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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET**

MIGUEL HUERTA, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERIOR REMOVAL SPECIALIST, INC.,
a California corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 20STCV09163

[Assigned for All Purposes to The Honorable
Hon. Maren Nelson Dept. 17]

CLASS ACTION

**FIRST AMENDED JOINT STIPULATION
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

Complaint filed: March 6, 2020
Trial date: Not set

1 **FIRST AMENDED JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This First Amended Joint Stipulation of Class and Representative Action Settlement (“Joint
3 Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between
4 Plaintiff MIGUEL HUERTA, individually, and on behalf of all others similarly situated, (“Plaintiff” or
5 “Class Representative”), and Defendant INTERIOR REMOVAL SPECIALIST, INC. (“Defendant”).
6 Plaintiff and Defendant are collectively referred to herein as “the Parties.”

7
8 THE PARTIES STIPULATE AND AGREE as follows:

9 **DEFINITIONS**

10 1. For purposes of this Settlement, “Complaint” refers to the operative complaint, which will
11 be the First Amended Complaint filed in this action.

12 2. For purposes of this Settlement, this matter, entitled *Huerta v. Interior Removal Specialist,*
13 *Inc.*, Case No. 20STCV09163, is referred to herein as the “Action.”

14 3. For purposes of this Settlement, the “Class Period” is March 6, 2016 through the date the
15 court issues an order granting preliminary approval or June 30, 2022, whichever is sooner.

16 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-
17 exempt employees of Defendant who worked in California during the Class Period. “Settlement Class
18 Members” are those Class Members who do not submit timely exclusion requests to the Settlement
19 Administrator. Defendant’s best estimate is that the Class included approximately 669 individuals on
20 January 20, 2022.

21 5. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

22 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a
23 Class Member worked for Defendant in California during the Class Period.

24 7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after
25 the Settlement Administrator initially mails the Class Notice to Settlement Class Members and the last
26 date on which Settlement Class Members may submit a request for exclusion or written objection to the
27 Settlement. In the case of a re-mailed Class Notice, the Response Deadline will be the later of 60 calendar
28 days after initial mailing or 14 calendar days from re-mailing, up to a maximum of 74 days after the initial

1 mailing. The Response Deadline may be extended only as expressly described herein.

2 8. For purposes of the Settlement, “Defendant’s Counsel” means JACKSON LEWIS, PC.

3 9. For purposes of this Settlement, “PAGA Allocation” means the amount that the Parties
4 have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys
5 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that the PAGA
6 Allocation will be \$80,000 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent
7 (75%), or \$60,000, of the PAGA Allocation will be paid to the LWDA (“PAGA Penalty Payment”), and
8 Twenty Five Percent (25%), or \$20,000, of the PAGA Allocation will be included in the Net Settlement
9 Amount for PAGA Employees (“PAGA Settlement Payment”).

10 10. For purposes of this Settlement, “PAGA Period” means the period between March 4, 2019
11 through the date the court issues an order granting preliminary approval or June 30, 2022, whichever is
12 sooner.

13 11. For purposes of this Settlement, “PAGA Employee” means all Class Members that worked
14 at any time during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all
15 PAGA Employees are “aggrieved employees” as defined pursuant to PAGA. PAGA Employees cannot
16 opt out of the settlement of the PAGA claim.

17 12. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods
18 each PAGA Employee worked during the PAGA Period.

19 13. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

20 14. For purposes of this Settlement, “Released PAGA Claims” means all claims that have been
21 pled or could have been pled, based upon the factual allegations and issues set forth in the Notice to the
22 LWDA and alleged in the Complaint, including civil penalties under PAGA, fees, and all other claims and
23 allegations made or which could have been made in the Action that are based on the facts and allegations
24 pled in Plaintiff’s Notice to the LWDA and the Complaint. Plaintiff’s Notice to the LWDA is attached
25 hereto as **Exhibit “B.”**

26 15. For purposes of this Settlement, “Released PAGA Claims Period” means the period
27 between March 4, 2019 through the date the court issues an order granting preliminary approval or June
28 30, 2022, whichever is sooner.

16. For purposes of this Settlement, “Settlement Payments” means all of the payments to Settlement Class Members (the “Settlement Class Payments”) and all of the payments to the PAGA Employees (the “PAGA Settlement Payment”).

STIPULATED BACKGROUND

17. On March 6, 2020, Plaintiff filed a putative Class Action against Defendant Interior Removal Specialist, Inc. alleging the following labelled causes of action: (1) Failure to Pay Minimum Wage and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when the Class Notice to the Class is sent.

18. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). On May 20, 2020, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

19. Solely for purposes of settling this case, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met. More specifically, the Parties stipulate and agree that:

(a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.

(b) There are common questions of law and fact including, but not limited to, the following:

1) Whether or not Defendant paid proper wages including minimum, overtime, and regular rate wages to the Class;

- 2) Whether or not Defendant provided meal periods to the Class;
 - 3) Whether or not Defendant provided rest periods to the Class;
 - 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;
 - 5) Whether or not Defendant paid compensation timely throughout Class Members' employment;
 - 6) Whether or not Defendant provided accurate itemized statements to the Class;
 - 7) Whether or not waiting-time penalties are available to similarly situated Class Members for violation of California Labor Code § 203;
 - 8) Whether or not Defendant maintained requisite records of Class Members' hours worked and the legally required records pursuant to Labor Code § 226;
 - 9) Whether or not Defendant paid proper meal period pay or rest period pay to the Class;
 - 10) Whether or not Defendant reimbursed for necessary business expenses; and,
 - 11) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.
- (c) Plaintiff's claims are typical of the claims of the Class Members.
- (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
- (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
- (f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such

Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

20. Should, for whatever reason, the Settlement not become effective, the fact that the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issues of whether the Class Members and/or the Class Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly reserves its right to oppose claim and class certification in this or any other action should this Settlement not become effective.

21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and the Class Members have been paid proper wages, have been provided meal periods, have been provided rest periods, have been paid timely wages upon separation of employment, have been reimbursed for business expenses and have been provided with accurate itemized wage statements. Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant contends that it has complied at all times with the California Business and Professions Code.

22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint.

23. Class Counsel has conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the Class and PAGA claims against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class and PAGA employees in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues. Defendant and Defendant's Counsel also agree that the

1 Settlement is fair and in the best interest of the Class.

2 24. The Parties agree to cooperate and take all reasonable steps necessary and appropriate to
3 obtain preliminary and final approval of this Settlement.

4 25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
5 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
6 Court.

7 **PRIMARY TERMS OF SETTLEMENT**

8 26. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements
9 set forth herein, the Parties agree, subject to the Court's approval, as follows:

10 (a) It is agreed by and among the Settlement Class Members, PAGA Employees, and
11 Defendant that this case and any claims, damages, or causes of action arising out of
12 the disputes which are the subject of this case, be settled and compromised as
13 between the Settlement Class Members, PAGA Employees, and Defendant,
14 subject to the terms and conditions set forth in this Settlement and the approval of
15 the Court.

16 (b) Effective Date: The terms of settlement embodied in this Settlement shall
17 become effective when: (1) the Court has held a formal fairness hearing and
18 entered a final Order and Judgment certifying the Settlement Class and
19 approving the Stipulation of Settlement and ten (10) calendar days have passed
20 since the Court has entered a final Order and Judgment certifying the Settlement
21 Class and approving the Stipulation of Settlement; or (2) in the event there are
22 written objections filed prior to the final fairness hearing which are not later
23 withdrawn or denied, the later of the following events: ten (10) business days
24 after the period for filing any appeal, writ or other appellate proceeding
25 opposing the Court's final Order approving the Stipulation of Settlement has
26 elapsed without any appeal, writ or other appellate proceeding having been
27 filed; or, if any appeal, writ or other appellate proceeding opposing the Court's
28 final Order approving the Stipulation of Settlement has been filed, ten (10)

1 business days after any appeal, writ or other appellate proceedings opposing the
2 Stipulation of Settlement has been finally and conclusively dismissed with no
3 right to pursue further remedies or relief. In this regard, it is the intention of the
4 Parties that the Settlement shall not become effective until the Court's order
5 approving the Settlement is completely final, and there is no further recourse by
6 an appellant or objector who seeks to contest the Settlement.

7 (c) Gross Settlement Amount: Defendant's maximum total payment under the
8 Settlement, including all attorney's fees and costs, the Service Payment to the
9 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
10 any other payments provided by this Settlement, is \$900,000.00 ("Gross Settlement
11 Amount"), subject to the Escalator Clause and except that, to the extent that any
12 portions of the Class Members' Settlement Payments constitute wages, Defendant
13 will be separately responsible for any employer payroll taxes required by law,
14 including the employer FICA, FUTA, and SDI contributions.

15 (d) Escalator Clause: The number of Covered Workweeks during the Class Period
16 is estimated to be sixty thousand four hundred thirty-two (60,432). If it is later
17 determined that, on the date of preliminary approval or June 30, 2022,
18 whichever is sooner, the number of actual Covered Workweeks during the
19 Class Period exceeds 15% of the estimated Covered Workweeks (i.e., equal or
20 more than sixty-nine thousand four hundred ninety-seven (69,497) workweeks),
21 the Gross Settlement Amount will be increased by 1% for every percentage
22 point that the Covered Workweeks exceed the 15% threshold (i.e., if there is
23 a 17% increase in the number of Covered Workweeks, Defendant shall increase
24 the Settlement Amount by 2%).

25 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
26 revert to Defendant.

27 (f) No Claims Required: Class Members will not be required to submit a claim to
28 receive their Settlement payment.

- (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$900,000) the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$ 300,000); (2) reasonable litigation costs (not to exceed \$25,000); (3) the Service Payment (not to exceed \$5,000 to the named Plaintiff); (4) the PAGA Penalty Payment in the amount of \$60,000 to the California Labor and Workforce Development Agency (which is 75% of the PAGA Allocation); and (5) costs of settlement administration (estimated not to exceed \$25,000). Settlement Payments to the Settlement Class Members and PAGA Employees will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.
- (h) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any **employer** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Except for any employer payroll taxes, it is understood and agreed that Defendant's maximum total liability under this Settlement shall not exceed the Gross Settlement Amount. The Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.
- (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member (i.e., those Class Members who do not opt out of the Class Settlement, as defined above) will be paid a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totalling \$20,000, as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual

Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows: $[\text{Covered Workweeks worked by a Settlement Class Member}] \div [\text{Sum of all Covered Workweeks worked by all Settlement Class Members}] \times [\text{Net Settlement Amount} - \text{PAGA Settlement Payment}] = \text{individual Settlement Class Payment for a Settlement Class Member}$. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $([\text{PAGA Pay Periods worked by a PAGA Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]) \times [\text{PAGA Settlement Payment to Employees, i.e. \$20,000}] = \text{individual PAGA Employee's portion of the PAGA Settlement Payment}$. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class

1 Payments will be allocated as follows: 25% to wages, 75% to penalties and
2 interest. The PAGA Settlement Payment shares to PAGA Employees will be
3 entirely allocated to penalties. Appropriate federal, state and local withholding
4 taxes will be taken out of the wage allocations, and each Class Member will
5 receive an IRS Form W-2 with respect to this portion of the Settlement Payment.
6 The employer's share of payroll taxes and other required withholdings will be paid
7 as set forth above, including but not limited to the Defendant's FICA and FUTA
8 contributions, based on the payment of claims to the Class Members. To the extent
9 required by law, IRS Forms 1099 will be issued to each Class Member reflecting
10 the payments for penalties and interest. Class Members are responsible for paying
11 appropriate taxes due on the Settlement Payments they receive.

12 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
13 Payments to individual Class Members shall be deemed to be paid to such Class
14 Member solely in the year in which such payments actually are received by the
15 Class Member. It is expressly understood and agreed that the receipt of such
16 Settlement Payments will not entitle any Class Member to additional compensation
17 or benefits under any company bonus, contest or other compensation or benefit
18 plan or agreement in place during the period covered by the Settlement, nor will it
19 entitle any Class Member to any increased retirement, 401(k) benefits or matching
20 benefits or deferred compensation benefits. It is the intent that the Settlement
21 Payments provided for in this Settlement are the sole payments to be made by
22 Defendant to the Class Members, and that the Class Members are not entitled to
23 any new or additional compensation or benefits as a result of having received the
24 Settlement Payments (notwithstanding any contrary language or agreement in any
25 benefit or compensation plan document that might have been in effect during the
26 period covered by this Settlement).

27 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
28 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of

1 the Gross Settlement Amount (\$300,000) and reimbursement of litigation costs and
2 expenses not to exceed \$25,000. Approved attorney's fees and litigation costs shall
3 be paid at the same time Settlement Payments issue to the Settlement Class. Should
4 the Court approve attorney's fees and costs in an amount less than that set forth
5 above, the difference between the lesser amount(s) approved by the Court and the
6 attorney's fees and costs set forth above shall be added to the Net Settlement
7 Amount.

8 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
9 Defendant will not object to Class Counsel's application for an additional payment
10 of up to \$5,000 to Plaintiff for service as a Class Representative ("Service
11 Payment"). It is understood that the Service Payment is in addition to the individual
12 Settlement Payment to which a Class Representative is entitled to along with the
13 other Class Members. In exchange, Plaintiff has agreed to release from all
14 claims, demands, rights, liabilities and causes of action of every nature and
15 description whatsoever, known or unknown, asserted or that might have been
16 asserted, whether in tort, contract, or for violation of any state or federal statute,
17 rule or regulation arising out of, relating to, or in connection with any act or
18 omission by or on the part of any of the Releasees that has been committed or
19 omitted prior to the execution hereof ("Plaintiff's Released Claims"). Plaintiff
20 understands that this release includes unknown claims and that he is, as a result,
21 waiving all rights and benefits afforded by Section 1542 of the California Civil
22 Code, which provides:

23 **A general release does not extend to claims that the creditor**
24 **or releasing party does not know or suspect to exist in his or**
25 **her favor at the time of executing the release and that, if**
known by him or her, would have materially affected his or
her settlement with the debtor or released party.

26 Specifically excluded from Plaintiff's Released Claims are any claims for workers'
27 compensation benefits. The Service Payment will issue at the same time all
28 Settlement Payments are mailed to the Settlement Class.

- 1 (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the
2 Service Payment to the Plaintiff. The Plaintiff will be individually responsible for
3 correctly characterizing this compensation on personal income tax returns for tax
4 purposes and for paying any taxes on the amounts received. Should the Court
5 approve a Service Payment in an amount less than that set forth above, the
6 difference between the lesser amount(s) approved by the Court and the Service
7 Payment amount(s) set forth above shall be added to the Net Settlement Amount.
8 Plaintiff agrees not to opt out or object to the Service Payment as the Class
9 Representative.
- 10 (p) Settlement Administrator: The Settlement Administrator will be ILYM Group,
11 Inc. The Settlement Administrator's bid for settlement administration services in
12 the amount of \$ 14,375.00 was selected for the reasonable price and the quality of
13 administration services provided by ILYM Group, Inc. The costs of the Settlement
14 Administrator for work done shall be paid regardless of the outcome of this
15 Settlement.
- 16 (q) Funding of Settlement Account: Defendant will fund the settlement account with
17 the Gross Settlement Amount and all employer related taxes within thirty (30)
18 calendar days of the Effective Date of the Settlement, provided that the Settlement
19 Administrator has delivered to the Parties an accounting of the amounts to be paid
20 by Defendant pursuant to the terms of this Settlement.
- 21 (r) Mailing of Settlement Payments: The Settlement Administrator shall cause the
22 Settlement Payments to be mailed to the Class Members sixty-two (62) calendars
23 days after the Effective Date, provided that the Defendant have funded the Gross
24 Settlement Amount within (30) calendar days of the Effective Date of the
25 Settlement pursuant to the terms of this Settlement.
- 26 (s) Notice of Settlement: Within fourteen (14) calendar days of the Court's
27 preliminary approval of the Settlement, Defendant will provide to the
28 Settlement Administrator a list in Microsoft Excel format containing each

1 Settlement Class Member's (i) full name, (ii) last known address, (iii) Social
2 Security Number, and (iv) dates worked for Defendant in California during the
3 Class Period as a non-exempt employee ("Class List"). Within fourteen (14)
4 calendar days of receipt of the Class List, the Settlement Administrator will
5 perform an NCOA check and will mail the notice to the Settlement Class
6 Members setting forth the material terms of the proposed Settlement, along with
7 instructions about how to object or request exclusion from the proposed class
8 action Settlement ("Class Notice"). The Administrator will skip-trace returned
9 mail and re-mail the notice to the new addresses within five (5) calendar days.
10 These deadlines are subject to court approval. For each Class Member, there
11 will be pre-printed information on the mailed Class Notice, based on
12 Defendant's records, stating the Class Member's Covered Workweeks during
13 the Class Period and the estimated total Settlement Payment under the
14 Settlement, including the Settlement Class Payment and the PAGA Settlement
15 Payment that will be distributed irrespective of any exclusion request. The pre-
16 printed information based on Defendant's records shall be presumed to be
17 correct. A Class Member may dispute the pre-printed information on the Class
18 Notice as to his or her Covered Workweeks during the Class Period. Class
19 Members must submit any dispute regarding the information on the Class
20 Notice to the Settlement Administrator as to his or her Covered Workweeks
21 within the Response Deadline. Unless a disputing Class Member submits
22 documentary evidence in support of his or her dispute, the records of the
23 Defendant will be dispositive.

23 (t) Settlement Notice Language: The Class Notice will issue in English and Spanish.

24 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

25 Class Members submitting a Request for Exclusion will nevertheless receive their
26 pro-rata share of the PAGA Settlement Payment. If the Court approves the
27 compromise of the PAGA Claim, all Class Members are bound by the Court's
28

1 resolution of the PAGA Claim. Plaintiff shall serve a notice of settlement on the
2 California Labor and Workforce Development Agency at or before the time
3 Plaintiff files the motion for preliminary approval.

4 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
5 Defendant's records used to calculate Covered Workweeks, and the Parties'
6 counsel and the Settlement Administrator cannot resolve the dispute informally, the
7 matter will be referred to the court for final resolution. The Class Member must
8 submit information or documents supporting his or her position to the Settlement
9 Administrator prior to the expiration of the Response Deadline. Information or
10 documents submitted after the expiration of the Response Deadline will not be
11 considered by the Settlement Administrator, unless otherwise agreed to by the
12 Parties.

13 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
14 Member may request to be excluded from the Class by mailing a "Request for
15 Exclusion" from the Settlement within the Response Deadline. A Request for
16 Exclusion must clearly and unequivocally state a desire to be excluded from the
17 Class. No specific wording is required to state a Request for Exclusion, so long as
18 it is clear and unequivocal. Any Request for Exclusion must include the name,
19 address, telephone number, last four digits of the Class Member's Social Security
20 Number, and the signature of the Class Member requesting exclusion. Any such
21 request must be made in accordance with the terms of the Class Notice, and the
22 Class Notice will advise Class Members of these requirements. Any Class
23 Member who timely requests exclusion in compliance with these requirements (i)
24 shall not have any rights under this Settlement other than a right to receive a pro-
25 rata share of the portion of the PAGA payment allocated to the Class Members if
26 the Class Member is also PAGA Employee; (ii) shall not be entitled to receive any
27 Settlement Payments under this Settlement other than as stated in (i) in this
28 paragraph; and (iii) shall not be bound by this Settlement or the Court's Order and

Final Judgment other than as it applies to the PAGA Claim.

- (x) Right of Settlement Class Member to Object to The Settlement: Any Class Member may object to the Settlement. To object, the Class Member may (1) appear in person (including through an audio or video call appearance via LACourtConnect) at the Final Approval Hearing to explain any objection, (2) have an attorney object for the Class Member, or (3) submit a simple written brief or statement of objection to the Settlement Administrator. If any Class Member chooses to submit a written objection, the written objection should contain sufficient information to confirm the identity of the objector and the basis of the objection, including (1) the full name of the Settlement Class Member; (2) the signature of the Settlement Class Member; (3) the grounds for the objection; and (4) be postmarked within the Response Deadline to permit adequate time for processing and review by the Parties of the written statement or objection. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to declaration from the Settlement Administrator). Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class Member must either make a timely complaint in intervention before final judgment or by file a motion to set aside and vacate the class judgment under Code of Civil Procedure § 663 to have standing to appeal entry of judgment approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendant's Counsel may file

responses to any written objections submitted to the Court.

- (y) Opt-in to Release Under Fair Labor Standards Act: Settlement Class Members will be advised that they will opt in to a settlement of claims for unpaid compensation under the Fair Labor Standards Act (“FLSA”) by cashing or otherwise depositing the check for their Settlement Class Payment. This will be set forth in the Class Notice.

THE SETTLEMENT ADMINISTRATOR’S PRIMARY DUTIES

27. Subject to the Court’s approval, and subject to reconsideration by the Parties after a competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform the customary duties of Settlement Administrator. The Settlement Administrator will mail the Class Notice, both in English and Spanish, to the Class Members.

28. The Settlement Administrator will independently review the Covered Workweeks and PAGA Pay Periods attributed to each Class Member and will calculate the estimated amounts due to each Class Member and the actual amounts due to each Settlement Class Member and PAGA Employee in accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The Settlement Administrator shall be granted reasonable access to Defendant’s records in order to perform its duties.

29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in accordance with state and federal tax laws. All disputes relating to the Settlement Administrator’s performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out.

30. The Settlement Administrator will post the final judgment approving the Settlement on a website maintained by the Settlement Administrator for a period of not less than 90 calendar days after the final judgment is entered. The website will use a page on the Settlement Administrator’s website, and not a custom domain for this Settlement. The address of that website will be included in the Class Notice.

ATTORNEY'S FEES AND COSTS

31. In consideration for resolving this matter and in exchange for the release of all claims by the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount (\$300,000 of \$900,000) and litigation costs not to exceed \$25,000.00. The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and administration of the Settlement. As with the Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be paid to Class Counsel within 30 calendar days of the Settlement Administrator's receipt of the Gross Settlement Amount from Defendant, provided that the Settlement Administrator has delivered to the Parties an accounting of the amounts to be paid by Defendant pursuant to the terms of this Settlement. Class Counsel shall disclose to the Court any fee sharing agreements in existence.

THE NOTICE PROCESS

32. A Class Notice in approximately the form attached hereto as **Exhibit "A,"** and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Class Notice shall be translated into Spanish so that Spanish and English language versions of the Class Notice are included in the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the Settlement Administrator to forward the Class Notices to the Class.

- (a) Within 14 calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member a list in Microsoft Excel format containing each Settlement Class Member's (1) full name, (2) last known address, (3) Social Security Number, and (4) dates worked for Defendant in California during the Class Period as a non-exempt employee ("Class List"): This database shall be based on Defendant's payroll and other business records and shall be provided in a format acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class

Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential and secure and use it only for the purposes described herein, and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement. However, Plaintiff's Counsel shall be entitled to review anonymized data showing the workweeks worked by each Class Member, with Class Member identity concealed through use of an employee number or number assigned by the Settlement Administrator.

(b) Within 14 calendar days after the Class database is provided to the Settlement Administrator, the Settlement Administrator will mail the Class Notices to the Class Members by First Class United States mail.

(c) Class Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Class Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the Class Member's social security number or other information. In any instance where a Class Notice is re-mailed, that Class Member will have until the extended Response Deadline as described above. A letter prepared by the Settlement Administrator will be included in the re-mailed Class Notice in that instance, stating the extended Response Deadline if different than the original Response Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Class Notice to the affected Class Member. The affected Class Member shall remain a member of the

1 Settlement Class and shall be bound by all the terms of the Settlement and the
2 Court's Order and Final Judgment.

3 (d) Class Counsel shall provide to the Court, at least five calendar days prior to the
4 final approval hearing, or such other date as set by the Court, a declaration by the
5 Settlement Administrator of due diligence and confirming mailing of the Class
6 Notices.

7 (e) The Parties authorize their respective Counsel to approve modifications to the
8 Class Notice to correct drafting errors or make changes required by the Court
9 without the need to amend this Settlement.

10 (f) Class Members will have 60 calendar days from the date Class Notices are
11 mailed in which to postmark or fax any dispute of their Class Member
12 Allocation Amounts or, object to the Settlement, and/or request to opt out of the
13 Settlement. In the case of a re-mailed Class Notice, the Response
14 Deadline will be the later of 60 calendar days after initial mailing or 14
15 calendar days from re-mailing, up to a maximum of 74 days after the
16 initial mailing. This deadline is subject to court approval and will be extended
17 if required by the Court.

18 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

19 33. As set forth above, each Class Member will have until the expiration of the applicable
20 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class
21 Member's Covered Workweek information on the Class Notice. No disputes will be honored if they are
22 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.
23 Each Class Member is responsible to maintain a copy of any documents sent to the Settlement
24 Administrator and a record of proof of mailing.

25 34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
26 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
27 PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and
28 negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will

1 automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member
2 within that time, and the Class Member's relevant claims will remain released by the Settlement.
3 Settlement Payment checks which have expired will not be reissued.

4 35. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void
5 date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of
6 each Class Member who failed to cash their Settlement Payment check prior to the void date.

7 36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator
8 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to
9 be made to Class Members (to be identified anonymously by employee number or other identifier). A
10 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and
11 Defendant's Counsel and filed with the Court by Class Counsel.

12 **RELEASE BY THE CLASS**

13 37. Upon the final approval by the Court of this Settlement and Defendant's payment of all
14 sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this
15 Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and
16 timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

17 (a) **Identity of Released Parties.** The released parties are Defendant, and each of
18 its/their former and present direct and/or indirect owners, dba's, affiliates, parent
19 companies, subsidiaries, brother and sister corporations, divisions, related,
20 associated, and/or affiliated companies, successors and predecessors, and current
21 and former managing agents, attorneys, officers, directors, shareholders, owners,
22 trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies,
23 agents, servants, insurers, representatives, administrators, employee benefit plans,
24 and assigns of said entities, and any individual or entity which could be liable for
25 any of the Released Claims, and Defendant's counsel of record in the Action
26 (collectively "Releasees").

27 (b) **Date Release Becomes Effective.** The Released Claims will be released upon the
28 later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's

1 obligation to provide to the Settlement Administrator a sum in the amount required
2 to satisfy all required payments and distributions pursuant to this Settlement and
3 the Order and Judgment of final approval. Class Members will not release the
4 Released Claims or Released PAGA Claims until both the Effective Date of the
5 Settlement has occurred, **and** Defendant has paid all amounts owing under the
6 Settlement.

7 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
8 on behalf of himself or herself and his or her heirs and assigns, unless he or she has
9 submitted a timely and valid Request for Exclusion (which will not effectuate an
10 opt-out from the release of Released PAGA Claims), hereby releases Releasees
11 from the following claims for the entire Class Period:

- 12 1) all known and unknown claims, losses, damages, liquidated
13 damages, penalties, interest, liabilities, causes of action, civil
14 complaints, arbitration demands or suits which arise from the
15 facts asserted in the Action, including, without limited to the
16 foregoing, all claims under the California Labor Code as alleged
17 in the Action, including violations for meal periods, rest breaks,
18 unpaid overtime and minimum wages, timely payment of wages,
19 wage statements, waiting time penalties, unreimbursed business
20 expenses, and violations of California Unfair Competition Law
21 (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), all claims asserted
22 through California Labor Code §§ 2698, *et seq.*, that were
23 identified by the PAGA Representative in the Notice to the
24 LWDA and are alleged in the Complaint (defined above to be the
25 First Amended Complaint) including, but not limited to, injunctive
26 relief, liquidated damages, penalties of any nature, including civil
27 penalties under the Private Attorneys General Act sections 2698, *et seq.*,
28 interest, attorney's fees, including attorney's fees under California Code

of Civil Procedure section 1021.5, costs, and all other claims and allegations made or which could have been made in the Action based on the facts and allegations pled in Plaintiff's PAGA notice to the LWDA and Complaint ("Released Claims"); and

- 2) in addition, as to *all* Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, the Released PAGA Claims (*see* Paragraph 14, above).

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

38. The Parties shall submit this Joint Stipulation of Class and Representative Action Settlement to the Court in support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class and Representative Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, Settlement Administration Costs, and the Class Representative's Service Payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class;
- (c) Approving as to form and content the proposed Class Notice;
- (d) Directing the mailing of the Class Notice;
- (e) Preliminarily approving the Settlement, including Class and PAGA claims, subject only to the objections of Class Members as to the Class Settlement and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM Group, Inc. as the Settlement Administrator and order the Settlement Administrator to issue Class Notices as outlined above.

1 **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

2 39. In conjunction with the hearing of a motion for final approval by the Court of the
3 Settlement provided for in this Joint Stipulation of Class and Representative Action Settlement, Class
4 Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a
5 proposed final order and judgment containing provisions sufficient to accomplish the following:

- 6 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
7 adequate, and directing consummation of its terms and provisions;
- 8 (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- 9 (c) Approving the Settlement Administration Costs;
- 10 (d) Approving the Service Payment to the Class Representative;
- 11 (e) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting
12 duties under the Settlement.
- 13 (f) Adjudging Plaintiff and Class Counsel may adequately represent the Final
14 Settlement Class for the purpose of entering into and implementing the Agreement;
- 15 (g) Entering a final judgment in the action as to all PAGA and Class Claims and
16 related issues;
- 17 (h) Adjudging that notwithstanding the submission of a timely request for exclusion,
18 Class Members are still bound by the settlement and release of the Released PAGA
19 Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46
20 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to
21 the Released PAGA Claims, and further affirms that the State's claims for civil
22 penalties pursuant to PAGA are also extinguished;
- 23 (i) Directing the posting of the final judgment on a website maintained by the
24 Settlement Administrator for a period of not less than 90 calendar days after entry
25 of final judgment.

26 Any revised final judgments will also be provided to Defendant's Counsel for review and approval before
27 they are submitted to the Court.
28

NULLIFICATION AND TERMINATION

40. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of the Service Payment; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

41. If 10% or more of the Class Members opt out of this Settlement, then Defendant in its sole discretion may terminate, nullify and void this Settlement within twenty-one (21) calendar days after expiration of the opt-out period. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 20 court days after the Response Deadline. If this option is exercised by Defendant, Defendant and Plaintiff shall split the the costs incurred by the Settlement Administrator for the settlement administration.

42. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

PARTIES' AUTHORITY

43. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

44. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that

1 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
2 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
3 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
4 Court's preliminary and final approval of this Settlement.

5 **NO PRIOR ASSIGNMENTS**

6 45. The Parties and their respective counsel represent, covenant, and warrant that they have not
7 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
8 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
9 released and discharged except as set forth herein.

10 **NO ADMISSION OF LIABILITY**

11 46. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
12 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
13 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. Defendant has entered
14 into this Settlement solely with the intention to avoid further disputes and litigation with the attendant
15 inconvenience and expenses.

16 **ENFORCEMENT ACTIONS**

17 47. In the event that one or more of the Parties to this Settlement institutes any legal action or
18 other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
19 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
20 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
21 incurred in connection with any enforcement actions.

22 **NOTICES**

23 48. Unless otherwise specifically provided herein, all notices, demands or other
24 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
25 third business day after mailing by United States registered or certified mail, return receipt requested,
26 addressed as follows:

27 Class Counsel:

Counsel for Defendant:

28 Kane Moon

Peter J. Woo

1 H. Scott Leviant
2 Lilit Tunyan
3 **MOON & YANG, APC**
4 1055 W. Seventh St., Suite 1880
5 Los Angeles, California 90017
6 Telephone: (213) 232-3128
7 Facsimile: (213) 232-3125
8 kane.moon@moonyanglaw.com
9 scott.leviant@moonyanglaw.com
10 lilit.tunyan@moonyanglaw.com

Vincent L. Chen
JACKSON LEWIS, PC
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Telephone: (949) 885-1360
Facsimile: (949) 885-1380
Vincent.Chen@jacksonlewis.com
Peter.Woo@Jacksonlewis.com

CONSTRUCTION

49. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

51. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

52. This Settlement contains the entire agreement between the Parties 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 herein. No rights hereunder may be waived except in writing.

WAIVER OF APPEALS

53. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the

1 Gross Settlement Amount as attorney's fees.

2 **BINDING ON ASSIGNS**

3 54. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
4 their respective heirs, trustees, executors, administrators, successors and assigns.

5 **CLASS COUNSEL SIGNATORIES**

6 55. It is agreed that because the members of the Class are so numerous, it is impossible or
7 impractical to have each member of the Class execute this Settlement. The Class Notice will advise all
8 Class Members of the binding nature of the Released Claims and Released PAGA Claims, and the release
9 shall have the same force and effect as if this Settlement were executed by each member of the Class.

10 **COUNTERPARTS**

11 56. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
12 and when each party has signed and delivered at least one such counterpart, each counterpart shall be
13 deemed an original, and, when taken together with other signed counterparts, shall constitute one
14 Settlement, which shall be binding upon and effective as to all Parties.

15 **CONFIDENTIALITY & PUBLIC COMMENT**

16 57. The Class Representative and Class Counsel agree they will not make any disparaging
17 comments about Defendant relating to this Settlement of this class action or disclose the negotiations of
18 the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record
19 other than to Class Members, who may receive information about the Settlement that is not in the public
20 record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as
21 expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of
22 the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no
23 comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. Class
24 Counsel will not include or use the Settlement for any marketing or promotional purposes, or for
25 attempting to influence Defendant's business relationships, either before or after the Motion for
26 Preliminary Approval is filed. Following preliminary approval of the Settlement, the Class Representative
27 and Class Counsel will not initiate any communications with the media or third parties. If contacted by the
28 media or third parties, they will only discuss information publicly available. Class Counsel will take all

steps necessary to ensure the Class Representative is aware of, and will encourage him to adhere to, the restriction against any public disclosures regarding the Settlement. Nothing herein will restrict Class Counsel from including publicly available information regarding this settlement in future judicial submissions regarding Class Counsel's qualifications and experience. Class Counsel may refer to the settlement in adequacy of counsel declarations, and following Preliminary Approval, may state on their websites that they settled a wage and hour class action in the Superior Court for \$900,000, and generally describe the claims at issue, provided that they describe Defendant only as a "Defendant Employer." Further, the Parties understand and agree that Plaintiff's counsel may disclose this Settlement if ordered to do so by the Court, e.g., post any settlement documents/orders on their respective websites and/or provide information to Settlement Class Members about this Settlement. Any communication about the Settlement to Class Members prior to the Court-approved mailing will be limited to (1) a statement that a settlement has been reached, (2) a statement of any of the details that would necessarily be included in any Court-approved Class Notice if a Class Member requests details about the proposed Settlement, and (3) a warning that the terms of the proposed Settlement have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse or (2) accountants or lawyers as necessary for tax purposes. At all times, the Class Representative is prohibited from communicating about the terms or the fact of the settlement on any form of social media. Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

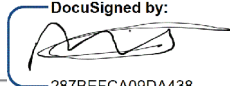
58. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

1 Dated: June 29 2022

By:  DocuSigned by:
287BEFCA09DA438...
MIGUEL HUERTA

3 Plaintiff's Counsel:

4 Dated: June 29 2022

MOON & YANG, APC

By: 
Kane Moon
H. Scott Leviant
Lilit Tunyan

Attorneys for Plaintiff MIGUEL HUERTA

10 Defendant:

11 Dated: 6/29 2022

INTERIOR REMOVAL SPECIALIST, INC.

By: Virginia Herrera
Print Name

Signature
VP of Operations
Title

18 Defendant's Counsel:

19 Dated: June 29, 2022

JACKSON LEWIS P.C.

By: 
Peter J. Woo
Vincent L. Chen

Attorneys for Defendant Interior Removal Specialist,
Inc.

4858-9273-1941, v. 1

Exhibit “A”

Exhibit “B”

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Allen Feghali, Attorney
allen.feghali@moonyanglaw.com

March 4, 2020

Via U.S. Mail

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: ***Miguel Huerta v. Interior Removal Specialist, Inc.***
PAGA Claim Notice Filing Fee

To Whom It May Concern:

Enclosed is a check for \$75 to cover the PAGA claim notice filing fee for the matter entitled ***Miguel Huerta v. Interior Removal Specialist, Inc.*** (LWDA Case No. LWDA-CM-776157-20). Please do not hesitate to contact me if you have any questions.

Sincerely,

MOON & YANG, APC

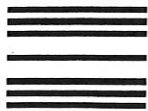


Allen Feghali
Attorney at Law

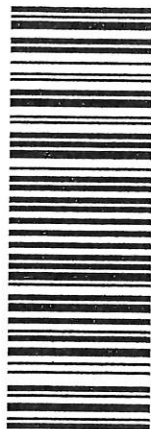
Enclosures (1)

062S0010480272

\$7.20
US POSTAGE
FIRST-CLASS
FROM 90017
03/04/2020
stamps
endicia



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL®



7017 1450 0002 0147 4058



Interior Removal Specialist Inc
8890 Atlantic Avenue
South Gate CA 90280



MOON & YANG, APC

ATTORNEYS AT LAW

1055 W. SEVENTH STREET, SUITE 1880, LOS ANGELES, CA 90017

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Interior Removal Specialist, Inc.
8890 Atlantic Avenue
South Gate, CA 90280



9590 9402 5037 9092 9833 97

2. Article Number (Transfer from service label)

7017 1450 0002 0147 4058

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery
- ☐ Mail Restricted Delivery

Domestic Return Receipt

U.S. Postal Service

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Postmark
Here

Interior Removal Specialist, Inc.
8890 Atlantic Ave.
South Gate, CA 90280

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
kane.moon@moonyanglaw.com

March 3, 2020

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Interior Removal Specialist, Inc.
8890 Atlantic Avenue
South Gate, CA 90280

Notice of Labor Code Violations and PAGA Penalties

Re: ***Miguel Huerta v. Interior Removal Specialist, Inc.***

To Whom It May Concern:

Please be advised that my office has been retained by Miguel Huerta (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Interior Removal Specialist, Inc. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a demolition employee and a tool roll employee from approximately 2010 to July 2019, primarily in Los Angeles County. Defendant classified Plaintiff as a non-exempt employee for purposes of overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 to 7 days per workweek, and in excess of 8 hours per workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the statutory period, Defendant also maintained a

policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”, including calling into work to determine work schedules. Throughout the statutory period, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of overtime pay in compliance with California law. For example, Plaintiff and the Aggrieved Employees earned non-discretionary bonuses, but Defendant failed to incorporate said bonuses into the regular rate of pay for purposes of calculating overtime wages owed. Further, when working in the demolition crew, Plaintiff and the Aggrieved Employees were only paid based on the hours they were scheduled to work, as opposed to the actual number of hours worked, which was typically more than the scheduled hours worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant’s policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Defendant also required that Plaintiff and the Class combine rest breaks into a single longer rest break. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant

without reimbursement, which included the purchase of tools, and the use of their own personal cellular telephones. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all

deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;

2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements.
8. Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law