying on any statements or representations by the Parties in this regard. Class
9 Members and/or Aggrieved Employees understand and agree that they will be
10 responsible for the payment of any taxes and penalties assessed on the Individual
11 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
12 Settlement, and will be solely responsible for any penalties or other obligations
13 resulting from their personal tax reporting of Individual Settlement Payments and/or
14 Aggrieved Employees' individual shares of the PAGA Settlement.

15 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
16 the "acknowledging party" and each Party to this Agreement other than the
17 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision
18 of this Agreement, and no written communication or disclosure between or among the
19 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
20 such communication or disclosure constitute or be construed or be relied upon as, tax
21 advice, within the meaning of United States Treasury Department circular 230 (31
22 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon
23 his, her or its own, independent legal and tax counsel for advice (including tax advice)
24 in connection with this Agreement, (b) has not entered into this Agreement based upon
25 the recommendation of any other Party or any attorney or advisor to any other Party,
26 and (c) is not entitled to rely upon any communication or disclosure by any attorney
27 or adviser to any other Party to avoid any tax penalty that may be imposed on the
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acknowledging party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. Class Counsel shall draft and file the motion for preliminary approval within ten (10) calendar days of execution of this Agreement.

K. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representative, Class Counsel, LWDA and Class Members; printing and mailing the Notice Packets to the Class Members as directed by the Court; receiving and reporting the objections and requests for exclusion; calculating, deducting and remitting all legally required taxes from Individual Settlement Payments and distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement; processing and mailing tax payments to the appropriate state and federal taxing authorities; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree, or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities by, among other things, sending a weekly status report to the Parties' counsel stating the date of the mailing, the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and the number of objections received.

L. Notice Procedure.

1. Class Data. No later than ten (10) business days after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with

1 the Class Data for purposes of preparing and mailing Notice Packets to the
2 Class Members.

3 2. Notice Packets.

4 a) The Notice Packet shall contain the Notice of Class Action Settlement
5 in a form substantially similar to the form attached as **Exhibit A** and a
6 Request for Exclusion form substantially similar to the form attached
7 hereto as **Exhibit B**. The Notice of Class Action Settlement shall
8 inform Class Members and Aggrieved Employees that they need not
9 do anything in order to receive an Individual Settlement Payment
10 and/or Aggrieved Employees' individual shares of the PAGA
11 Settlement and to keep the Settlement Administrator apprised of their
12 current mailing address, to which the Individual Settlement Payments
13 and/or Aggrieved Employees' individual shares of the PAGA
14 Settlement will be mailed following the Funding Date. The Notice of
15 Class Action Settlement shall set forth the release to be given by all
16 members of the Class who do not request to be excluded from the
17 Settlement Class and/or Aggrieved Employees' in exchange for an
18 Individual Settlement Payment and/or Aggrieved Employees'
19 individual shares of the PAGA Settlement; the number of Workweeks
20 worked by each Class Member during the Class Period and PAGA
21 Period, if any; and the estimated amount of their Individual Settlement
22 Payment if they do not request to be excluded from the Settlement and
23 each Aggrieved Employee's share of the PAGA Settlement, if any.
24 The Settlement Administrator shall use the Class Data to determine
25 Class Members' Workweeks and PAGA Workweeks. The Notice will
26 also advise the Aggrieved Employees that they will release the
27 Released PAGA Claims and will receive their share of the PAGA
28

1 Settlement regardless of whether they request to be excluded from the
2 Settlement.

3 b) The Notice Packet's mailing envelope shall include the following
4 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
5 ENTITLED TO PARTICIPATE IN A CLASS ACTION
6 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
7 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
8 NOTICE."

9 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
10 Settlement Administrator will perform a search based on the National Change
11 of Address Database to update and correct any known or identifiable address
12 changes. No later than fourteen (14) calendar days after receiving the Class
13 Data from Defendants, the Settlement Administrator shall mail copies of the
14 Notice Packet to all Class Members via regular First-Class U.S. Mail. The
15 Settlement Administrator shall exercise its best judgment to determine the
16 current mailing address for each Class Member. The address identified by the
17 Settlement Administrator as the current mailing address shall be presumed to
18 be the best mailing address for each Class Member.

19 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
20 Administrator as non-delivered on or before the Response Deadline shall be
21 re-mailed to any forwarding address provided. If no forwarding address is
22 provided, the Settlement Administrator shall promptly attempt to determine a
23 correct address by lawful use of skip-tracing, or other search using the name,
24 address, and/or Social Security number of the Class Member involved, and
25 shall then perform a re-mailing, if another mailing address is identified by the
26 Settlement Administrator. In addition, if any Notice Packets, which are
27 addressed to Class Members who are currently employed by Defendants, are
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1 returned to the Settlement Administrator as non-delivered and no forwarding
2 address is provided, the Settlement Administrator shall notify Defendants.
3 Defendants will request that the currently employed Class Member provide a
4 corrected address, and transmit to the Settlement Administrator any corrected
5 address provided by the Class Member. Class Members who receive a re-
6 mailed Notice Packet shall have their Response Deadline extended fifteen (15)
7 days from the original Response Deadline.

8 5. Disputes Regarding Individual Settlement Payments. Class Members will
9 have the opportunity, should they disagree with Defendants' records regarding
10 the start and end dates of employment, to provide documentation and/or an
11 explanation to show contrary dates. If there is a dispute, the Settlement
12 Administrator will consult with the Parties to determine whether an
13 adjustment is warranted, and work in good faith to attempt to resolve the
14 dispute. If, however, the Parties and the Settlement Administrator are unable
15 to resolve the dispute to the satisfaction of the Class Member, the Court shall
16 retain jurisdiction to resolve the dispute and the Court's resolution shall be
17 binding upon the Class Member and the Parties.

18 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
19 by the Settlement Administrator concerning the administration of the
20 Settlement will be resolved by the Court under the laws of the State of
21 California. Before any such involvement of the Court, counsel for the Parties
22 will meet and confer in good faith to resolve the disputes without the necessity
23 of involving the Court.

24 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
25 Packet shall state that Class Members who wish to exclude themselves from
26 the Settlement must submit a signed copy of the Request for Exclusion form
27 to the Settlement Administrator by the Response Deadline. A Request for
28

1 Exclusion form will be mailed together with the Notice Packet to all Class
2 Members. The Request for Exclusion will not be valid if it is not timely
3 submitted, if it is not signed by the Class Member, or if it does not contain the
4 name and address and last four digits of the Social Security number of the
5 Class Member. The date of the postmark on the mailing envelope or fax stamp
6 on the Request for Exclusion shall be the exclusive means used to determine
7 whether the request for exclusion was timely submitted. Any Class Member
8 who submits a timely Request for Exclusion shall be excluded from the
9 Settlement Class, will not be entitled to an Individual Settlement Payment,
10 and will not be otherwise bound by the terms of the Settlement or have any
11 right to object, appeal or comment thereon. However, any Class Member that
12 submits a timely Request for Exclusion that is also a member of the Aggrieved
13 Employees will still receive his/her pro rata share of the PAGA Settlement, as
14 specified below, and in consideration, will be bound by the Release by the
15 Aggrieved Employees as set forth herein. Settlement Class Members who fail
16 to submit a valid and timely Request for Exclusion on or before the Response
17 Deadline shall be bound by all terms of the Settlement and any final judgment
18 entered in this Action, if the Settlement is approved by the Court. No later
19 than fourteen (14) calendar days after the Response Deadline, the Settlement
20 Administrator shall provide counsel for the Parties with a final list of the Class
21 Members who have timely submitted timely Requests for Exclusion. At no
22 time shall any of the Parties or their counsel seek to solicit or otherwise
23 encourage members of the Class to submit Requests for Exclusion from the
24 Settlement.

- 25 8. Objections. The Notice of Class Action Settlement contained in the Notice
26 Packet shall state that Class Members who wish to object to the Settlement
27 may submit to the Settlement Administrator a written statement of objection
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(“Notice of Objection”) by the Response Deadline. The postmark date of mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the case name and number; (2) the name of the Settlement Class Member; (3) the address of the Settlement Class Member; (4) the last four digits of the Settlement Class Member’s Social Security number; (4) the basis for the objection; and (5) if the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. Class Members who fail to make objections in writing in the manner specified above may still make their objections orally at the Final Approval/Settlement Fairness Hearing, with the Court’s permission. Settlement Class Members will have a right to appear at the Final Approval/Settlement Fairness Hearing to have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Class Members who submit a written request for exclusion may not object to the Settlement. Class Members may not object to the PAGA Settlement

M. Funding and Allocation of the Gross Settlement Amount. Defendants are required to pay the Gross Settlement Amount on or before the Funding Date, plus any employer’s share of payroll taxes, if any, as mandated by law, within the time specified herein.

1. Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each

1 Class Member. Each Class Member's Payment Ratio will then be multiplied
2 by the Net Settlement Amount to calculate each Class Member's estimated
3 Individual Settlement Payments. Each Individual Settlement Payment will be
4 reduced by any legally mandated employee tax withholdings (e.g., employee
5 payroll taxes, etc.). Individual Settlement Payments for Class Members who
6 submit valid and timely requests for exclusion will be redistributed to
7 Settlement Class Members who do not submit valid and timely requests for
8 exclusion on a pro rata basis based on their respective Payment Ratios.

9 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
10 Class Data, the Settlement Administrator shall add up the total number of
11 PAGA pay periods for all Aggrieved Employees during the PAGA Period.
12 The respective PAGA pay periods for each Aggrieved Employee will be
13 divided by the total PAGA pay periods for all Aggrieved Employees, resulting
14 in the "PAGA Payment Ratio" for each Aggrieved Employee. Each
15 Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the
16 Aggrieved Employee Payment to calculate each Aggrieved Employee's
17 estimated share of the PAGA Settlement.

18 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
19 Settlement Payments shall be allocated and treated as 10% wages ("Wage
20 Portion") and 90% interest and penalties ("Non-Wage Portion"). The Wage
21 Portion of the Individual Settlement Payments shall be reported on IRS Form
22 W-2 and the Non-wage Portion of the Individual Settlement Payments shall
23 be reported on IRS Form 1099.

24 4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
25 Employee Settlement Payments shall be allocated and treated as 100%
26 penalties and shall be reported on IRS Form 1099.

- 1 5. No Credit Toward Benefit Plans. The Individual Settlement Payments and
2 individual shares of the PAGA Settlement made to Settlement Class Members
3 and/or Aggrieved Employees under this Settlement Agreement, as well as any
4 other payments made pursuant to this Settlement Agreement, will not be
5 utilized to calculate any additional benefits under any benefit plans to which
6 any Class Members may be eligible, including, but not limited to, profit-
7 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
8 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
9 Parties' intention that this Settlement Agreement will not affect any rights,
10 contributions, or amounts to which any Class Members may be entitled under
11 any such benefit plans.
- 12 6. All monies received by Settlement Class Members under the Settlement which
13 are attributable to wages shall constitute income to such Settlement Class
14 Members solely in the year in which such monies actually are received by the
15 Settlement Class Members. It is the intent of the Parties that Individual
16 Settlement Payments and individual shares of the PAGA Settlement provided
17 for in this Settlement agreement are the sole payments to be made by Defendants
18 to Settlement Class Members and/or Aggrieved Employees in connection with
19 this Settlement Agreement, with the exception of Plaintiff, and that the
20 Settlement Class Members and/or Aggrieved Employees are not entitled to any
21 new or additional compensation or benefits as a result of having received the
22 Individual Settlement Payments and/or their shares of the PAGA Settlement.
- 23 7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
24 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
25 and/or Aggrieved Employees last known mailing address no later than fifteen
26 (15) calendar days after the Funding Date.

1 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved
2 Employees shall remain valid and negotiable for one hundred and eighty (180)
3 days from the date of their issuance. If a Settlement Class Member and/or
4 Aggrieved Employee does not cash his or her settlement check within 90 days,
5 the Settlement Administrator will send a letter to such persons, advising that
6 the check will expire after the 180th day, and invite that Settlement Class
7 Member and/or Aggrieved Employee to request reissuance in the event the
8 check was destroyed, lost or misplaced. In the event an Individual Settlement
9 Payment and/or Aggrieved Employee's individual share of the PAGA
10 Settlement check has not been cashed within one hundred and eighty (180)
11 days, all funds represented by such uncashed checks, plus any interest accrued
12 thereon, shall be transmitted to the Controller of the State of California to be
13 held pursuant to the Unclaimed Property Law, California Civil Code § 1500
14 *et seq.*, in the names and corresponding amounts associated with each Class
15 Member and/or Aggrieved Employee whose check(s) are cancelled.

16 9. Class Representative Service Award. In addition to the Individual Settlement
17 Payment and his individual share of the PAGA Settlement to be paid to
18 Plaintiff, Plaintiff will apply to the Court for an award of not more than
19 \$10,000, as the Class Representative Service Award. Defendants do not
20 presently intend to oppose a Class Representative Service Award of no more
21 than \$10,000 for Plaintiff. The Settlement Administrator shall pay the Class
22 Representative Service Award to Plaintiff, either in the amount stated herein
23 if approved by the Court or some other amount as approved by the Court, from
24 the Gross Settlement Amount no later than fifteen (15) calendar days after the
25 Effective Date. Any portion of the requested Class Representative Service
26 Award that is not awarded to the Class Representative shall be part of the Net
27 Settlement Amount and shall be distributed to Settlement Class Members as

provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Class Representative Service Award and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Award. The Class Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Class Representative Service Award. If the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding.

10. Class Counsel Award. Defendants understand a motion will be filed by Class Counsel for attorneys' fees in an amount not to exceed one-third of the Gross Settlement Amount, currently estimated to be \$88,000.00, plus costs and expenses supported by declaration in an amount not to exceed Fifteen Thousand Dollars (\$15,000), payable from the Gross Settlement Amount. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall allocate and pay the Class Counsel Award to Class Counsel from the Gross Settlement Amount no later than fifteen (15) calendar days after the Effective Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Class

Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke the Settlement, or to appeal such Order, and the Settlement will remain binding.

11. PAGA Settlement. Ten Thousand Dollars (\$10,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Settlement (\$7,500.00) to the California Labor and Workforce Development Agency no later than fifteen (15) calendar days after the Effective Date (hereinafter “LWDA Payment”). Twenty-five percent (25%) of the PAGA Settlement (\$2,500.00) will be distributed to the Aggrieved Employees as described in this Agreement (“Aggrieved Employee Payment”). For purposes of distributing the PAGA Settlement to the Aggrieved Employees, each Aggrieved Employee shall receive their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as defined above.

12. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Settlement Administration Costs is \$8,500. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after the Effective Date.

N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Class Representative Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will provide Defendants with a draft of the Motion at least five (5) business days prior to

the filing of the Motion to give Defendants an opportunity to propose revisions to the Motion.

1. Declaration by Settlement Administrator. No later than fourteen (14) days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement, detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the number of objections received, the amount of the average Individual Settlement Payment and highest Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree, or the Court orders the Settlement Administrator to provide.

2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

N. Review of Motions for Preliminary Approval and Final Approval. Class Counsel will provide an opportunity for Defendants' Counsel to review the Motions for Preliminary Approval and Final Approval, including the Order Granting Final Approval of Class Action Settlement and (proposed) Judgment, before filing same with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to affect the Court's approval of the Motions for Preliminary Approval and Final Approval of the Settlement, and entry of Judgment.

O. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement this Settlement Agreement.

- 1 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
2 except such proceedings necessary to implement and complete the Settlement, pending
3 the Final Approval/Settlement Fairness Hearing to be conducted by the Court
- 4 Q. Amendment or Modification. This Agreement may be amended or modified only by
5 a written instrument signed by counsel for all Parties or their successors-in-interest.
- 6 R. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
7 Agreement among these Parties, and no oral or written representations, warranties or
8 inducements have been made to any Party concerning this Agreement or its Exhibits
9 other than the representations, warranties and covenants contained and memorialized
10 in this Agreement and its Exhibits.
- 11 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
12 represent they are expressly authorized by the Parties whom they represent to negotiate
13 this Agreement and to take all appropriate Action required or permitted to be taken by
14 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
15 documents required to effectuate the terms of this Agreement. The persons signing
16 this Agreement on behalf of Defendants represent and warrant that he/she is authorized
17 to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that
18 he is authorized to sign this Agreement and that he has not assigned any claim, or part
19 of a claim, covered by this Settlement, to a third-party.
- 20 T. No Public Comment: The Parties and their counsel agree that they will not issue any
21 press releases, initiate any contact with the press, respond to any press inquiry, or have
22 any communication with the press about the fact, amount or terms of this Settlement
23 Agreement. Class Counsel further agree not to use the Settlement Agreement or any
24 of its terms for any marketing or promotional purposes. Nothing herein will restrict
25 Class Counsel from including publicly available information regarding this settlement
26 in future judicial submissions regarding Class Counsel's qualifications and experience.
27 Further, Class Counsel will not include, reference or use the Settlement Agreement for
28

any marketing or promotional purposes, either before or after the Motion for Preliminary Approval is filed.

U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.

V. California Law Governs. All terms of this Agreement and any disputes arising therefrom shall be governed by and interpreted according to the laws of the State of California.

W. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement, and all Orders and the Judgment entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement and all Orders and the Judgment entered in connection with this Agreement.

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

AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently intend to pursue any claims against the Released Parties, including, but not limited to,

1 any and all claims relating to or arising from Plaintiff's employment with Defendants,
2 regardless of whether Class Counsel is currently aware of any facts or legal theories
3 upon which any claims or causes of action could be brought against Released Parties,
4 including those facts or legal theories alleged in the operative Complaint in this Action.
5 The Parties further acknowledge, understand and agree that this representation is
6 essential to the Settlement and that this Agreement would not have been entered into
7 were it not for this representation.

8 BB. Waiver of Certain Appeals. The Parties agree to waive appeals.

9 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
10 Released Claims have merit and give rise to liability on the part of Defendants.
11 Defendants claim that the Released Claims have no merit and do not give rise to
12 liability. This Agreement is a compromise of disputed claims. Nothing contained in
13 this Agreement and no documents referred to and no action taken to carry out this
14 Agreement may be construed or used as an admission by or against the Defendants or
15 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
16 than as may be specifically set forth herein, each Party shall be responsible for and
17 shall bear its/his own attorney's fees and costs.

18 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:
19

20
21 DATED: Feb 18, 2022


Omar Vejar (Feb 18, 2022 19:50 PST)

OMAR VEJAR

1 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

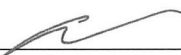
2
3 DATED: 2.18.2022


FINELINE WOODWORKING, INC.

4
5 Mary Burton
Printed Name

6
7 CEO
Title

8 DATED: 2.18.2022


FINELINE ARCHITECTURAL MILL WORK, INC.

10
11 Mary Burton
Printed Name

12
13 CEO
Title

14
15 IT IS SO AGREED AS TO FORM BY COUNSEL:

16 DATED: February 22, 2022

JCL LAW FIRM, A.P.C.

18 By: 

19 Attorneys for Plaintiff and the Settlement Class
20 Members

21 DATED: February 22, 2022

ZAKAY LAW GROUP, APLC

23 By: 

24 Attorneys for Plaintiff and the Settlement Class
25 Members

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DATED: February 18, 2022

FITZGERALD YAP KREDITOR LLP

By: 
Eoin L. Kreditor
Charles C. McKenna
Attorneys for Defendants

EXHIBIT B

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF ORANGE**

9 OMAR VEJAR, on behalf of himself and on
10 behalf of all persons similarly situated,

11 Plaintiffs,

12 vs.

13 FINELINE WOODWORKING, INC., a
14 California Corporation, FINELINE
15 ARCHITECTURAL MILLWORK, INC., a
16 California Corporation; and DOES 1-50,
17 Inclusive,

18 Defendants.

Case No. 30-2021-01208607-CU-OE-CXC

**~~AMENDED~~ [PROPOSED] ORDER
GRANTING PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Dept.: CX105

Judge: Randall J. Sherman

Date: May 20, 2022

Time: 10:00 A.M.

Reservation ID: 73712866

18 This matter having come before the Superior Court of the State of California, in and for
19 the County of Orange, on May 20, 2022 at 10:00 a.m., with Jean-Claude Lapuyade, Esq., of the
20 JCL Law Firm, APC, and Shani O. Zakay, Esq. of the Zakay Law Group, APLC, as counsel for
21 Plaintiff OMAR VEJAR ("Plaintiff") and Charles McKenna, Esq. of Fitzgerald Yap Kreditor,
22 LLP, appearing for defendants FINELINE WOODWORKING, INC. and FINELINE
23 ARCHITECTURAL MILLWORK, INC., (hereinafter collectively "Defendants"). The Court,
24 having carefully considered the briefs, argument of counsel and all the matters presented to the
25 Court, and good cause appearing, hereby GRANTS Plaintiff's Motion for Preliminary Approval
26 of Class Action Settlement.

27 ////
28

1 **IT IS HEREBY ORDERED:**

2 1. The Court preliminarily approves the Stipulation for Settlement of Class Action
3 Claims and PAGA Action and Release of Claims (“Settlement Agreement” or “Agreement”), a
4 true and correct copy of which is attached to the Declaration of Jean-Claude Lapuyade, Esq. as
5 **Exhibit “1”**. This is based on the Court’s determination that the Settlement Agreement is within
6 the range of possible final approval, pursuant to the provisions of Section 382 of the California
7 *Code of Civil Procedure* and California *Rules of Court*, Rule 3.769.

8 2. This Order incorporates by reference the definitions in the Agreement, and all
9 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

10 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount
11 that Defendants shall pay is Two Hundred Sixty-Four Thousand Dollars (\$264,000.00). It
12 appears to the Court on a preliminary basis that the settlement amount and terms are fair,
13 adequate, and reasonable as to the entire Class, when balanced against the probable outcome of
14 further litigation relating to certification, liability, and damages issues. It further appears that
15 investigation and research have been conducted such that counsel for the Parties are able to
16 reasonably evaluate their respective positions. It further appears to the Court that settlement at
17 this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks
18 that would be presented by the further prosecution of the litigation. It further appears that the
19 Settlement has been reached as the result of intensive, serious, and non-collusive arms-length
20 negotiations.

21 4. The Court preliminarily finds that the Settlement appears to be within the range of
22 reasonableness of a settlement that could ultimately be given final approval by this Court. The
23 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
24 preliminarily finds that the monetary settlement awards made available to the Settlement Class
25 are fair, adequate, and reasonable, when balanced against the probable outcome of further
26 litigation relating to certification, liability, and damages issues.

27 5. The Agreement specifies an award of Attorneys’ Fees and Costs in the amount of
28 up-to one-third of the Gross Settlement Amount for attorneys’ fees, currently estimated at

1 \$88,000.00 **and** an award of litigation expenses incurred, not to exceed \$15,000.00, and a
2 proposed Class Representative Service Award to the Class Representative, Omar Vejar, in an
3 amount not to exceed \$10,000.00. While these awards appear to be within the range of
4 reasonableness, the Court will not approve the Class Counsel Award or Class Representative
5 Service Award until the Final Approval Hearing.

6 6. The Court recognizes that Plaintiff and Defendants stipulate and agree to
7 certification of a class for settlement purposes only. This stipulation will not be deemed
8 admissible in this or any other proceeding should this Settlement not become final. For settlement
9 purposes only, the Court conditionally certifies the following Class:

10 “All employees who are or previously were employed by defendant
11 Fineline Woodworking, Inc., or Fineline Architectural Millwork, Inc.,
12 in California and who were classified as non-exempt employees
13 during the Class Period. The Class Period means the period between
14 June 29, 2017 to the earlier of March 26, 2022 or Preliminary
15 Approval of this Settlement by the Court (the “Class Period”).”

16 7. The Court preliminarily concludes that, for settlement purposes only, the Class
17 meets the requirements for certification under section 382 of the California *Code of Civil*
18 *Procedure* in that: (a) the Class is ascertainable and so numerous that joinder of all members of
19 the Class is impracticable; (b) common questions of law and fact predominate, and there is a
20 well-defined community of interest amongst the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Class Representative are typical of the claims of the Class; (d) the
22 Class Representative will fairly and adequately protect the interests of the Class; (e) a class action
23 is superior to other available methods for the efficient adjudication of this controversy; and (f)
24 Class Counsel are qualified to act as counsel for the Class Representative in his individual
25 capacity and as the representative of the Class Members.

26 8. For settlement purposes only, the Court provisionally appoints plaintiff Omar Vejar
27 as the representative of the Class.

28 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law

1 Firm, A.P.C., and Shani Zakay, Esq., of the Zakay Law Group, APLC, as Class Counsel for the
2 Class.

3 10. The Court hereby approves, as to form and content, the Proposed Notice of
4 Pendency of Class Action Settlement and Final Hearing Date (“Class Notice”) attached hereto as
5 **Exhibit “A”**. The Court finds the Notice appears to fully and accurately inform the Class and
6 Aggrieved Employees of all material elements of the proposed Settlement, including the right of
7 any Class member to be excluded from the Settlement Class by submitting a written request for
8 exclusion, and of each Class member’s right and opportunity to object to the Settlement. The
9 Court further finds that the distribution of the Class Notice, substantially in the manner and form
10 set forth in the Agreement and this Order, meets the requirements of due process, is the most
11 reasonable notice under the circumstances, and shall constitute due and sufficient notice to all
12 persons entitled thereto. The Court orders the mailing of the notice by first class mail, pursuant to
13 the terms set forth in the Agreement.

14 11. The Court hereby appoints ILYM Group, Inc. as Settlement Administrator. Within
15 ten (10) business days of this Order, Defendants shall provide to the Settlement Administrator the
16 Class List, including information regarding Class Members that Defendants will in good faith
17 compile from their records, including each Class Member’s full name; last known address; Social
18 Security Number; dates of employment, and number of Workweeks accrued by each Class
19 Member during the Class Period and the PAGA Period. Within fourteen (14) calendar days after
20 receiving the Class List from Defendants, the Settlement Administrator shall mail the Class
21 Notice to all identified, potential members of the Class via first class U.S. Mail, using the most
22 current mailing address information available.

23 12. The Court hereby preliminarily approves the proposed procedure for exclusion
24 from the Settlement, attached hereto as **Exhibit “B”** (“Request for Exclusion Form”). Any Class
25 Member may individually choose to opt out of and be excluded from the Settlement as provided
26 in the Notice by following the instructions for requesting exclusion from the Settlement of the
27 Released Claims that are set forth in the Notice and Request for Exclusion Form. All requests for
28 exclusion must be postmarked or received by the Response Deadline which is forty-five (45)

1 calendar days after the date the Class Notice is mailed to the Settlement Class Member or, in the
2 case of a re-mailed Class Notice, not more than fifteen (15) calendar days after the original
3 Response Deadline. Any such person who chooses to opt out of and be excluded from the
4 Settlement will not be entitled to an Individual Settlement Payment for the class action portion
5 under the Settlement and will not be bound by the Settlement, or have any right to object, appeal
6 or comment thereon. Settlement Class members who have not requested exclusion shall be bound
7 by all determinations of the Court, the Agreement and the Judgment. A request for exclusion may
8 only opt out that particular individual, and any attempt to affect an opt-out of a group, class, or
9 subclass of individuals is not permitted and will be deemed invalid.

10 13. Any Settlement Class member who has not opted out may appear at the final
11 approval hearing and may object or express the Member's views regarding the Settlement and
12 may present evidence and file briefs or other papers that may be proper and relevant to the issues
13 to be heard and determined by the Court as provided in the Notice. Settlement Class Members
14 will have forty-five (45) days from the date the Settlement Administrator mails the Class Notice
15 to postmark any written objections to the Settlement Administrator.

16 14. A Final Approval Hearing shall be held before this Court on September 9, 2022 at
17 10:00 a.m. in Department CX-105 of the Orange County Superior Court to determine all
18 necessary matters concerning the Settlement, including: whether the proposed settlement of the
19 Action on the terms and conditions provided for in the Agreement is fair, adequate and
20 reasonable and should be finally approved by the Court; whether an Order Granting Final
21 Approval should be entered herein; whether the plan of allocation contained in the Agreement
22 should be approved as fair, adequate and reasonable to the Class; and to finally approve the Class
23 Counsel Award, Class Representative Service Award, and the Settlement Administration Costs.
24 Class Counsel and Plaintiff shall use best efforts to file all papers in support of the Motion for
25 Final Approval, and the Motion for Attorneys' Fee and Costs and Class Representative Service
26 Award shall be filed with the Court and served on all counsel no later than twenty-eight (28) days
27 following the expiration of the Response Deadline.

28 15. Neither the Settlement nor any exhibit, document, or instrument delivered

1 thereunder shall be construed as a concession or admission by Defendants in any way, and shall
2 not be used as evidence of, or used against Defendants as, an admission or indication in any way,
3 including with respect to any claim of any liability, wrongdoing, fault or omission by Defendants
4 or with respect to the truth of any allegation asserted by any person. Whether or not the
5 Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement,
6 proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any
7 event be construed as, offered or admitted in evidence as, received as, or deemed to be evidence
8 for any purpose adverse to the Defendants, including, but not limited to, evidence of a
9 presumption, concession, indication or admission by Defendants of any liability, fault,
10 wrongdoing, omission, concession or damage.

11 16. In the event the Settlement does not become effective in accordance with the terms
12 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
13 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
14 and the Parties shall revert to their respective positions as of before entering into the Agreement.
15 In such an event, the Court's orders regarding the Settlement, including this Preliminary
16 Approval Order, shall not be used or referred to in litigation for any purpose. Nothing in this
17 paragraph is intended to alter the terms of the Settlement Agreement with respect to the effect of
18 the Settlement Agreement if it is not approved.

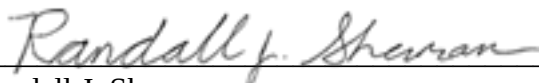
19 17. Pending final determination of whether the Settlement should be approved, the
20 Class Representative ~~and all members of the Class~~ are barred and enjoined from filing,
21 commencing, prosecuting, intervening in, instigating or in any way participating in the
22 commencement or prosecution of any lawsuit, action, arbitration, administrative or regulatory
23 proceeding, or any other proceeding, in any forum, asserting any claims that are, or relate in any
24 way to, the Class Representative's Released Claims or the Class's Released Claims, unless and
25 until they submit a timely request for exclusion pursuant to the Agreement.

26 18. The Court reserves the right to adjourn or continue the date of the final approval
27 hearing and all dates provided for in the Agreement without further notice to the Class and retains
28 jurisdiction to consider all further applications arising out of or connected with the proposed

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Settlement.

DATED: **May 20, 2022**



Randall J. Sherman
JUDGE OF THE SUPERIOR COURT

EXHIBIT C

Tesla Stone

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, March 4, 2022 3:48 PM
To: Tesla Stone
Subject: Thank you for your Proposed Settlement Submission

03/04/2022 03:47:47 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D