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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CLARENCE SMITH, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

v.

WATLOW ELECTRIC
MANUFACTURING COMPANY, a
Missouri corporation; and DOES 1 through
50, inclusive,

Defendants.

PHUOC TRUONG, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 et seq.,

Plaintiff,

v.

WATLOW ELECTRIC
MANUFACTURING COMPANY, a
Missouri corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO. 20CV365250
Consolidated with Case No. 20CV362069

[Assigned for all purposes to the Hon. Sunil R.
Kulkarni, Dept. 1]

**DECLARATION OF MAI TULYATHAN IN
SUPPORT OF PLAINTIFFS’ MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

DATE: May 26, 2021
TIME: 1:30 P.M.
DEPT.: 1

Complaint filed: March 18, 2020
Trial Date: None

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1 forced to incur various fees to access their wages and therefore were not provided with all earned
2 wages upon separation of employment.

3 6. With respect to Plaintiffs' wage statement claims, Plaintiffs contend that
4 Defendant issued deficient wage statements that failed to identify the gross wages earned, net
5 wages earned, and premium pay for missed meal and rest breaks. Additionally, Plaintiffs also
6 allege that whenever overtime wages were paid, the wage statements issued to Plaintiffs and other
7 employees failed to accurately state the overtime rates of pay, in violation of Labor Code §
8 226(a)(9), and failed to accurately state the correct total hours worked during the pay period, in
9 violation of Labor Code § 226(a)(2).

10 7. As to Plaintiffs' claim pursuant to Labor Code §§ 201-203, Plaintiffs allege on a
11 derivative basis that Plaintiffs and other employees were denied the timely payment of wages at
12 the separation of their employment, based on the failures to pay all wages as detailed above.

13 8. As a result of the alleged violations, Plaintiff seeks wages, statutory penalties, and
14 civil penalties under the California Labor Code and the PAGA, restitution under California's
15 Unfair Competition Law, as well as attorneys' fees and costs and other forms of relief.

16 **SUMMARY OF INVESTIGATION AND SETTLEMENT DISCUSSIONS**

17 9. After the initial Case Management Conference held on July 24, 2020, the Parties
18 agreed to participate in private mediation. In connection with mediation, the Parties engaged in
19 informal discovery to allow Plaintiffs to assess the claims and liability, as well as analyze the
20 maximum exposure of damages and penalties. Defendant provided Plaintiffs' counsel with
21 informal data and information pertaining to the number of putative class members, the number of
22 shifts at issue, the number of pay periods at issue, the number of wage statements and paychecks
23 at issue, the hourly rates of pay for class members, as well as information pertaining to
24 Defendant's various wage and hour policies and practices. The information provided by
25 Defendant allowed Plaintiffs to review and analyze the liability and potential exposure.

26 10. On January 19, 2021, the Parties engaged in a full-day mediation with mediator
27 Steven Rottman, Esq. After thorough investigation and evaluation of the facts and claims, and as
28 a result of the arm's-length negotiations facilitated by Mr. Rottman, the Parties and their counsel
ultimately reached the current settlement. In resolution of Plaintiffs' class and PAGA claims, the

1 Parties entered into the Joint Stipulation of Class Action and PAGA Settlement and Release.

2 11. On August 17, 2021, Plaintiffs filed their Motion for Preliminary Approval of
3 Class Action Settlement as a “hybrid” class action settlement and settlement under the federal
4 Fair Labor Standards Act (FLSA) at the time. The Court initially denied preliminary approval, as
5 it had concerns with approving such a hybrid FLSA/class action settlement at the time. The Court
6 directed the Parties to revise the FLSA component of the settlement as well as meet and confer on
7 other issues pertaining to the settlement. In connection with addressing the issues identified by
8 the Court, the Parties executed an Amended Joint Stipulation of Class Action and PAGA
9 Settlement and Release (the “Settlement Agreement”, “Stipulation”, or “Stip.”) to remove the
10 FLSA component. Attached hereto as **Exhibit A** is a true and correct copy of the executed
11 Settlement Agreement.

12 12. On December 27, 2021, Plaintiffs filed their Renewed Motion for Preliminary
13 Approval of Class Action Settlement. On January 25, 2022, the Court granted preliminary
14 approval of this settlement. Attached hereto as **Exhibit B** is a true and correct copy of the Court’s
15 January 25, 2022 order granting preliminary approval.

16 13. I recognize the risk, expense, and delay in continuing litigation with the class and
17 PAGA claims, and I believe this settlement to be fair, adequate, and reasonable.

18 **THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

19 14. The results from the notice dissemination process support final approval. As of the
20 date of the filing of Plaintiffs’ Motion for Final Approval, only one Settlement Class Member has
21 opted out of the settlement bringing the final count of participating Settlement Class members to
22 78. As such, the settlement has a significantly high participation rate of **99.17%**, which further
23 supports that the settlement is fair and reasonable.

24 15. During the course of this litigation, the Parties have engaged in significant
25 investigation into the factual and legal claims presented in the complaint. Substantial discovery
26 into the merits of Plaintiffs’ claims and the nature of Defendant’s employment practices took
27 place between the Parties in which Defendant and Plaintiffs exchanged a considerable amount of
28 information and documentation and further apprised each other of their respective factual
contentions, legal theories, and defenses. In short, the Parties have engaged in extensive good

1 faith, arms-length negotiations, telephone conferences, and correspondence further aimed at
2 settling their disputes.

3 16. Prior to settlement, Plaintiffs' counsel created a comprehensive damage analysis
4 using sampling information obtained through informal discovery. This damage analysis, further
5 discussed in my previous declarations filed with the Court in support of preliminary approval,
6 reveals that the negotiated settlement falls within a realistic range of recovery on Settlement Class
7 Members' claims.

8 17. There were no objections to the amount of attorneys' fees or litigation costs that
9 Plaintiffs' Counsel seeks in the case and for which Plaintiffs ask the Court for final approval.

10 18. Any remaining monies from uncashed settlement checks will be distributed to
11 Legal Aid At Work. Plaintiffs' Counsel does not have any relationship with or connection to said
12 organization.

13 **ATTORNEY QUALIFICATIONS AND LODESTAR INFORMATION**

14 19. I am one of the primary attorneys on this matter. My qualifications are as follows:
15 I received my JD from Loyola Law School in 2017. I received the First Honors Award in Legal
16 Research and Writing, First Honors Award in Appellate Advocacy, and First Honors Award in
17 Civil Litigation Practicum I for achieving the highest grade in those classes. During law school, I
18 was a Staff Editor for Loyola Law Review. I was also an extern at the U.S. District Court, Central
19 District of California, for the Honorable Christina A. Snyder, and a certified law clerk at the San
20 Diego County District Attorney's Office, Collaborative Courts Division, and the Los Angeles
21 County District Attorney's Office, Consumer Protection and Environmental Crimes Division. In
22 2016, I participated in Loyola Law School's Scott Moot Court Competition, where I placed Top 16
23 and was awarded the Top Ten Brief Award. In 2017, I participated in the Employment Rights
24 Clinic, an extension of the Division of Labor Standards Enforcement created to investigate
25 retaliation complaints. Upon graduation from law school, I was admitted to the California Bar in
December 2017.

26 20. I am currently an associate at the law firm Diversity Law Group, P.C., an
27 employment law firm that has handled numerous wage and hour class and individual actions, on
28 both plaintiff and defense sides. The firm currently has cases in numerous state courts, including

1 the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior Court, San
2 Diego County Superior Court, Monterey County Superior Court, as well as the United States
3 District Courts for the Central, Northern, Southern, and Eastern Districts of California. I have
4 handled and am currently handling numerous wage and hour class action and PAGA lawsuits,
5 including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number 5:17-cv-00062-LHK);
6 *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD); *Arroyo v. Int'l*
7 *Paper Company* (Case Number 5:17-cv-06211-BLF); *Baker v. California Forensic Medical*
8 *Group, Inc., et al.*, Judicial Council Coordination Proceeding No. 4999 (Lead Case No.
9 17CV003723); *Westmoreland v. KinderCare Education LLC* (Case Number CGC-19-573125);
10 *Arrington v. Automatic Data Process Insurance Agency, Inc.* (Case Number 30-2019-01099994-
11 CU-OE-CXC); *Garcia v. Apex Systems, LLC, et al.* (Case Number RG19014709); *Martin v. Wells*
12 *Fargo Bank* (Case Number 19-cv-01969-JAK).

13 21. In 2018, I argued before the California Court of Appeal, Second Appellate District,
14 in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case Number
15 B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.* (California Court
16 of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In that same year, I also
17 assisted the firm in successfully obtaining class certification and partial summary judgment by the
18 United States District Court, Central District of California in the case of *Magadia v. Wal-Mart*
19 *Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the bench trial in that same
20 case in December 2018.

21 22. I have also been certified and/or approved as class counsel in numerous other
22 wage/hour class actions in connection with class certification motions as well as settlement
23 approvals. Most recently, I was certified and/or approved as class counsel in the cases *Garcia v.*
24 *Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan,*
25 *LLC, et al.* (Case Number 17CV314186), *Song v. THC – Orange County, Inc.* (Case No. 8-17-cv-
26 965-JLS (DFM)), and *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case No. 16-CV-
27 299319). Moreover, I was granted final approval as class counsel in *Lao v. H & M Hennes &*
28 *Mauritz, L.P.* (Case No. 5:16-cv-333 EJD), *Abarca v. El Estero Car Wash, Inc. et al* (Case No.
18CV003398), *Valles v. Community Hospital of the Monterey Peninsula* (Case No. 17CV003452),

1 *Chavez v. Hugo Boss Retail, Inc.* (Case No. 18CV322644), *Hernandez v. Wells Fargo Bank*
2 *National Ass'n, et al* (Case No. 16-CV-299319); *Baker v. California Forensic Medical Group,*
3 *Inc., et al.*, Judicial Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723);
4 *Mendez v. Falcon Trading Company* (Case No. 19CV004512); *Truong v. DS Services of America,*
5 *Inc.* (Case No. FCS054399).

6 23. Based on my experience in wage and hour class actions, I am of the opinion that
7 this settlement is fair, reasonable, and adequate.

8 24. To date, I have incurred approximately 113.7 hours in connection with the
9 litigation of this lawsuit. Attached hereto as **Exhibit C** is a chart summarizing the amount of work
10 I have incurred to date on this matter.

11 25. In addition to the hours above, I also anticipate spending an additional 10 hours
12 through the completion of this case to handle any post-final approval and settlement matters,
13 including payments from the Settlement Administrator, issues from Class Members, and any
14 related issues.

15 26. Thus, I anticipate the total amount of my fees incurred in this case to be
16 approximately \$ 61,850.00, based on 123.7 total hours, at an hourly rate of \$500.00 per hour. In
17 2019 and 2020, I have been approved at an hourly rate of \$450.00 per hour by various Courts in a
18 number of matters, including but not limited to, *Lao v. H & M Hennes & Mauritz, L.P.* (Case No.
19 5:16:cv-333 EJD), *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case No. 16-CV-
20 299319), and *Abarca v. El Estero Car Wash, Inc. et al* (Case No. 18CV003398). As of January 1,
21 2021, I increased my hourly rate to \$500.00 per hour. I have been approved at the hourly rate of
22 \$500.00 in other cases in 2021, including *Baker v. California Forensic Medical Group, Inc., et al.*,
23 Judicial Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723), *Mendez v.*
24 *Falcon Trading Company* (Case No. 19CV004512), and *Truong v. DS Services of America, Inc.*
(Case No. FCS054399).

25 **LITIGATION COSTS INCURRED**

26 27. My office has incurred costs in the amount of \$5,442.75. The costs are all
27 litigation related costs, including court filing and service fees, postage fees, costs associated with
28 mediation, and CourtCall fees. Attached hereto as **Exhibit D** is copy of the cost report in

1 connection with prosecution of this lawsuit.

2 **NOTICE HAS BEEN GIVEN TO THE LWDA**

3 28. Plaintiffs' counsel provided notice of the Settlement Agreement at preliminary
4 approval pursuant to the PAGA.

5 29. Concurrent with the filing of this Motion, my office also uploaded a copy of the
6 Settlement Agreement to the LWDA through its online submission interface. The LWDA has not
7 objected or otherwise responded to the submission. Attached hereto as **Exhibit E** is a true and
8 correct copy of the submission confirmation.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11 Executed on this 4th day of May, 2022, at Los Angeles, California.

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13 Mai Tulyathan
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EXHIBIT A

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

This Amended Joint Stipulation of Class Action and PAGA Settlement and Release (“Agreement”) is made and entered into by and between Plaintiffs Phuoc Truong and Clarence Smith (“Plaintiffs” or “Class Representatives”), as individuals and on behalf of all others similarly situated and aggrieved employees, and Defendant Watlow Electric Manufacturing Company (“Defendant”) (collectively with Plaintiffs, the “Parties”).

This Agreement shall be binding on Plaintiffs and Settlement Class Members (as defined below) and on Defendant, subject to the terms and conditions hereof and the approval of the Court.

RECITALS

1. On January 13, 2020, Phuoc Truong commenced a PAGA action entitled *Phuoc Truong v. Watlow Electric Manufacturing, Inc.*, Superior Court of California for the County of Santa Clara, Case No. 20-cv-362069 (“*Truong* Action”) against Defendant. On March 18, 2020, Clarence Smith filed commenced a putative class and representative PAGA action entitled *Clarence Smith v. Watlow Electric Manufacturing, Inc.*, Superior Court of California for the County of Santa Clara, Case No. 20-cv-365250 (“*Smith* Action”) (collectively, the “Actions”) against Defendant. On June 8, 2021, Clarence Smith filed the First Amended Consolidated Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et Seq. (“Operative Complaint”), which added Plaintiff Phuoc Truong and alleges causes of action against Defendant for failure to provide compliant meal and rest periods and associated premium payments, pay all wages for hours worked, timely pay wages during and after employment and pay associated waiting-time penalties, provide compliant wage statements, and maintain complete and accurate payroll records, for violations of California Business and Professions Code Section 17200, et seq., and for civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code Section 2698, et seq. (“PAGA”), on behalf of all current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time during the period from November 15, 2018, through the date of Preliminary Approval.

2. Defendant denies all material allegations set forth in the Action, defined below, and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,

1 Defendant desires to fully and finally settle the Actions and Released Claims (as defined below).

2 3. Class Counsel (as defined below) in the Actions diligently investigated the proposed Class
3 Members' claims against Defendant, including any and all applicable defenses and the applicable law.
4 The investigation included, *inter alia*, the exchange of information, data, and documents, and review of
5 numerous corporate policies and practices.

6 4. On January 19, 2021, the Parties participated in mediation with Steven Rottman (the
7 "Mediator"), a respected mediator of complex wage and hour actions, and eventually, after continued
8 settlement negotiations and with the assistance of the Mediator and his evaluations, the Parties reached
9 the settlement that is memorialized in this Agreement. The settlement discussions were conducted at
10 arm's-length, and the settlement is the result of an informed and detailed analysis of Defendant's potential
11 liability and total exposure in relation to the costs and risks associated with continued litigation. Based
12 on the documents produced, as well as Class Counsel's own independent investigation and evaluation,
13 Class Counsel believe that the settlement with Defendant for the consideration and on the terms set forth
14 in this Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light
15 of all known facts and circumstances, including the risk of significant delay and uncertainty associated
16 with litigation and various defenses asserted by Defendant.

17 5. The Parties expressly acknowledge that this Agreement is entered into solely for the
18 purpose of compromising significantly disputed claims and that nothing in this Agreement is an admission
19 of liability or wrongdoing by Defendant. If for any reason this Agreement is not approved, it will be of
20 no force or effect, and the Parties shall be returned to their original respective positions.

21 DEFINITIONS

22 6. The following definitions are applicable to this Agreement. Definitions contained
23 elsewhere in this Agreement will also be effective:

24 a. "Attorneys' Fees and Costs" means attorneys' fees approved by the Court for Class
25 Counsel's litigation and resolution of this Action, and all actual costs incurred and to be incurred by Class
26 Counsel in the Action, as set forth in Paragraph 10 below.

27 b. "Class Counsel" means Larry W. Lee and Mai Tulyathan of Diversity Law Group, APC
28 and Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC, counsel for Plaintiffs, who will

1 seek to be appointed counsel for the Class.

2 c. "Class Data and List" means a complete list of all Class Members that Defendant
3 will diligently and in good faith compile from its records and provide to the Settlement Administrator
4 within fifteen (15) calendar days after Preliminary Approval. The Class Data and List will be formatted
5 in a readable Microsoft Office Excel spreadsheet and will include each Class Member's full name, last
6 known mailing address, Social Security Number, dates worked or the number of workweeks worked for
7 Defendant as an hourly-paid or non-exempt employee during the Class Period, and such other information
8 as is necessary for the Settlement Administrator to calculate Workweeks (as defined below).

9 d. "Class Member(s)" or "Class" means all current and former hourly-paid or non-
10 exempt employees, who worked for Defendant in California at any time during the Class Period (as
11 defined below) and who received at least one paycheck during the Class Period from Defendant.

12 e. "Class Notice" means the Notice of Class Action Settlement approved by the Court,
13 substantially in the form attached as "**Exhibit A.**"

14 f. "Class Period" means the time period from November 15, 2018, through the date
15 of Preliminary Approval (as defined below).

16 g. "Class Representatives" or "Plaintiffs" means Phuoc Truong and Clarence Smith.

17 h. "Court" means the Superior Court of the State of California for the County of Santa
18 Clara.

19 i. "Defendant" means Watlow Electric Manufacturing Company.

20 j. "Defendant's Counsel" means A.J. Weissler, Bob Tomaso, and Amberly Morgan
21 of Husch Blackwell LLP.

22 k. "Effective Date" means the date when all of the following events have occurred:
23 (1) this Agreement has been executed by all Parties, Class Counsel, and Defendant's Counsel; (2) the
24 Court has given preliminary approval to the Settlement; (3) the Class Notice has been mailed to the Class
25 Members, providing them with an opportunity to object to the terms of the Settlement or opt out of the
26 Settlement; (4) the Court has held a Final Approval Hearing and entered a Final Approval Order and
27 Judgment; and (5) in the event there are written objections filed prior to the Final Approval Hearing which
28 are not later withdrawn or denied, the later of the following events: five business days after the period for

1 filing any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and
2 Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any
3 appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has
4 been filed, five business days after any appeal, writ, or other appellate proceedings opposing the
5 Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief.

6 l. "Enhancement Payments" means the amounts to be paid to Plaintiffs Phuoc Truong
7 and Clarence Smith in recognition of their efforts and work in prosecuting the Action on behalf of Class
8 Members and in exchange for a general release and withdrawal of any pending claims, as set forth in
9 Paragraph 11 below.

10 m. "Final Approval" means the determination by the Court that the settlement is fair,
11 reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

12 n. "Final Approval Hearing" means the hearing at which the Court will consider and
13 determine whether the settlement should be granted Final Approval.

14 o. "Individual Settlement Payment" means the net payment of each Settlement Class
15 Member's Individual Settlement Share, after reduction for the employee's share of taxes and withholdings
16 with respect to the wages portion of the Individual Settlement Share, as provided in Paragraph 25 below.

17 p. "Individual Settlement Share" means the *pro rata* share of the Net Settlement
18 Amount that a Class Member may be eligible to receive under this Agreement, to be calculated in
19 accordance with Paragraph 14.

20 q. "LWDA Payment" means the amount that the Parties have agreed to pay to the
21 California Labor and Workforce Development Agency ("LWDA") as set forth in Paragraph 13.

22 r. "Net Settlement Amount" means the portion of the Total Settlement Amount that
23 is available for distribution to Settlement Class Members, which is the Total Settlement Amount less the
24 Court-approved Enhancement Payments, Settlement Administration Costs, LWDA Payment, and
25 Attorneys' Fees and Costs.

26 s. "Notice of Objection" means a Class Member's valid and timely written objection
27 to this Agreement, which must be in writing and include: (a) the case name and number of the Action; (b)
28 the objector's full name, signature, address, and telephone number, (c) a written statement of all grounds

1 for the objection accompanied by any legal support for such objection, and (d) copies of any papers, briefs,
2 or other documents upon which the objection is based.

3 t. “Party” means either Plaintiff or Defendant.

4 u. “Parties” collectively means Plaintiffs and Defendant.

5 v. “Preliminary Approval” means entry by the Court of an order granting preliminary
6 approval of the settlement in this Agreement.

7 w. “Released Claims” means all claims under state, federal, or local law, whether
8 statutory law, common law, or administrative law, arising out of or assertable based upon the allegations
9 set forth in the Operative Complaint. These claims include, but are not limited to: claims for rest period
10 violations, meal period violations, unpaid wages, failure to keep proper records, itemized wage statement
11 violations, waiting time penalties, unfair competition, declaratory relief, claims for violation of the Private
12 Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”), penalties of any nature
13 premised on Labor Code §§ 201-203, 212, 225.5, 226, 226.3, 226.7, 512, and 558, interest, fees, costs,
14 and all other claims and allegations made or which could have been made in the Actions arising during
15 the Class Period.

16 x. “Released Parties” means Defendant, and all its present and former parent
17 companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors,
18 employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could
19 be liable for any of the Released Claims.

20 y. “Request for Exclusion” means a timely letter submitted by a Class Member
21 indicating a request to be excluded from the settlement. The Request for Exclusion must: (a) contain the
22 case name and number of the Action, (b) be signed by the Class Member, (c) contain the full name,
23 address, telephone number, and the last four digits of the Social Security Number of the Class Member
24 requesting exclusion, (d) clearly state that the Class Member does not wish to be included in the settlement,
25 and (e) be returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile
26 number, postmarked or faxed on or before the Response Deadline. The date of the postmark on the return
27 mailing envelope or fax-stamp on the submission will be the exclusive means to determine whether a
28 Request for Exclusion has been timely submitted. A Class Member who does not request exclusion from

1 the settlement will be deemed a Settlement Class Member and will be bound by all terms of this
2 Agreement, if the settlement is granted Final Approval by the Court.

3 z. “Response Deadline” means the deadline by which Class Members must submit a
4 Request for Exclusion, objection, and/or dispute of the Workweeks credited to them, which shall be the
5 date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement
6 Administrator, unless the forty-fifth (45th) day falls on a Sunday or Federal holiday, in which case the
7 Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The
8 Response Deadline may also be extended by express agreement between Class Counsel and Defendant’s
9 Counsel. Under no circumstances, however, will the Settlement Administrator have the authority to
10 extend the Response Deadline. In the event that a Class Notice is re-mailed to a Class Member, the
11 Response Deadline for that Class Member shall be the extended by fifteen (15) calendar days.

12 aa. “Settlement Administrator” means Simpluris, or any other third-party class action
13 settlement administrator agreed to by the Parties and approved by the Court for purposes of administering
14 this settlement. The Parties each represent that they do not have any financial interest in the Settlement
15 Administrator or otherwise have a relationship with the Settlement Administrator that could create a
16 conflict of interest.

17 bb. “Settlement Administration Costs” means the costs payable from the Total
18 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this
19 settlement, as set forth in Paragraph 12 below.

20 cc. “Settlement Class Members” means all Class Members who do not submit a valid
21 and timely Request for Exclusion.

22 dd. “Total Settlement Amount” means the amount of Five Hundred Thousand Dollars
23 (\$500,000) to be paid by Defendant in full resolution of all Released Claims and the Action, which
24 includes all Attorneys’ Fees and Costs, Enhancement Payments, LWDA Payment, Net Settlement Amount
25 to be paid to the Settlement Class Members (which includes the Settlement Class Members’ portion of the
26 PAGA Payment), and Settlement Administration Costs. No portion of the Total Settlement Amount shall
27 revert to Defendant. The employer’s share of taxes on the wages portion of Individual Settlement Shares
28 will be paid separately and in addition to the Total Settlement Amount.

1 ee. "Workweeks" means the number of weeks each Class Member worked for
2 Defendant as an hourly-paid or non-exempt employee in California during the Class Period, which will
3 be calculated by the Settlement Administrator as the total number of days from the first day of a Class
4 Member's employment as an hourly-paid or non-exempt employee. Each Class Member will be credited
5 with at least one (1) Workweek.

6 **CLASS CERTIFICATION**

7 7. For the purposes of this settlement only, the Parties stipulate to the certification of the
8 following Class: all current and former hourly-paid or non-exempt employees, who worked for Defendant
9 in California at any time during the Class Period.

10 8. The Parties agree that certification for the purpose of settlement is not an admission that
11 certification is proper under Section 382 of the California Code of Civil Procedure or 29 U.S.C. § 216(b).
12 Should, for whatever reason, the Court not grant Final Approval, the Parties' stipulation to class and
13 collective action certification as part of the settlement shall become null and void *ab initio* and shall have
14 no bearing on, and shall not be admissible in connection with, the issue of whether or not certification
15 would be inappropriate in a non-settlement context.

16 **TERMS OF AGREEMENT**

17 NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set
18 forth in this Agreement, the Parties agree, subject to the Court's approval, as follows:

19 9. Funding of the Total Settlement Amount. Within fifteen (15) calendar days after the
20 Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts
21 to be paid by Defendant pursuant to the terms of this Agreement. Within thirty (30) calendar days of the
22 Effective Date, Defendant will make a one-time deposit of the Total Settlement Amount and all employer
23 taxes due on wage payments made hereunder into a settlement account to be established by the Settlement
24 Administrator. Within seven (7) calendar days of the funding of Total Settlement Amount, the Settlement
25 Administrator will issue payments due under the settlement and approved by the Court, as follows: (a)
26 Individual Settlement Payments to Settlement Class Members; (b) LWDA Payment to the Labor and
27 Workforce Development Agency; (c) Enhancement Payments to Plaintiffs; and (d) Attorneys' Fees and
28

Costs to Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the settlement.

10. Attorneys' Fees and Costs. Class Counsel will request and Defendant will not oppose attorneys' fees of up to thirty-five percent (35%) of the Total Settlement Amount (i.e., up to One Hundred Seventy-Five Thousand (\$175,000.00)) and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Actions, in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000), both of which will be paid from the Total Settlement Amount subject to Court approval. These amounts will cover any and all work performed and any and all costs incurred by Class Counsel in connection with the litigation of the Actions, including without limitation all work performed and costs incurred to date, and all work to be performed and all costs to be incurred in connection with obtaining the Court's approval of this Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. Any portion of the Attorneys' Fees and Costs not awarded to Class Counsel shall be a part of the Net Settlement Amount for the benefit of Settlement Class Members.

11. Enhancement Payments. In recognition of their efforts and work in prosecuting the Action, Defendant agrees not to oppose or impede any application or motion for Enhancement Payments in an amount up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Phuoc Truong and an amount up to Ten Thousand Dollars (\$10,000.00) to Plaintiff Clarence Smith. The Enhancement Payments, which will be paid from the Total Settlement Amount, subject to Court approval, will be in addition to their Individual Settlement Payments that are to be paid pursuant to the settlement. The Settlement Administrator will issue an IRS Form 1099 to each Plaintiff for their Enhancement Payments, and Plaintiffs shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. Plaintiffs agree to indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payments. Should the Court approve the Enhancement Payments to Plaintiffs in an amount that is less than that set forth above, the difference between the lesser amount approved by the Court and the amount allocated toward the

Enhancement Payments will be part of the Net Settlement Amount for the benefit of Settlement Class Members.

12. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments under the settlement, which is currently estimated not to exceed Six Thousand Five Hundred Dollars (\$6,500.00). These costs, which will be paid from the Total Settlement Amount, subject to Court approval, will include, *inter alia*, printing, distributing, and tracking Class Notices and other documents for this settlement, calculating and distributing payments due under the settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth in this Agreement to process this settlement, and as requested by the Parties. To the extent actual Settlement Administrations Costs are greater than the estimated amount stated in this Agreement, such excess amount will be deducted from the Total Settlement Amount, subject to approval by the Court. Any portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not in fact required to fulfill payment to the Settlement Administrator to undertake the requirement settlement administration duties will become part of the Net Settlement Amount.

13. Labor and Workforce Development Agency Payment. Subject to approval by the Court, the Parties agree that the amount of Eighty Thousand Dollars (\$80,000.00) from the Total Settlement Amount will be allocated toward penalties under the Private Attorneys General, California Labor Code Section 2698, *et seq.* ("PAGA Penalties"), of which seventy-five percent (75%), or \$60,000, will be paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) or, \$20,000, will be distributed to Settlement Class Members as part of the Net Settlement Amount.

14. Individual Settlement Share Calculations. Individual Settlement Shares will be calculated and apportioned from the Net Settlement Amount based on the Class Members' Workweeks, as follows:

a. After Preliminary Approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated

1 Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible
2 to receive under the Settlement.

3 b. After Final Approval of the Settlement, the Settlement Administrator will divide
4 the final Net Settlement Amount by the Workweeks of all Settlement Class Member to yield the "Final
5 Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final
6 Workweek Value to yield his or her Individual Settlement Share.

7 15. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
8 settlement shall be deemed to be paid to the payee solely in the year in which such payments actually are
9 issued to the payee. It is expressly understood and agreed that payments made under this settlement shall
10 not in any way entitle Plaintiffs or any Settlement Class Member to additional compensation or benefits
11 under any new or additional compensation or benefits, or any bonus, contest or other compensation or
12 benefit plan or agreement in place during the Class Period, nor will it entitle any Settlement Class Member
13 to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits
14 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
15 might have been in effect during the Class Period).

16 16. Delivery of the Class Data and List. Within fifteen (15) calendar days of Preliminary
17 Approval, Defendant will provide the Class Data and List to the Settlement Administrator.

18 17. Notice by First-Class U.S. Mail.

19 a. Within ten (10) calendar days after receiving the Class Data and List from
20 Defendant, the Settlement Administrator will perform a search based on the National Change of Address
21 Database or any other similar services available, such as provided by Experian, for information to update
22 and correct for any known or identifiable address changes, and will mail a Class Notice in English and
23 Spanish (in the form attached as **Exhibit A** to this Agreement) to all Class Members via First-Class U.S.
24 Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

25 b. With respect to Class Notices that are returned as undeliverable on or before the
26 Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace
27 and re-mail the Class Notice within five (5) calendar days.

1 18. Dispute Regarding Workweeks. Class Members will have an opportunity to dispute the
2 number of Workweeks to which they have been credited, as reflected in their respective Class Notices. In
3 order to dispute Workweeks, Class Members must submit a written letter to the Settlement Administrator
4 that: (a) contains the case name and number of the Action, (b) is signed by the Class Member, (c) contains
5 the full name, address, telephone number, and the last four digits of the Social Security Number of the
6 disputing Class Member, (d) clearly states that the Class Member disputes the number of Workweeks
7 credited to him or her and what he or she contends is the correct number to be credited to him or her, (e)
8 includes information and/or attaches documentation demonstrating that the number of Workweeks that he
9 or she contends should be credited to him or her are correct, and (f) is returned by fax or mail to the
10 Settlement Administrator at the specified address and/or facsimile number, postmarked or fax-stamped on
11 or before the Response Deadline. The date of the postmark on the return mailing envelope or fax-stamp
12 on the submission will be the exclusive means to determine whether a dispute has been timely submitted.
13 Absent evidence rebutting the accuracy of Defendant's records and data as they pertain to the number of
14 Workweeks to be credited to a disputing Class Member, Defendant's records will be presumed correct
15 and determinative of the dispute. However, if a Class Member produces information and/or documents
16 to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class Member
17 and the Settlement Administrator will resolve and determine the number of eligible Workweeks that the
18 disputing Class Member should be credited with under the settlement. The Settlement Administrator's
19 decision on such disputes will be final and non-appealable.

20 19. Settlement Checks. The Settlement Administrator will be responsible for undertaking
21 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way of
22 check to the Settlement Class Members in accordance with this Agreement. Each Individual Settlement
23 Payment check will be valid and negotiable for one hundred eighty (180) calendar days from the date the
24 checks are issued, and thereafter, shall be cancelled. All funds associated with such cancelled checks will
25 be transmitted, pursuant to California Code of Civil Procedure Section 384, to Legal Aid at Work. The
26 Parties each represent that they do not have any significant affiliation or involvement with the proposed
27 *cy pres* recipient. The Settlement Administrator shall undertake amended and/or supplemental tax filings
28 and reporting, required under applicable local, state, and federal tax laws, that are necessitated due to the

1 cancellation of any Individual Settlement Payment checks. Settlement Class Members whose Individual
2 Settlement Payment checks are cancelled shall, nevertheless, be bound by this Agreement.

3 20. Procedure for Requesting Exclusion from the Settlement. Any Class Member wishing to
4 be excluded from the Settlement must submit a written Request for Exclusion to the Settlement
5 Administrator, by mail or fax, within the Response Deadline. The date of fax or the postmark on the
6 return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has
7 been timely submitted. The Settlement Administrator will certify jointly to Class Counsel and
8 Defendant's Counsel the Requests for Exclusion that were timely submitted, and also identify the
9 individuals who have submitted a timely and valid Request for Exclusion in a declaration that is to be filed
10 with the Court in advance of the Final Approval Hearing. Any Class Member who submits a Request for
11 Exclusion is prohibited from making any objection to this Agreement.

12 21. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any Class
13 Member who does not affirmatively request exclusion from the settlement by submitting a timely and
14 valid Request for Exclusion will be bound by all of the terms of this Agreement, including and not limited
15 to those pertaining to the Released Claims, as well as any judgment that may be entered by the Court if it
16 grants Final Approval to the settlement.

17 22. Procedures for Objecting to the Settlement. To object to the settlement, Class Members
18 who have not opted out of the Settlement (i.e., Settlement Class Members) must submit a timely and
19 complete written Notice of Objection to the Settlement Administrator, by fax or mail, on or before the
20 Response Deadline. The Notice of Objection must be signed by the Settlement Class Member and contain
21 all information required by this Agreement. The postmark or fax-stamp date will be deemed the exclusive
22 means for determining that the Notice of Objection is timely. The Settlement Administrator will furnish
23 copies of any such objections to counsel for the Parties within three (3) calendar days after receipt. Class
24 Members may appear at the final approval hearing, either in person or through counsel retained at their
25 own expense, to have their objections heard, whether or not they had submitted a prior written Notice of
26 Objection as specified in this paragraph. At no time will any of the Parties or their counsel seek to solicit
27 or otherwise encourage Settlement Class Members to object to this Agreement or appeal from the Final
28 Approval Order and Judgment.

1 23. Reports by the Settlement Administrator Regarding Settlement Administration. The
2 Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report which
3 certifies: (a) the number of Class Members who have submitted a dispute of Workweeks; (b) the number
4 of Class Members who have submitted timely and valid Requests for Exclusion or timely and complete
5 Notices of Objection; and (c) the number of undeliverable and re-mailed Class Notices. Additionally, the
6 Settlement Administrator will provide to counsel for both Parties any updated reports regarding the
7 administration of this Agreement as needed or requested, and immediately notify the Parties when it
8 receives a request from an individual or any other entity regarding inclusion in the Class and/or settlement.

9 24. Certification of Completion. Upon completion of administration of the settlement, the
10 Settlement Administrator will provide a written declaration under oath to certify such completion to the
11 Court and counsel for all Parties.

12 25. Treatment of Individual Settlement Payments. Each Individual Settlement Share will be
13 allocated as follows: one-quarter(1/4), or 25%, as wages and three-quarters (3/4), or 75%, as penalties,
14 interest, and non-wage damages. The portion allocated to wages will be reported on an IRS Form W-2
15 and the portions allocated to interest and penalties will be reported on an IRS Form-1099 by the Settlement
16 Administrator. The Settlement Administrator will withhold the employee's share of taxes and
17 withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to
18 Settlement Class Members for their Individual Settlement Payment (i.e., payment of their Individual
19 Settlement Share net of these taxes and withholdings). The employer's share of taxes and contributions
20 on the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total
21 Settlement Amount.

22 26. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
23 will be responsible for issuing to Plaintiffs, Settlement Class Members, and Class Counsel any W-2, 1099,
24 or other tax forms as may be required by law for all amounts paid pursuant to this Agreement. The
25 Settlement Administrator will also be responsible for forwarding all payroll taxes, contributions, and
26 withholdings to the appropriate government authorities.

27 27. Tax Liability. Plaintiffs, Class Counsel, Defendant, and Defendant's Counsel make no
28 representations or warranties as to the tax consequences, treatment, or legal effect of any payments made

1 under this Agreement, do not intend anything contained in this Agreement to constitute advice regarding
2 taxes or taxability, nor shall anything in this Agreement be relied on as such. Plaintiffs and Settlement
3 Class Members understand and agree that Plaintiff and Settlement Class Members will be solely
4 responsible for correctly characterizing any compensation received under the settlement on his/her
5 personal income tax returns and paying any and all taxes due for any and all amounts paid to them under
6 the settlement.

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

1 29. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that
2 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
3 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or
4 right in this Agreement released and discharged.

5 30. Release of Claims by Settlement Class Members. Upon the Effective Date, and subject to
6 Defendant's full payment of the Total Settlement Amount, Plaintiffs and all Class Members who do not
7 submit a valid and timely Request for Exclusion (i.e., Settlement Class Members) will be deemed to have
8 fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties
9 of all Released Claims he or she may have or had.

10 31. General Release of Claims by Plaintiffs. In addition, upon the Effective Date, Plaintiffs
11 will be deemed to have fully released and discharged the Released Parties of and from all claims arising
12 from Plaintiffs' employment with Defendant, separation of employment from Defendant, and any acts
13 that have or could have been asserted in any legal action or proceeding against Defendant, whether known
14 or unknown, arising under any federal, state, or local law, or statute, including, *inter alia*, those arising
15 under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of
16 the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act,
17 California Corporations Code, California Business and Professions Code, California Fair Employment
18 and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for
19 discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment
20 compensation, emotional distress, medical expenses, other economic and non-economic damages,
21 attorney fees, and costs, arising on or before the date on which the Settlement is executed. With respect to
22 those claims released by Plaintiffs in an individual capacity, Plaintiffs acknowledge and waive any and all
23 rights and benefits available under California Civil Code Section 1542, which provides:

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

Plaintiffs understand and agree that claims or facts in addition to or different from those which are now known or believed by her to exist may hereafter be discovered. It is Plaintiffs' intention to settle fully and release all claims they now have against the Released Parties, whether known or unknown, suspected or unsuspected. The Enhancement Payments shall be paid to Plaintiffs specifically in exchange for the general release of the Released Parties from all claims, including those specified in this paragraph and a covenant not to sue the Released Parties. To the extent either Plaintiff has a claim or claims against any Released Party pending with any administrative agency or court, Plaintiff agrees to withdraw such claim or claims with prejudice within (14) days of the final approval of this settlement. Notwithstanding the above, the general release by Plaintiffs shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

32. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.

Upon execution of this Agreement, Plaintiffs shall promptly obtain a hearing date for Plaintiffs' Motion for Preliminary Approval of the Settlement, which Plaintiffs and Class Counsel will be responsible for drafting, and submit this Agreement to the Court in support of said motion. Class Counsel will provide Defendant's Counsel a draft of the Preliminary Approval Motion at least three (3) calendar days before the filing deadline. Defendant agrees not to oppose the Motion for Preliminary Approval of the Settlement consistent with this Agreement. Said motion shall apply to the Court for the entry of an order ("Preliminary Approval Order"), which shall be mutually agreed upon by the Parties, seeking the following:

- a. Conditionally certifying the Class for settlement purposes only;
- b. Granting Preliminary Approval of the Settlement;
- c. Preliminarily appointing Plaintiffs as representatives of the Class;
- d. Preliminarily appointing Plaintiffs' Counsel as counsel for the Class;
- e. Approving, as to form and content, the mutually-agreed upon and proposed Class Notice substantially in the form attached hereto as Exhibit A, and directing its mailing to the Class by first class mail;
- f. Approving the manner and method for Class Members to request exclusion from the Settlement as contained in this Agreement and within the Class Notice; and

1 g. Scheduling a Final Approval Hearing at which the Court will determine whether
2 the Settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class
3 Members.

4 33. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After
5 the Response Deadline, and with the Court's permission, a Final Approval Hearing will be conducted to
6 determine whether Final Approval of the Settlement should be granted, along with the amounts properly
7 payable for (a) Individual Settlement Payments; (b) LWDA Payment; (c) Attorneys' Fees and Costs; (d)
8 Enhancement Payments; and (e) Settlement Administration Costs. Plaintiffs and Class Counsel will be
9 responsible for drafting the motion seeking Final Approval of the Settlement. Class Counsel will provide
10 Defendant's Counsel a draft of the Final Approval Motion at least three (3) calendar days before the filing
11 deadline. By way of said motion, Plaintiffs will apply for the entry of the mutually agreed upon proposed
12 order and judgment ("Final Approval Order and Judgment"), which will provide for, in substantial part,
13 the following:

14 a. Approval of the Settlement as fair, reasonable, and adequate, and directing
15 consummation of its terms and provisions;

16 b. Certification of the Settlement Class;

17 c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;

18 d. Approval of the application for Enhancement Payments to Plaintiffs;

19 e. Directing Defendant to fund all amounts due under this Agreement and ordered by
20 the Court; and

21 f. Entering judgment in this Action barring and enjoining all Settlement Class
22 Members from prosecuting the Released Claims against any of the Released Parties, while maintaining
23 continuing jurisdiction, in conformity with California Rules of Court 3.769 and this Agreement.

24 34. Termination or Revocation of Settlement.

25 a. If ten percent (10%) or more of the Class Members submit timely and valid
26 Requests for Exclusion, Defendant may elect to rescind this Agreement. Defendant must exercise this
27 right of rescission in writing that is provided to Class Counsel within ten (10) calendar days of the
28

1 Response Deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement
2 administration owed to the Settlement Administrator incurred up to that date.

3 b. If the Court finds the Total Settlement Amount to be insufficient to warrant
4 Preliminary Approval or Final Approval of the Settlement, Defendant may, at its election, rescind this
5 Agreement and all actions taken in furtherance of it will thereby be null and void.

6 c. If the total number of Class Members exceeds One Hundred Thirty (130)
7 individuals, Defendant may, in its sole discretion, choose to amend this Settlement Agreement to end the
8 Class Period on the last day when the total number of Class Members was not more than One Hundred
9 Thirty (130). If Defendant chooses to amend this Agreement pursuant to this Paragraph 34, it must do so
10 by written notice to Plaintiffs within ten (10) days after written notice to the Parties from the Class
11 Administrator that the total number of Class Members exceeds One Hundred Thirty (130). If the total
12 number of Class Members exceeds One Hundred Thirty (130) individuals and Defendant does not choose
13 to amend this Agreement pursuant to this Paragraph 34, then Plaintiffs may, in their discretion, choose to
14 terminate this Agreement. If Plaintiffs choose to terminate this Agreement pursuant to this Paragraph 34,
15 they must do so by written notice to Defendant within twenty (20) days after written notice to Plaintiffs
16 from the Class Administrator that the total number of Class Members exceeds One Hundred Thirty (130).

17 35. Effects of Termination of the Settlement. Termination of this Agreement shall have the
18 following effects:

19 a. This Agreement shall be void and shall have no force or effect, and no Party shall
20 be bound by any of its terms;

21 b. In the event this Agreement is terminated, Defendant shall have no obligation to
22 make any payments to any Party, Class Member or attorney, except that the terminating Party shall pay
23 the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified
24 that the settlement has been terminated;

25 c. The Preliminary Approval Order, Final Approval Order and Judgment, including
26 any order certifying the Class, shall be vacated;

27 d. This Agreement and all negotiations, statements and proceedings relating thereto
28 shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective

positions in the Action prior to the execution of this Agreement;

e. Neither this Agreement, nor any ancillary documents, actions, statements or filings in furtherance of the Settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever;

f. Any documents generated to bring the settlement into effect, will be null and void, and any order or judgment entered by the Court in furtherance of this Agreement will likewise be treated as void from the beginning; and

g. The Parties shall request that the Court reopen proceedings within thirty (30) calendar days.

36. Continued Jurisdiction. After entry of judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Agreement. The Parties further understand and agree that if an action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to its/her reasonable attorneys' fees and costs incurred in connection with any enforcement action(s).

37. Exhibits Incorporated by Reference. The terms of this Agreement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth in this Agreement. Any exhibits to this Agreement are an integral part of the settlement.

38. Limitation on Publicity. Plaintiffs and Class Counsel, including its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, will not make any public disclosure of the settlement or discuss the settlement or this Agreement with anyone other than those necessary to effectuate the filing of the Motion for Preliminary Approval, until after the Motion for Preliminary Approval is filed. Class Counsel will take all steps necessary to ensure Plaintiffs are aware of, and will encourage them to adhere to, the restriction against any public disclosure of the settlement until after the Motion for Preliminary Approval is filed. Prior to and following Preliminary Approval of the Settlement, Plaintiffs

1 and Class Counsel will not have any communications with any media other than to direct any media
2 inquiries to the public records of the Action on file with the Court and will not publicize the Settlement,
3 including but not limited to, postings on Class Counsel's websites and social media sites/outlets. Class
4 Counsel will take all steps necessary to ensure Plaintiffs are aware of, and will encourage them to adhere
5 to, the restriction against any media comment on the settlement and its terms. Class Counsel further agrees
6 not to use the settlement of the Actions or any of its terms for any marketing or promotional purposes, or
7 for attempting to influence business relationships at Defendant, either before or after the Motion for
8 Preliminary Approval is filed. Nothing in this Agreement will restrict Class Counsel from including
9 publicly available information regarding this settlement in future judicial submissions regarding Class
10 Counsel's qualifications and experience. Furthermore, Plaintiffs and Class Counsel will undertake any
11 and all disclosures required to be made to the LWDA in conformity with PAGA. Neither Plaintiffs nor
12 Class Counsel shall engage in any disparagement of any type related to this settlement.

13 39. Entire Agreement. This Agreement and any attached exhibits constitute the entirety of the
14 Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed
15 binding on the Parties. The Parties expressly recognize California Civil Code § 1625 and California Code
16 of Civil Procedure § 1856(a), which provide that a written agreement is to be construed according to its
17 terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such
18 extrinsic oral or written representations or terms will modify, vary or contradict the terms of this
19 Agreement.

20 40. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the
21 Action, except such proceedings necessary to implement and complete this Agreement, pending the Final
22 Approval hearing to be conducted by the Court.

23 41. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of
24 this Agreement except by written agreement signed by counsel for all Parties, and subject to any necessary
25 Court approval. A waiver or amendment of any provision of this Agreement will not constitute a waiver
26 of any other provision.

27 42. Authorization to Enter into Agreement. Counsel for all Parties warrant and represent they
28 are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all

appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under state or federal law.

43. Signatories. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Agreement. The Class Notice will advise all Class Members of the binding nature of the release as to the Settlement Class Members, and the release shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.

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

45. California Law Governs. All terms of this Agreement and attached exhibits hereto will be governed by and interpreted according to the laws of the State of California.

46. Execution and Counterparts. This Agreement is subject only to the execution of all Parties. However, this Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile, electronic, pdf, or DocuSign, and scanned copies of the signature page, will be deemed to be one and the same instrument.

47. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Actions and have arrived at this settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement. In addition, the Mediator may execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

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

4 49. Plaintiffs' Waiver of Right to Be Excluded. Plaintiffs agree to sign this Agreement and,
5 by signing this Agreement, are hereby bound by the terms in this Agreement.

6 50. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute
7 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering
8 into this Agreement, Defendant does not admit, and specifically denies, that it has violated any state,
9 federal, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any
10 other applicable laws, regulations or legal requirements; breached any contract; violated or breached any
11 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
12 respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the
13 negotiations connected with it, shall be construed as an admission or concession by Defendant of any such
14 violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce
15 the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received
16 as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or
17 to establish the existence of any condition constituting a violation of, or a non-compliance with state,
18 federal, local or other applicable law.

19 51. Captions. The captions and paragraph numbers in this Agreement are inserted for the
20 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions
21 of this Agreement.

22 52. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
23 conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly against
24 one party than another merely by virtue of the fact that it may have been prepared by counsel for one of
25 the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all
26 Parties have contributed equally to the preparation of this Agreement.

27 53. Representation by Counsel. The Parties acknowledge that they have been represented by
28 counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement

has been executed with the consent and advice of counsel, and reviewed in full. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on this Agreement.

54. All Terms Subject to Final Court Approval. All amounts and procedures described in this Agreement in this Agreement will be subject to final Court approval.

55. Notices. All notices, demands, and other communications to be provided concerning this Agreement shall be in writing and delivered by overnight mail at the addresses set for below, or such other addresses as either Party may designate in writing from time to time:

To Plaintiffs and Class Counsel:

Daniel F. Gaines
Alex P. Katofsky
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301

Larry W. Lee
Mai Tulyathan
DIVERSITY LAW GROUP, APC
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071

To Defendant:

Robert Tomaso
AJ Weissler
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105

Amberly Morgan
HUSCH BLACKWELL LLP
501 W. Broadway, Suite 800
San Diego, CA 92101

56. Final Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Judgment on its website within three (3) business days of receipt and for a period of no fewer than one hundred eighty (180) days after the Effective Date. No individualized notice to the Class will be required.

57. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

58. Integration Clause. This Agreement contains the entire agreement between the Parties

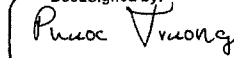
1 relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous
2 agreements, understandings, representations, and statements, whether oral or written and whether by a
3 Party or such Party's legal counsel, are merged in this Agreement. No rights hereunder may be waived
4 except in writing.

5 **IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this Amended
6 Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs and Defendant:

7 **IT IS SO AGREED.**

8
9
10 Dated: October 8, 2021, 2021

PHUOC TRUONG



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Phuoc Truong

CLARENCE SMITH

11
12
13 Dated: _____, 2021

Clarence Smith

**WATLOW ELECTRIC MANUFACTURING
COMPANY**

14
15
16 Dated: _____, 2021

Full Name: _____

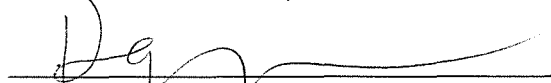
Title: _____

On behalf of Defendant Watlow Electric Manufacturing
Company

17
18
19
20
21 **APPROVED AS TO FORM**

22
23 Dated: October 8, 2021

GAINES & GAINES, APLC



Daniel F. Gaines

Alex P. Katofsky

Attorneys for Plaintiffs and Proposed Class Counsel

relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights hereunder may be waived except in writing.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Amended Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs and Defendant:

IT IS SO AGREED.

PHUOC TRUONG

Dated: _____, 2021

Phuoc Truong

CLARENCE SMITH

DocuSigned by:

Dated: 10/11/2021
_____, 2021


4BFCA12C076E40D
Clarence Smith

**WATLOW ELECTRIC MANUFACTURING
COMPANY**

Dated: _____, 2021

Full Name: _____

Title: _____
On behalf of Defendant Watlow Electric Manufacturing
Company

APPROVED AS TO FORM

GAINES & GAINES, APLC

Dated: _____, 2021

Daniel F. Gaines
Alex P. Katofsky
Attorneys for Plaintiffs and Proposed Class Counsel

1 relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous
2 agreements, understandings, representations, and statements, whether oral or written and whether by a
3 Party or such Party's legal counsel, are merged in this Agreement. No rights hereunder may be waived
4 except in writing.

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6 Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs and Defendant:

7 **IT IS SO AGREED.**

8
9 **PHUOC TRUONG**

10 Dated: _____, 2021

Phuoc Truong

11
12 **CLARENCE SMITH**

13 Dated: _____, 2021

Clarence Smith

14
15 **WATLOW ELECTRIC MANUFACTURING
COMPANY**

16 Dated: _____, 2021

David P. McCool

Full Name: *David P. McCool*

Title: *V.P. & General Counsel*

On behalf of Defendant Watlow Electric Manufacturing
Company

20
21 **APPROVED AS TO FORM**

22 **GAINES & GAINES, APLC**

23 Dated: _____, 2021

Daniel F. Gaines
Alex P. Katofsky
Attorneys for Plaintiffs and Proposed Class Counsel

DIVERSITY LAW GROUP, APC

DocuSigned by:

Mai Tulyathan

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Larry W. Lee

Mai Tulyathan

Attorneys for Plaintiffs and Proposed Class Counsel

HUSCH BLACKWELL LLP

Dated: October 8, 2021

Dated: _____, 2021

Robert Tomaso

AJ Weissler

Amberly Morgan

Attorneys for Defendant Watlow Electric Manufacturing Company

EXHIBIT B

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 1/25/2022 12:24 PM
Reviewed By: R. Walker
Case #20CV365250
Envelope: 8132656

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

CLARENCE SMITH,

Plaintiff,

vs.

WATLOW ELECTRIC MANUFACTURING
COMPANY, et al.,

Defendants.

Lead Case No.: 20CV365250

(consolidated with Case No.
20CV362069)

**ORDER CONCERNING
PLAINTIFFS' RENEWED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
ACTION SETTLEMENT**

PHUOC TRUONG,

Plaintiff,

vs.

WATLOW ELECTRIC MANUFACTURING
COMPANY, et al.,

Defendants.

This consolidated, putative class and Private Attorneys General Act ("PAGA") action is brought on behalf of employees of Defendant Watlow Electric Manufacturing Company.

1 Plaintiffs allege that Defendant failed to provide proper meal and rest breaks, failed to pay wages
2 in the proper form, and failed to provide accurate itemized wage statements.

3 The parties reached a settlement, and Plaintiffs moved for preliminary approval in August
4 2021. The Court denied this motion due to concerns over the Fair Labor Standards Act (FLSA)
5 portion of the settlement and the definition of the class period, but invited the parties to meet and
6 confer about possible modifications to the settlement to address those issues. The parties met
7 and conferred accordingly and agreed to amend the settlement to remove the FLSA component.¹

8 Now before the Court is Plaintiffs' motion for preliminary approval of the amended
9 settlement, which is unopposed. The Court issued a tentative ruling on January 19, 2022 and no
10 one challenged it at the hearing on January 20. The Court now issues its final order, which
11 GRANTS preliminary approval.

12 **I. BACKGROUND**

13 These related actions were consolidated in October 2020, pursuant to a stipulated order.
14 Plaintiffs filed the operative First Amended Consolidated Class and Representative Action
15 Complaint (FAC) on June 8, 2021.

16 As alleged in the FAC, Defendant is a Missouri corporation that manufactures industrial
17 heaters, sensors, and controllers. (FAC, ¶ 11.) It operates numerous manufacturing facilities and
18 sales offices throughout the United States, including in Santa Clara County. (*Ibid.*) Plaintiff
19 Clarence Smith worked for Defendant as a janitor from September 13, 2017 until January 28,
20 2020. (*Id.*, ¶ 8.) Plaintiff Phuoc Truong was also a non-exempt, hourly employee, from April
21 2017 through August 2019. (*Id.*, ¶ 9.)

22 Plaintiffs allege that they were regularly denied proper meal and rest breaks and were not
23 paid premium wages for the missed breaks. (FAC, ¶ 24.) In addition, they received paychecks
24 drawn from an account at Harris Bank, an entity with no California locations, which did not list a
25 business address where they could be cashed in California without fees. (*Id.*) Plaintiffs

26
27 ¹ The Court also directed Plaintiffs' counsel to speak with Plaintiff Clarence Smith, who
28 appeared at the first preliminary approval hearing to express concerns with the settlement.
Plaintiffs' counsel declares that she spoke with Mr. Smith on October 8, 2021, and based on their
discussion, he agreed to sign the amended stipulation of settlement.

1 consequently incurred fees to access their wages. (*Ibid.*) As a result of these other violations,
2 Plaintiffs were not paid all wages due upon separation of employment. (*Ibid.*) Finally,
3 Plaintiffs' wage statements did not correctly identify the overtime rates of pay, number of hours
4 worked at each rate of pay, and total hours worked in pay periods in which they worked
5 overtime. (*Ibid.*)

6 Based on these allegations, Plaintiffs assert claims for the following: (1) violation of
7 Labor Code section 226.7 by failing to provide compliant rest breaks; (2) violation of Labor
8 Code sections 226.7 and 512 by failing to provide compliant meal periods; (3) violation of Labor
9 Code sections 201–203 by failing to pay wages owed at separation; (4) violation of Labor Code
10 section 226, subdivision (a) by failing to provide compliant wage statements; (5) violations of
11 the Unfair Competition Law, Business and Professions Code section 17200, *et seq.*; and
12 (6) violation of PAGA.

13 The parties have now reached a settlement. Plaintiffs move for an order preliminarily
14 approving the settlement of the class and PAGA claims, provisionally certifying the settlement
15 class, approving the form and method for providing notice to the class, and scheduling a final
16 fairness hearing.

17 **II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL**

18 **A. Class Action**

19 Generally, “questions whether a [class action] settlement was fair and reasonable,
20 whether notice to the class was adequate, whether certification of the class was proper, and
21 whether the attorney fee award was proper are matters addressed to the trial court’s broad
22 discretion.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*),
23 disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th
24 260.)

25 In determining whether a class settlement is fair, adequate and reasonable, the
26 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
27 the risk, expense, complexity and likely duration of further litigation, the risk of
28 maintaining class action status through trial, the amount offered in settlement, the

1 extent of discovery completed and the stage of the proceedings, the experience
2 and views of counsel, the presence of a governmental participant, and the reaction
3 of the class members to the proposed settlement.

4 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

5 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
6 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)
7 168 Cal.App.4th 116, 130 (*Kullar*).) But the trial court is free to engage in a balancing and
8 weighing of factors depending on the circumstances of each case. (*Wershba, supra*, 91
9 Cal.App.4th at p. 245.) The trial court must examine the “proposed settlement agreement to the
10 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
11 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
12 whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, citation and internal quotation
13 marks omitted.)

14 The burden is on the proponent of the settlement to show that it is fair and
15 reasonable. However “a presumption of fairness exists where: (1) the settlement
16 is reached through arm’s-length bargaining; (2) investigation and discovery are
17 sufficient to allow counsel and the court to act intelligently; (3) counsel is
18 experienced in similar litigation; and (4) the percentage of objectors is small.”

19 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citation omitted.) The presumption does not permit
20 the Court to “give rubber-stamp approval” to a settlement; in all cases, it must “independently
21 and objectively analyze the evidence and circumstances before it in order to determine whether
22 the settlement is in the best interests of those whose claims will be extinguished,” based on a
23 sufficiently developed factual record. (*Kullar, supra*, 168 Cal.App.4th at p. 130.)

24 **B. PAGA**

25 Labor Code section 2699, subdivision (l)(2) provides that “[t]he superior court shall
26 review and approve any settlement of any civil action filed pursuant to” PAGA. The court’s
27 review “ensur[es] that any negotiated resolution is fair to those affected.” (*Williams v. Superior*
28 *Court* (2017) 3 Cal.5th 531, 549.) Seventy-five percent of any penalties recovered under PAGA

1 go to the Labor and Workforce Development Agency (LWDA), leaving the remaining twenty-
2 five percent for the aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC*
3 (2014) 59 Cal.4th 348, 380.)

4 Similar to its review of class action settlements, the Court must “determine independently
5 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
6 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72
7 Cal.App.5th 56, 76–77.) It must make this assessment “in view of PAGA’s purposes to
8 remediate present labor law violations, deter future ones, and to maximize enforcement of state
9 labor laws.” (*Id.* at p. 77; see also *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383
10 F. Supp. 3d 959, 971 [“when a PAGA claim is settled, the relief provided for under the PAGA
11 [should] be genuine and meaningful, consistent with the underlying purpose of the statute to
12 benefit the public”], quoting LWDA guidance discussed in *O’Connor v. Uber Technologies,*
13 *Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110 (*O’Connor*).)

14 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor,*
15 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential
16 verdict].) But a permissible settlement may be substantially discounted, given that courts often
17 exercise their discretion to award PAGA penalties below the statutory maximum even where a
18 claim succeeds at trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-
19 CV-02198-EMC) 2016 WL 5907869, at *8–9.)

20 **III. SETTLEMENT PROCESS**

21 According to Plaintiffs, after an initial case management conference on July 24, 2020, the
22 parties agreed to mediate. Defendant provided Plaintiffs with information about the number of
23 putative class members, shifts, pay periods, and wage statements at issue; class members’ hourly
24 rates of pay; and Defendant’s wage and hour policies and practices. Plaintiffs reviewed this
25 information and analyzed Defendant’s liability and potential exposure. On January 19, 2021, the
26 parties engaged in a full day of mediation with Steven Rottman, Esq. They were able to reach
27 the settlement before the Court.
28

1 Following the Court's denial of Plaintiffs' first motion for preliminary approval, the
2 parties met and conferred and agreed to remove the FLSA component from the original
3 settlement. They executed an amended stipulation of settlement on October 11, 2021.

4 **IV. SETTLEMENT PROVISIONS**

5 The non-reversionary gross settlement amount is \$500,000. Attorney fees of up to
6 \$175,000 (thirty-five percent of the gross settlement), litigation costs not to exceed \$25,000, and
7 administration costs of up to \$6,500 will be paid from the gross settlement. \$80,000 will be
8 allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named
9 plaintiffs will also seek enhancement awards of \$10,000 each.

10 The net settlement, approximately \$213,500, will be allocated to settlement class
11 members pro rata based on their weeks worked during the class period. The average payment
12 will be \$1,642.31 to each of the 130 class members. Class members will not be required to
13 submit a claim to receive their payments. Settlement payments will be allocated one-quarter to
14 wages and three-quarters to penalties, interest, and non-wage damages for tax purposes. The
15 employer's share of taxes on the wage portion will be paid separately and in addition to the gross
16 settlement. Funds associated with checks uncashed after 180 days will be distributed to Legal
17 Aid at Work.

18 In exchange for the settlement, class members will release all claims "arising out of or
19 assertable based upon the allegations set forth in the Operative Complaint. These claims include,
20 but are not limited to: claims for rest period violations, meal period violations, unpaid wages,
21 failure to keep proper records, itemized wage statement violations, waiting time penalties, unfair
22 competition, declaratory relief, claims for violation of [PAGA], penalties of any nature premised
23 on Labor Code §§ 201-203, 212, 225.5, 226, 226.3, 226.7, 512, and 558, interest, fees, costs, and
24 all other claims and allegations made or which could have been made in the Actions arising
25 during the Class Period." The release is appropriately tailored to the allegations at issue. (See
26 *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)
27
28

1 **V. FAIRNESS OF SETTLEMENT**

2 Plaintiffs estimate that Defendant would face liability of up to \$2,860,418.56 on the class
3 claims for meal and rest period and wage statement violations, including waiting time penalties.
4 They estimate that the maximum PAGA penalties are \$2,971,000. The settlement thus
5 represents 8.6 percent of the maximum value of the case (\$5,831,418.56) and 17 percent of the
6 potential value of the class claims. On the merits, Defendant maintains that its meal and rest
7 break policies were facially compliant and any missed breaks were affirmatively waived by
8 employees. It revised its wage statements as of May 2020, although it maintains they were
9 already compliant, and claims it only issued 27 paychecks in a form that could potentially violate
10 Labor Code section 212.

11 The Court agrees with Plaintiffs that the settlement is fair and reasonable to the class in
12 light of the risks on the merits and at class certification, especially considering the portion of the
13 case's value attributable to highly uncertain penalties. The Court also finds that the PAGA
14 allocation is genuine, meaningful, and fair to those impacted considering the purposes of the
15 statute.

16 The Court retains an independent right and responsibility to review the requested attorney
17 fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles*
18 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127–128.) While 33% of the common fund
19 for attorney fees is generally considered reasonable, counsel shall submit lodestar information
20 prior to the final approval hearing in this matter so the Court can compare the lodestar
21 information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th
22 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee
23 through a lodestar calculation].) The Court is not inclined to award 35 percent of the common
24 fund as attorney fees, as is currently requested.

25 **VI. PROPOSED SETTLEMENT CLASS**

26 Plaintiffs request that the following settlement class be provisionally certified:
27
28

1 All current and former hourly-paid or non-exempt employees, who worked for
2 Defendant in California at any time during the Class Period, and who received at
3 least one paycheck during the Class Period from Defendant.

4 The Class Period is defined as the time period from November 15, 2018, through the date
5 of Preliminary Approval. Plaintiffs explain that November 15, 2018 was the date the parties
6 agreed the class period would begin for purposes of mediation, due to the fact that the claims
7 alleged in the original complaints filed by Mr. Smith and Mr. Truong were subject to a one-year
8 statute of limitations. Consistent with this agreement, the FAC defines the class period to begin
9 on the same date, even though it asserts additional causes of action with longer statutes of
10 limitations. Considering that individuals with claims arising before the class period were never
11 included in the putative class, the class period is appropriately defined.

12 **A. Legal Standard for Certifying a Class for Settlement Purposes**

13 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
14 approving or denying certification of a provisional settlement class after [a] preliminary
15 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
16 class “when the question is one of a common or general interest, of many persons, or when the
17 parties are numerous, and it is impracticable to bring them all before the court”

18 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence:
19 (1) an ascertainable class and (2) a well-defined community of interest among the class
20 members. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On*
21 *Drug Stores*).) “Other relevant considerations include the probability that each class member
22 will come forward ultimately to prove his or her separate claim to a portion of the total recovery
23 and whether the class approach would actually serve to deter and redress alleged wrongdoing.”
24 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) The plaintiff has the burden of
25 establishing that class treatment will yield “substantial benefits” to both “the litigants and to the
26 court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.)

27 In the settlement context, “the court’s evaluation of the certification issues is somewhat
28 different from its consideration of certification issues when the class action has not yet settled.”

1 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the
2 settlement-only context, the case management issues inherent in the ascertainable class
3 determination need not be confronted, and the court’s review is more lenient in this respect. (*Id.*
4 at pp. 93–94.) But considerations designed to protect absentees by blocking unwarranted or
5 overbroad class definitions require heightened scrutiny in the settlement-only class context, since
6 the court will lack the usual opportunity to adjust the class as proceedings unfold. (*Id.* at p. 94.)

7 **B. Ascertainable Class**

8 A class is ascertainable “when it is defined in terms of objective characteristics and
9 common transactional facts that make the ultimate identification of class members possible when
10 that identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980
11 (*Noel*.) A class definition satisfying these requirements

12 puts members of the class on notice that their rights may be adjudicated in the
13 proceeding, so they must decide whether to intervene, opt out, or do nothing and
14 live with the consequences. This kind of class definition also advances due
15 process by supplying a concrete basis for determining who will and will not be
16 bound by (or benefit from) any judgment.

17 (*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

18 “As a rule, a representative plaintiff in a class action need not introduce evidence
19 establishing how notice of the action will be communicated to individual class members in order
20 to show an ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held
21 that “[c]lass members are ‘ascertainable’ where they may be readily identified ... by reference to
22 official records.” (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on
23 another ground by *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178
24 Cal.App.4th 966, 975-976 [“The defined class of all HD Package subscribers is precise, with
25 objective characteristics and transactional parameters, and can be determined by DIRECTV’s
26 own account records. No more is needed.”].)

1 Here, the estimated 130 class members are readily identifiable based on Defendant's
2 records, and the settlement class is appropriately defined based on objective characteristics. The
3 Court finds that the settlement class is numerous, ascertainable, and appropriately defined.

4 **C. Community of Interest**

5 The "community-of-interest" requirement encompasses three factors: (1) predominant
6 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and
7 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34
8 Cal.4th at pp. 326, 332.)

9 For the first community of interest factor, "[i]n order to determine whether common
10 questions of fact predominate the trial court must examine the issues framed by the pleadings
11 and the law applicable to the causes of action alleged." (*Hicks v. Kaufman & Broad Home Corp.*
12 (2001) 89 Cal.App.4th 908, 916 (*Hicks*)). The court must also examine evidence of any conflict
13 of interest among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court*
14 (2003) 113 Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be
15 jointly tried, when compared with those requiring separate adjudication, are so numerous or
16 substantial that the maintenance of a class action would be good for the judicial process and to
17 the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105
18 (*Lockheed Martin*)). "As a general rule if the defendant's liability can be determined by facts
19 common to all members of the class, a class will be certified even if the members must
20 individually prove their damages." (*Hicks, supra*, 89 Cal.App.4th at p. 916.)

21 Here, common legal and factual issues predominate. Plaintiffs' claims all arise from
22 Defendant's wage and hour practices applied to the similarly-situated class members.

23 As to the second factor,

24 The typicality requirement is meant to ensure that the class representative is able
25 to adequately represent the class and focus on common issues. It is only when a
26 defense unique to the class representative will be a major focus of the litigation,
27 or when the class representative's interests are antagonistic to or in conflict with
28 the objectives of those she purports to represent that denial of class certification is

1 appropriate. But even then, the court should determine if it would be feasible to
2 divide the class into subclasses to eliminate the conflict and allow the class action
3 to be maintained.

4 (*Medrazo v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
5 brackets, and quotation marks omitted.)

6 Like other members of the class, Plaintiffs were employed by Defendant as hourly
7 employees and allege that they experienced the violations at issue. The anticipated defenses are
8 not unique to Plaintiffs, and there is no indication that Plaintiffs' interests are otherwise in
9 conflict with those of the class.

10 Finally, adequacy of representation "depends on whether the plaintiff's attorney is
11 qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the
12 interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
13 representative does not necessarily have to incur all of the damages suffered by each different
14 class member in order to provide adequate representation to the class. (*Wershba, supra*, 91
15 Cal.App.4th at p. 238.) "Differences in individual class members' proof of damages [are] not
16 fatal to class certification. Only a conflict that goes to the very subject matter of the litigation
17 will defeat a party's claim of representative status." (*Ibid.*, internal citations and quotation marks
18 omitted.)

19 Plaintiffs have the same interest in maintaining this action as any class member would
20 have. Further, they have hired experienced counsel. Plaintiffs have sufficiently demonstrated
21 adequacy of representation.

22 **D. Substantial Benefits of Class Certification**

23 "[A] class action should not be certified unless substantial benefits accrue both to
24 litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
25 internal quotation marks omitted.) The question is whether a class action would be superior to
26 individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of
27 superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a
28 class action is proper where it provides small claimants with a method of obtaining redress and

1 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
2 120–121, internal quotation marks omitted.)

3 Here, there are an estimated 130 class members. It would be inefficient for the Court to
4 hear and decide the same issues separately and repeatedly for each class member. Further, it
5 would be cost prohibitive for each class member to file suit individually, as each member would
6 have the potential for little to no monetary recovery. It is clear that a class action provides
7 substantial benefits to both the litigants and the Court in this case.

8 **VII. NOTICE**

9 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
10 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
11 for class members to follow in filing written objections to it and in arranging to appear at the
12 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
13 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
14 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
15 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
16 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
17 3.766(e).)

18 Here, the notice describes the lawsuit, explains the settlement, and instructs class
19 members that they may opt out of the settlement or object. The gross settlement amount and
20 estimated deductions are provided. Class members’ estimated payments are stated, and they are
21 informed of their qualifying workweeks as reflected in Defendant’s records and instructed how
22 to dispute this information. Class members are given 45 days to request exclusion from the class
23 or submit a written objection to the settlement. The notice makes it clear that class members
24 may appear at the final approval hearing to make an oral objection without submitting a written
25 objection. Notice will be provided in both English and Spanish.

26 At the Court’s direction, the notice was modified to instruct class members that they may
27 request to be excluded from the class by simply providing their name, without the need to
28 provide their address or other identifying information. The notice was also modified to explain

1 how class members may, but are not required to, appear remotely at the final fairness hearing
2 through CourtCall. With these modifications, the form of notice is approved.

3 Turning to the notice procedure, the parties have selected Phoenix Settlement
4 Administrators as the settlement administrator. The administrator will mail the notice packet
5 within 25 calendar days of preliminary approval, after updating addresses based on a search of
6 the National Change of Address Database. The administrator will conduct a skip trace to locate
7 a more current address for class members whose notice packets are returned as undeliverable,
8 and re-mail such notices within 5 calendar days. Class members whose notices are re-mailed
9 will have an additional 15 days to submit a response. These notice procedures are appropriate
10 and are approved.

11 **VIII. CONCLUSION**

12 Plaintiffs' motion for preliminary approval is GRANTED. The final approval hearing
13 shall take place on May 26, 2022 at 1:30 p.m. in Dept. 1. The following class is preliminarily
14 certified for settlement purposes:

15 All current and former hourly-paid or non-exempt employees, who worked for
16 Defendant in California at any time during the Class Period [(November 15, 2018,
17 through the date of Preliminary Approval)], and who received at least one
18 paycheck during the Class Period from Defendant.

19 **IT IS SO ORDERED.**

20 Date: January 25, 2022

21 
22 _____
23 The Honorable Sunil R. Kulkarni
24 Judge of the Superior Court
25
26
27
28

From: [DIR PAGA Unit](#)
To: [Olympia Pena](#)
Subject: Thank you for your Court Order or Judgment Submission
Date: Friday, January 28, 2022 8:56:25 AM

01/27/2022 03:41:01 PM

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

Item submitted: Court Order or Judgment

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 C

Smith v. Watlow Electric Manufacturing Company
Time and Task Chart for Mai Tulyathan

Hours	Description of Work
5.5	Factual investigation, review of file and client documents, review PAGA letter, confer with co-counsel and client regarding the case upon assignment to case.
5.6	Draft class and PAGA complaint; further review and revise complaint
1.0	Review Defendant's Answer
0.5	Review the Court's order re: complex civil actions and stay on discovery and responsive pleading deadline
3.4	Review notice of related case and related complaint; conduct further investigation; confer with co-counsel regarding same
5.0	Meet and confer with opposing counsel for case management conferences, draft, review and revise several joint statements and updated statements in connection therewith
2.9	Meet and confer with co-counsel and opposing counsel regarding consolidation; draft stipulation to consolidate
3.0	Draft, review, and revise first amended consolidated complaint and confer with co-counsel and opposing counsel regarding same
2.5	Meet and confer with opposing counsel regarding mediation; draft and prepare informal discovery request in connection with mediation
12.7	Review and analyze production of informal discovery for mediation, including class payroll data, wage statements, and documents re: Defendant's various policies; numerous meet and confer communications with opposing counsel regarding data and documents and regarding liability issues
8.2	Draft mediation brief; conduct legal research in connection with same; revise and revise brief; conducted exposure analysis based on data produced by Defendant
8.5	Prepare for and attend mediation
10.4	Review and revise long-form settlement agreement; confer with co-counsel and opposing counsel regarding terms therein; confer with client regarding same
3.2	Further revised long-form settlement agreement; review court's requirements for preliminary approval
2.8	Review and revise class notice to be sent to class members; confer with co-counsel and opposing counsel regarding same
1.0	Confer with settlement administrator regarding administration and admin expenses

14.2	Draft motion for preliminary approval of settlement, proposed order, and supporting documents; further revise same
1.8	Review the Court's order regarding preliminary approval of settlement; further meet and confer with co-counsel, opposing counsel, and client regarding amendment of settlement
6.6	Draft amended settlement and revised class notice; further confer with opposing counsel with email and telephone regarding same; further confer with client regarding same
1.0	Confer with settlement administrator regarding administration timeline and dissemination of class notice
1.2	Review weekly mailing reports from settlement administrator; confer with settlement administrator regarding class list and final approval
12.7	Draft, review, and revise motion for final approval of settlement, proposed order, and supporting documents; further revise same
<u>113.7</u>	<u>TOTAL HOURS</u>

EXHIBIT D

4/26/2022
4:09 PM

DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip.Classification Open
Client (hand select) Include: Smith, Clarence v. Watlow
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
61631	EXP	Olympia	1	75.00	75.00
2/25/2020		Court fees			
WIP		Smith, Clarence v. Watlow			
LWDA					
61916	EXP	Olympia	1	7.40	7.40
2/28/2020		Postage			
WIP		Smith, Clarence v. Watlow			
Postage					
61787	EXP	Olympia	1	1483.77	1483.77
3/18/2020		Court fees			
WIP		Smith, Clarence v. Watlow			
Odyssey - Complaint					
62106	EXP	Olympia	1	63.25	63.25
3/31/2020		Atty Service			
WIP		Smith, Clarence v. Watlow			
Attorney Service - Service of Complaint					
62299	EXP	Olympia	1	5.72	5.72
4/10/2020		Court fees			
WIP		Smith, Clarence v. Watlow			
Odyssey - POS of Summons					
63219	EXP	Olympia	1	5.72	5.72
7/17/2020		Court fees			
WIP		Smith, Clarence v. Watlow			
Odyssey - Joint CMS					
63358	EXP	Larry W. Lee	1	94.00	94.00
7/24/2020		Court fees			
WIP		Smith, Clarence v. Watlow			
Courtcall					
64426	EXP	Olympia	1	3000.00	3000.00
10/14/2020		Arbitrators			
WIP		Smith, Clarence v. Watlow			
Steven J. Rottman, PC Mediation					

4/26/2022
4:09 PM

DIVERSITY LAW GROUP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
66226	EXP	Olympia	1	54.85	54.85
1/16/2021		Delivery serv			
WIP		Smith, Clarence v. Watlow			
Federal Express					
65841	EXP	Olympia	1	5.72	5.72
1/29/2021		Court fees			
WIP		Smith, Clarence v. Watlow			
Odyssey - Joint CMS					
66892	EXP	Erika Mejia	1	5.72	5.72
4/9/2021		Court fees			
WIP		Smith, Clarence v. Watlow			
Odyssey - CMS					
67532	EXP	Olympia	1	5.72	5.72
6/8/2021		Court fees			
WIP		Smith, Clarence v. Watlow			
Odyssey - FAC					
68550	EXP	Erika Mejia	1	67.52	67.52
8/17/2021		Court fees			
WIP		Smith, Clarence v. Watlow			
Odyssey - MPA					
69101	EXP	Mai Tulyathan	1	0.84	0.84
9/9/2021		Telephone			
WIP		Smith, Clarence v. Watlow			
Conference Call					
70170	EXP	Linda Lee	1	67.52	67.52
12/27/2021		Court fees			
WIP		Smith, Clarence v. Watlow			
Odyssey - Renewed MPA					
71580	EXP	Olympia	1	500.00	500.00
4/26/2022		Court fees			
WIP		Smith, Clarence v. Watlow			
Final Approval Filing Fees					
Grand Total					
			0.00		5442.75
			0.00		0.00
			0.00		5442.75

EXHIBIT E