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6 on behalf of themselves and similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 RICARDO GOMEZ and RICARDO GOMEZ,
12 SR., individually and on behalf of all others
similarly situated,

13 Plaintiffs,

14 vs.
15

16 KLEARY MASONRY, INC., a California
Corporation;
17 MICHAEL G. KLEARY, an individual;
18 NICK KLEARY, an individual;
19 DIANA KLEARY, an individual; and DOES 1
to 100, inclusive,

20 Defendants.
21
22

Case No. 34-2020-00278067

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Reservation No. 2555119

Date: September 30, 2021

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama Mesiwala

Filed: 5/6/2020

FAC Filed: 6/30/2020

SAC Filed: 1/5/2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 30, 2021, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department 53 of the above-entitled Court, Plaintiffs Ricardo Gomez and
4 Ricardo Gomez, Sr. ("Plaintiffs"), individually and on behalf of all other similarly situated individuals,
5 hereby move for entry of an Order for the following:

- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. as class representatives for
8 purposes of settlement;
- 9 3. Appointing the Shimoda Law Corp. as Class Counsel for purposes of settlement;
- 10 4. Approving the class action settlement in the amount of \$1,621,432.00, which is incorporated
11 herein by reference;
- 12 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
13 \$567,501.20 (35% of the Gross Settlement Amount);
- 14 6. Approving the application for payment to class counsel of reasonable costs in the amount of
15 \$6,368.68;
- 16 7. Approving the Class Representative Enhancement Payments of \$15,000 each to Plaintiff
17 Ricardo Gomez and Plaintiff Ricardo Gomez, Sr.;
- 18 8. Approving the appointment of Simpluris, Inc. as the Claims Administrator and for payment
19 to Simpluris, Inc. for administering said class action settlement in the amount of \$11,759;
- 20 9. Approving the settlement of claims under the Private Attorneys General Act for the total
21 amount of \$20,000, 75% of which will be paid to the Labor and Workforce Development
22 Agency and 25% of which will be paid to Aggrieved Employees;
- 23 10. Approving the procedures used to notify the class and determining that the proposed
24 notification procedures and process complied with class members' due process rights;
- 25 11. Directing that any residue from settlement checks that are not cashed by the check cashing
26 deadline be donated 50/50 to Capital Pro Bono Inc. and the Center For Workers' Rights
27 under the doctrine of *cy pres*;
- 28

1 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed
2 herewith and incorporated by reference.

3 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
4 2699(1), and California Rules of Court 3.764 and 3.769, on the grounds that the proposed class action
5 and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all class members
6 and should be given final approval by the Court. This motion will be based on the notice of motion,
7 memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration Lindsay
8 Kline, exhibits, the record and files of this case, and any further oral or documentary evidence
9 introduced at the hearing of this motion.

10
11 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter
12 by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the
13 department may be downloaded off the court's website. If the party does not have online access,
14 they may call the dedicated phone number for the department as referenced in the local telephone
15 directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and
16 receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the
17 court day before the hearing, no hearing will be held.

18
19 Dated: August 13, 2021

Shimoda Law Corp.

20 By: _____

21 Galen T. Shimoda
22 Justin P. Rodriguez
23 Brittany V. Berzin
24 Attorneys for Plaintiffs
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17 MICHAEL G. KLEARY, an individual;

18 NICK KLEARY, an individual;

19 DIANA KLEARY, an individual; and DOES 1
to 100, inclusive,

20 Defendants.
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Case No. 34-2020-00278067

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 This Motion is brought seeking final approval of a wage and hour class action and Private
3 Attorney General Act (“PAGA”) settlement. *See generally* Exhibit A (Joint Stipulation Regarding Class
4 Action and PAGA Settlement and Release). Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr.
5 (“Plaintiffs”) brought this class action individually and on behalf of other similarly situated employees
6 employed by Defendants Kleary Masonry, Inc., Michael G. Kleary, Nick Kleary, and Diana Kleary
7 (“Defendants”). Plaintiff Ricardo Gomez worked for Defendants in California from approximately
8 2014 to April 2020 and Plaintiff Ricardo Gomez, Sr. worked for Defendants within the last year prior to
9 filing the complaint and was subject to all the same policies and practices that are alleged to be unlawful
10 in this litigation. *See generally* Exhibit B (Plaintiffs’ Operative Complaint).

11 Plaintiffs have alleged that Defendants failed to pay minimum wages, failed to pay overtime,
12 failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage
13 statements, failed to timely pay final wages, engaged in unfair competition, failed to reimburse
14 expenses, violated the PAGA, failed to pay prevailing wages, and failed to pay reporting time. *See*
15 *generally* Exhibit B. Plaintiffs have also alleged Defendants are liable for a civil penalties under the
16 PAGA based on these violations. *See id.*; Exhibit C (Plaintiffs’ Ltr. to the LWDA Regarding PAGA
17 Claims). These violations primarily stem from Plaintiffs’ allegations that Defendants violated
18 California law by 1) failing to pay putative class members for all time spent at the shop and all time
19 spent driving from the shop to the first jobsite or from the last jobsite back to the shop; 2) failing to pay
20 putative class members reporting time or wages owed for time spent where Defendants required them
21 to report to the shop or jobsite, but ultimately sent them home without any work; 3) failing to authorize
22 and permit putative class members to take all meal and rest periods; 4) failing to pay putative class
23 members all prevailing wages owed for work on public works jobs; 5) failing to pay putative class
24 members all overtime wages owed on public works jobs; 6) failing to incorporate the value of
25 prevailing wage rates into putative class members’ regular rates of pay for the purpose of calculating
26 overtime wages on non-public works jobs where putative class members worked on public works and
27 non-public works jobs in the same workweek; and 7) failing to reimburse putative class members for
28 the use of their personal cellphones, vehicles, and tools for work. *See* Exhibit B. Plaintiffs have

1 contended that this is a meritorious class action lawsuit and that this case is appropriate for class
2 certification for settlement purposes as the requisites for class certification in this case can be satisfied.
3 *See* Exhibit B.

4 Defendants have denied all of Plaintiffs' allegations in their entirety and any liability or
5 wrongdoing of any kind. *See* Declaration of Justin P. Rodriguez ("Decl. Rodriguez"), ¶ 5. Defendants
6 have denied that this case is appropriate for class certification other than for purposes of settlement and
7 maintain that Plaintiffs would have difficulty proving class certification. *See id.* However, subject to
8 final approval by the Court, the parties have been able to compromise and settle all asserted claims for
9 monetary compensation as a result of extensive investigations, informal document and data exchanges,
10 and extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiffs'
11 counsel is convinced that the proposed settlement is in the best interest of the putative class based on
12 the discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See*
13 Decl. Rodriguez, ¶¶ 2, 6-13. The prospect of potential class certification issues and the uncertainty of
14 class certification, difficulties of complex litigation, the lengthy process of establishing specific
15 damages and various possible delays and appeals were carefully considered by Plaintiffs and Plaintiffs'
16 counsel in agreeing to the proposed settlement. *See id.*

17 It is well within the discretion of this Court to grant final approval of the Agreement, which
18 satisfies all of the criteria for final settlement approval under California law. Accordingly, Plaintiffs
19 requests that the Court: (1) certify the proposed settlement class; (2) grant final approval of the
20 proposed Agreement (Exhibit A); and (3) adopt the implementation schedule contained in the proposed
21 order.

22 **II. PROCEDURAL AND LITIGATION HISTORY**

23 Plaintiffs filed a class action complaint on approximately May 6, 2020, in the Sacramento
24 County Superior Court against Defendants. Plaintiffs exhausted administrative remedies under the
25 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
26 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Plaintiffs filed a First Amended Class Action Complaint on
27 approximately June 30, 2020 to include additional claims, including a PAGA cause of action. *See id.*
28 A Second Amended Complaint was filed on January 5, 2021 to include additional allegations and

claims relating to Plaintiffs' overtime claims and the amended June 19, 2020 PAGA notice. *See* Exhibit B; Decl. Rodriguez, ¶ 3. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiffs thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* Plaintiffs worked during the time all of Defendants' policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. The parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶ 7. A large number of declarations by putative class members were also obtained that gave critical information concerning the scope and impact of the policies and practices that Plaintiffs alleged to be unlawful. *See id.* The information allowed Plaintiffs to determine the extent and frequency of any violations in accordance with Plaintiffs' contentions and create a damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiffs and Defendants Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, and sometimes contentious, arm's length negotiations. Over the course of approximately eight (8) months, Plaintiffs have been investigating the claims and discussing with Defendants' counsel the merits of the claims and certification issues present in this case. *See id.* at ¶¶ 6-8. The parties exchanged substantial amounts of information and legal analysis regarding the asserted claims. *See id.* Then, only after nearly eight (8) months of litigation and negotiation, the parties able to reach a mutually agreeable settlement that is now before the Court. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties agreed to a Gross Settlement Amount of \$1,621,432.00. *See* Exhibit A; Decl. Rodriguez, ¶¶ 10-13.

1 **b. The Terms of the Settlement**

2 Under the settlement agreement, Defendants have agreed to the following:

3 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶
4 1.2, 1.8, 1.9, 1.25):

5 Class Members: all individuals who have, or continue to, perform work
6 for Defendants in California as non-exempt, hourly employees from May
7 6, 2016 up to February 2, 2021.

8 Aggrieved Employees: all individuals who have, or continue to, perform
9 work for Defendants in California as non-exempt, hourly employees from
10 April 17, 2019 up to February 2, 2021.

11 2. Pay the Gross Settlement Amount of \$1,621,432.00, which is an increase from the
12 original \$1,100,000.00 Gross Settlement Amount stated in the Agreement as a result of additional
13 workweeks pursuant to Section 10.1 of the Agreement. *See id.* at ¶¶ 5.1, 10.1; Decl. Rodriguez, ¶¶ 10-
14 11. No portion of the Gross Settlement Amount will revert to Defendants. *See* Exhibit A at ¶ 5.6.
15 Aggrieved Employees will still be paid their share of the PAGA Payment regardless of whether they
16 opted out of being Class Members. *See id.* at 7.5.1.

17 3. The parties agree that up to \$15,000, each, for Plaintiffs Ricardo Gomez and Ricardo
18 Gomez, Sr. will be paid as a Class Representative Enhancement Payment. This amount will be in
19 addition to any amount Plaintiffs may be entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

20 4. The parties agree that the cost of administering this class action settlement shall be paid
21 from the settlement proceeds. Subject to Court approval, the parties have selected Simpluris, Inc. to act
22 as the class action claims administrator, who has provided a final cost estimate of \$11,759 for the
23 administration work that has been performed and will be performed in the future. *See* Declaration of
24 Lindsay Kline (“Decl. Kline”) ¶ 18. The difference between the actual administration costs and the
25 \$12,500 originally allocated will be paid to Class Members. *See* Decl. Rodriguez, ¶ 22.

26 5. The parties agree that \$20,000 of the Gross Settlement Amount shall be allocated to
27 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
28 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
29 5.5.

30 //

1 6. The parties agree that up to thirty-five percent (35%) (\$567,501.20) of the Gross
2 Settlement Amount (\$1,621,432.00) will be paid for Plaintiffs' attorneys' fees incurred in the litigation
3 of this case. *See* Exhibit A, ¶ 5.2; Decl. Rodriguez, ¶¶ 10-11. Defendants will not oppose any
4 application for attorneys' fees so long as it is within the thirty-five percent (35%) threshold. *See id.* at ¶
5 5.2. Additionally, the parties agree that Plaintiffs will also be entitled to the actual litigation costs,
6 which are \$6,368.68. *See id.*; Exhibit D (Plaintiff's Itemized Costs). The notice sent to class members
7 stated the Gross Settlement Amount (\$1,621,432.00), the attorneys fees' being requested
8 (\$567,501.20), and the maximum cost potential of \$10,000.00. *See* Decl. Kline, Exh. A, pg. 2 at
9 Section II.A.

10 7. Any Claims Administrator Costs, any amounts paid for attorneys' fees and costs, the
11 Class Representative Enhancement Payments, and PAGA Payment will be paid out from the Gross
12 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

13 8. For any portion of the Net Settlement Amount or PAGA Payment allocated to Qualified
14 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
15 settlement checks within 120 days, the remaining amount shall be paid 50/50 to Capital Pro Bono, Inc.
16 and the Center for Workers Rights under the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.6.

17 **c. Allocation of Settlement Funds**

18 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
19 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
20 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
21 Enhancement Payment to the Class Representatives, the Claims Administrator Costs, and the PAGA
22 Payment. Each Class Member's share will be determined by dividing their total weeks worked within
23 the Class Period by the total weeks worked by all Class Members within the Class Period. That
24 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
25 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
26 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
27 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
28

1 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
2 Aggrieved Employee's individual share. *See* Exhibit A, at ¶ 5.8.

3 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
4 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

5 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
6 Court, in its entirety, on March 16, 2021. During the Claims Administrator's review of class data used
7 to determine each Class Members individual share, it was determined that Class Members workweeks
8 totaled 39,070.21. *See* Decl. Rodriguez, ¶ 10. Under the terms of Paragraph 10.1 of the Agreement,
9 this caused the Gross Settlement Amount to increase to \$1,621,432.00. *See id.* at ¶¶ 10-11; Exhibit A,
10 at ¶ 10.1. After meeting and conferring and determining that the additional funding obligations would
11 not cause the need for Court approved modifications due to financial hardship and inability to pay such
12 a substantial increase, the parties proceeded with noticing the class and included the updated allocations
13 and numbers resulting from the increased Gross Settlement Amount into the Notice of Settlement. *See*
14 Decl. Rodriguez, at ¶¶ 10-11; Decl. Kline, Exh. A.

15 To comply with the class members' due process rights, the parties enlisted an exhaustive
16 method to ensure the best practical means possible was used to provide notice to the class. The parties
17 provided the class action administrator the names, last known address, and social security numbers for
18 the class. The class action administrator then updated this information by doing an address trace for
19 each individual using this information. *See* Decl. Kline, ¶¶ 6-7. If the Notice Packets were returned as
20 undeliverable, further investigation was performed and they were re-mailed using updated information.
21 *See id.* at ¶ 9. Of the 589 Notice Packets mailed, only 45 were undeliverable after use of these
22 methods. *See id.* The Notice Packets included information regarding the requested attorneys' fees,
23 costs, payment to the LWDA, administration costs, and tax allocations. *See* Decl. Kline, Exh. A.
24 Plaintiffs' counsel assisted several Class Members submit disputes regarding their workweek
25 allocations and have them corrected. *See* Decl. Rodriguez, ¶ 24. Ultimately the administrator found
26 each dispute was valid and updated each class member's workweek allocation with the number of
27 workweeks claimed. *See id.*; Decl. Kline, ¶ 13.

1 The average distribution to participating Class Members is approximately \$1,682.18, the
2 maximum distribution is approximately \$6,266.47. *See* Decl. Kline, ¶ 17. No Class Members
3 submitted objections to the proposed settlement to the Claims Administrator as directed in the Notice of
4 Settlement and no Class Members have opted out. *See id.* at ¶¶ 11-12.

5 VI. ARGUMENT

6 a. Class Action Settlements are Subject to Court Review and Approval Under the 7 California Rules of Court

8 A class action may not be dismissed, compromised, or settled without Court approval and the
9 decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules
10 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
11 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2) (requiring Court review of PAGA
12 settlements). However, courts should give "proper deference to the private consensual decision of the
13 parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated
14 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
15 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
16 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."
17 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms
18 agreeable to all parties, a court should disapprove of the settlement "only with considerable
19 circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
20 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
21 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
22 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

23 b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

24 The purpose of the Court's final evaluation of a proposed class action settlement is to determine
25 only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App.
26 4th at 234-35. If the Court finds a proposed settlement falls within "the range of reasonableness," it
27 should grant final approval of the class action settlement. *See, e.g., North County Contr. 's Assn., Inc. v.*

28 ¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 *Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994). To make the fairness determination, the
2 Court must consider several factors, including:

3 the strength of the Plaintiff's case, the risk, expense, complexity and likely
4 duration of further litigation, the risk of maintaining class action status
5 through trial, the amount offered in settlement, the extent of discovery
6 completed and the stage of the proceedings, the experience and views of
counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.

7 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its
8 analysis with a presumption that the settlement is fair. "A presumption of fairness exists where: (1) the
9 settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to
10 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
11 the percentage of objectors is small." *Id.* at 1802.

12
13 **i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length
Negotiations Between the Parties**

14 Settlement in this case was reached only after litigation and extensive arm's length negotiations
15 lasting nearly eight (8) months. *See* Decl. Rodriguez, ¶¶ 6-8. At all times, the negotiations were
16 adversarial and contentious, although still professional in nature. *See id.* Further, while Plaintiffs
17 contend they would ultimately prevail on the claims and the issue of certification, this is not a certainty
18 and there is substantial risk in proceeding to further litigation. *See id.* at ¶¶ 6-13. The ability to secure a
19 guaranteed settlement now and ensure class members receive some compensation, rather than proceed to
20 further litigation and potentially recover nothing, was a motivating factor in reaching this settlement.
21 *See id.*

22
23 **ii. The Extent of Investigation and Discovery Completed Provided Ample
Information to Enter Into an Informed and Reasonable Settlement**

24 The parties were in possession of all necessary information during the negotiations. The parties
25 engaged in substantial informal discovery and exchange of documents, including a representative
26 sampling of employee data, such as timecards, payroll data and relevant policies for the entirety of the
27 statute of limitations applicable to the alleged claims and obtaining declarations, which covered all
28 aspects of the class claims and helped thoroughly vet the extent of Plaintiffs' claims against Defendants

1 and create reliable damages model. *See id.* at ¶¶ 6-9. Plaintiffs were in possession of this information
2 prior to calculating the potential damages in this case. *See id.* As a result, Plaintiffs were able to make
3 a reasonable estimation of Defendants' potential liability. *See id.* For these reasons, the settlement now
4 before the Court was reached at a stage where “the parties certainly have a clear view of the strengths
5 and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp.
6 610, 617 (N.D. Cal. 1979).

7 **iii. Plaintiffs’ Counsel is Experienced in Similar Litigation and No Class Members**
8 **Opted Out Or Submitted Objections to the Settlement**

9 Plaintiffs’ Counsel has considerable experience in class actions and wage and hour litigation.
10 Plaintiffs' counsel has brought and is currently bringing several wage and hour class and/or PAGA
11 actions. Thus, Plaintiffs' counsel is qualified to evaluate the class claims, value of settlement versus
12 moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl.*
13 *Rodriguez*, ¶¶ 14-20. Plaintiffs' counsel believes that the settlement is fair and reasonable in light of the
14 complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to
15 the class. *See id.* at ¶¶ 9-13. This belief is bolstered by the fact that zero class members have opted out
16 of the settlement and no objections to the settlement have been made by class members. *See Decl.*
17 *Kline*, ¶¶ 11-12.

18 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiffs’ Case**
19 **and the Risks and Costs of Further Litigation**

20 A review of the Agreement’s terms does not give rise to any doubts about its fairness. Based on
21 the records and facts of this case, Plaintiffs have secured a gross recovery of approximately 19.4% and
22 a net recovery of approximately 11.8% of the claims’ maximum likely value. *See Decl. Rodriguez*, ¶¶
23 9-13. Additionally, the average class members will receive a net award of approximately \$1,682.18
24 and the highest recovery is approximately \$6,266.47. *See Decl. Kline* ¶ 17. This settlement is a
25 reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total
26 available damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th
27 at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v.*
28 *Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*,

1 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum
2 potential recovery after reduction for attorney's fees was higher than median percentage for recoveries
3 in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale*
4 *Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net
5 recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila*
6 *v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement
7 with a gross recovery of 11% of the projected maximum damages available and a net recovery of
8 approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306
9 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5%
10 of the projected maximum recovery).

11 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

12 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
13 information be presented to the Court, acting as a fiduciary for the absent class members "to ensure that
14 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
15 being released, discounted by the risks and expenses of attempting to establish and collect on those
16 claims by pursuing the litigation" *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
17 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to
18 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
19 risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an
20 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
21 claims provided there is a record that allows "an understanding of the amount that is in controversy and
22 the realistic range of outcomes of the litigation." *Id.* at 409. The *Munoz* Court found that the record
23 before the trial court was sufficient, having included the number of class members, payroll data,
24 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
25 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
26 constituted "an adequate basis from which to garner a reasonably adequate understanding of the amount
27 that is in controversy within the meaning of *Kullar*." *Id.*
28

1 Plaintiffs similarly relied upon payroll data and Class Members data to determine the realistic
2 potential damages suffered by the class as a whole. *See* Decl. Rodriguez, ¶¶ 6-13. This analysis
3 allowed Plaintiffs to determine the extent and frequency of potential violations on all claims as to all
4 Class Members. *See id.* Ultimately, Plaintiffs secured a percentage of the total demand for the putative
5 class that is within the range of what has been found to be sufficient in several other cases. *See, supra*,
6 Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-*
7 *800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7
8 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of
9 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
10 approximately \$800 per class member). This settlement represents a reasonable compromise given the
11 percentage of the total demand that was secured, the average recovery per class member, the Court's
12 ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See* Decl.
13 Rodriguez, ¶¶ 9-13.

14 **vi. The Enhancement Payment to the Named Plaintiffs for Plaintiffs' Services to the**
15 **Putative Class Is Reasonable and Routinely Awarded by Courts**

16 The Enhancement Payment to the named Plaintiffs is intended to recognize the time and effort
17 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
18 compensate named plaintiffs for the services they provide and the risks they incurred during the course
19 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
20 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
21 recognition of the services they provided to the class by responding to discovery, participating in the
22 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
23 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
24 enhancement payment).

25 In this case, Plaintiffs provided and explained documents, being available at all times to discuss
26 the case with Plaintiffs' counsel. *See* Decl. Rodriguez, ¶ 7. Plaintiffs spent a significant amount of time
27 pursuing this litigation for the benefit of all Class Members. *See id.* Plaintiffs brought this action
28 knowing there would be a delay in any payment as the litigation progressed, rather than proceeding on

individual claims in front of the California Labor Commissioner. *See id.* Payment of \$15,000, each, to Plaintiffs is appropriate given the risk, assistance, time required in bringing this case and resolution of this case.

vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable and Customarily Approved by Courts

California state and federal courts have recognized that when a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered on her behalf." *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement Plaintiffs and Plaintiffs' counsel were able to negotiate on behalf of the class, and the fee can be shifted

1 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
2 fund. As set forth in the fee award examples provided below for the Court's reference, it is an accepted
3 practice in wage and hour class action settlements to award attorneys' fees based on a percentage of the
4 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
5 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
6 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

7 Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of
8 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
9 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
10 generally approved as reasonable in wage and hour settlements below \$10 million:

11 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
12 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
13 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
14 recent wage and hour class actions where federal district courts approved attorney fee
15 awards ranging from 30 to 33%); *Singer v. Becton Dickinson and Co.*, 2010 U.S. Dist.
16 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

17 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiffs'
18 request of thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates
19 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
20 excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379
21 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634;
22 *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v.*
23 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v.*
24 *Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC
25 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern
26 District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should
27 consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the
28 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and

(5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class counsel’s fee request further supports finding the fee request reasonable”).

These factors support Plaintiffs' request for reasonable attorneys' fees. The typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation depending on the complexity of the case. In class action litigation, the typical percentage negotiated between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiffs' request of 35% falls within these typical fee arrangements. *See Decl. Rodriguez*, ¶ 21. The quality of counsel and the average size of settlement payments to Class Members and Aggrieved Employees (\$1,682.18) also support the fee request when compared to other settlements courts have considered as good results. *See Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class Members will receive an average of approximately \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the results achieved in this case were very favorable. Class members are provided with immediate monetary relief, with an average award of around several hundred dollars and a minimum award of \$50”). Furthermore, the notice to the class stated the amount of attorneys fees and costs being requested and zero class members have opted out of the settlement and no objections to the settlement have been made by class members. *See Decl. Kline* ¶¶ 11-12; *Decl. Kline Exh. A*, pg. 2 at Section II.A.

c. Certification of the Class is Appropriate

Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three factors: (1) common questions of law or fact predominate; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See Exhibit A.*

1 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

2 The proposed settlement class is ascertainable because all putative class members can be readily
3 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th
4 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
5 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 589 individuals
6 who fall within the definition of Class Member, which makes joinder of all members impracticable.
7 *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531
8 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to
9 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
10 these requirements are satisfied.

11 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

12 The commonality requirement is met when there are questions of law or fact regarding the class
13 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
14 factual questions exist; Plaintiffs need not show that all issues in the litigation are identical. *See*
15 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
16 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
17 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
18 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
19 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
20 named representative are typical of those of the class, though "they need not be substantially identical."
21 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

22 The common questions of law and fact in this case stem from Plaintiffs' allegations of
23 Defendants 1) failing to pay putative class members for all time spent at the shop and all time spent
24 driving from the shop to the first jobsite or from the last jobsite back to the shop; 2) failing to pay
25 putative class members reporting time or wages owed for time spent where Defendants required them
26 to report to the shop or jobsite, but ultimately sent them home without any work; 3) failing to authorize
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 and permit putative class members to take all meal and rest periods; 4) failing to pay putative class
2 members all prevailing wages owed for work on public works jobs; 5) failing to pay putative class
3 members all overtime wages owed on public works jobs; 6) failing to incorporate the value of
4 prevailing wage rates into putative class members' regular rates of pay for the purpose of calculating
5 overtime wages on non-public works jobs where putative class members worked on public works and
6 non-public works jobs in the same workweek; and 7) failing to reimburse putative class members for
7 the use of their personal cellphones, vehicles, and tools for work. *See* Exhibit B. The waiting time
8 penalties, unfair competition, and PAGA claims are derivative of these violations. *See id.* Plaintiffs
9 and the Class Members seek the same remedies under state law. Under these specific circumstances,
10 the commonality and predominance requirements are satisfied. Regarding the typicality requirement,
11 Plaintiffs contend they suffered from the same unlawful policies, treatment, and circumstances as Class
12 Members did, will request the same remedies, and will rely on the same methods of proof to establish
13 liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

14 **iii. The Adequacy Requirement is Met**

15 The adequacy of representation requirement is met if the named representative and counsel have
16 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
17 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
18 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the preliminarily approved
19 settlement, Plaintiffs and the putative class members will receive a pro rata share of the settlement
20 based on the number of workweeks they worked for Defendants. *See* Exhibit A. Finally, any
21 settlement class member who wished to opt-out of the settlement or dispute the number of workweeks
22 stated in the Notice had the opportunity to do so. *See* Exh. A to Decl. Kline.

23 There is no conflict of interest between Plaintiffs and Class Members. Plaintiffs and Plaintiffs'
24 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
25 Plaintiffs' counsel, with Plaintiffs' assistance, thoroughly investigated the claims made in this case by
26 speaking with Plaintiffs and reviewing substantial amounts of documents. Plaintiffs' counsel thereafter
27 engaged Defendants' counsel in settlement discussions over the course of approximately eight (8)
28 months. Moreover, Plaintiffs' counsel has experience defending and bringing wage and hour claims.

1 Because Plaintiffs' counsel has vigorously pursued Plaintiffs' and the class members' claims, the
2 adequacy requirement is met. *See generally* Decl. Rodriguez.

3 **VII. CONCLUSION**

4 For all of the foregoing reasons, Plaintiffs respectfully requests that this Court certify the class
5 for settlement purposes; grant approval to the proposed settlement, including the Plaintiffs' Class
6 Representative Enhancement Payments, the payment to the LWDA under PAGA, and Class Counsel's
7 application for reasonable attorneys' fees and costs; find that the Notice of Pendency of Class Action
8 and Disbursement Form and administration process satisfied class members' due process rights; and
9 approve the proposed order submitted concurrently herewith.

10
11 Dated: August 23, 2021

Shimoda Law Corp.

12
13 By: _____

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Justin P. Rodriguez
Brittany V. Berzin
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 on behalf of themselves and similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

RICARDO GOMEZ and RICARDO GOMEZ, SR., individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

KLEARY MASONRY, INC., a California Corporation;
 MICHAEL G. KLEARY, an individual;
 NICK KLEARY, an individual;
 DIANA KLEARY, an individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00278067

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
 SUPPORT OF PLAINTIFFS' MOTION FOR
 FINAL APPROVAL OF CLASS ACTION
 AND PAGA SETTLEMENT**

Reservation No. 2555119

Date: September 30, 2021

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama Mesiwala

Filed: 5/6/2020

FAC Filed: 6/30/2020

SAC Filed: 1/5/2021

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiffs' Operative Complaint
C	Plaintiffs' Letter to the LWDA Regarding PAGA Claims
D	Plaintiffs' Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: August 23, 2021

Shimoda Law Corp.

By: _____

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Exhibit A

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20 and DIANA KLEARY

21
22 **SUPERIOR COURT OF CALIFORNIA**
23 **FOR THE COUNTY OF SACRAMENTO**
24

25 RICARDO GOMEZ and RICARDO GOMEZ,
26 SR., individually and on behalf of all other
27 similarly situated employees,

28 Plaintiffs,

vs.

KLEARY MASONRY, INC., a California
Corporation ; MICHAEL G. KLEARY, an
individual; NICK KLEARY, an individual;
DIANA KLEARY, an individual; and DOES 1
to 100, inclusive,

Defendants.

Case No.: 34-2020-00278067

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: 5/6/2020

FAC Filed: 6/30/2020

Trial Date: None Set

This Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) is made and entered into between the Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. (“Plaintiffs”), on behalf of themselves, the Labor and Workforce Development Agency, and Aggrieved Employees, and Defendants Kleary Masonry, Inc., Michael G. Kleary, Nick Kleary, and Diana Kleary (“Defendants”). This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

1. DEFINITIONS

The following terms, when used in this Agreement, have the following meanings:

1.1 “Action” means the above stated lawsuit, *Gomez, et al. v. Kleary Masonry, Inc., et al.*, Sacramento County Superior Court, Case No. 34-2020-00278067, filed May 6, 2020.

1.2 “Aggrieved Employee(s)” means all individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees during the PAGA Claim Period.

1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation Regarding Class Action and PAGA Settlement and Release.

1.4 “Claim Amount” means an individual Qualified Claimant’s and Aggrieved Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21, 1.25, 5.5, and 5.8.

1.5 “Claims Administrator” means and refers to Simpluris, Inc. the third-party entity that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.

1.6 “Claims Administrator Costs” means the fees and expenses reasonably incurred by the Claims Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class

Members and/or Aggrieved Employees, Class Counsel, and Defendants' Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

1.7 "Class Counsel" means Galen T. Shimoda and Justin P. Rodriguez, of the Shimoda Law Corp.

1.8 "Class Member(s)" means all individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees during the Class Period. The estimated number of Aggrieved Employees is 445.

1.9 "Class Period" means from May 6, 2016 up to either (1) the Preliminary Approval Date, or (2) February 2, 2021, whichever is earlier.

1.10 "Class Representatives" means Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr.

1.11 "Complaint" means the operative Complaint on file in the Action with the Court.

1.12 "Court" means the Sacramento County Superior Court.

1.13 "Defendants" means Kleary Masonry, Inc., Michael G. Kleary, Nick Kleary, and Diana Kleary.

1.14 "Defendants' Counsel" means Cook Brown, LLP.

1.15 "Enhancement Payment" means the amount approved by the Court to be paid to the Class Representatives in recognition of the time and effort expended on behalf of Class Members for the benefit of Class Members, which is in addition to any Claim Amount paid to the Class Representatives as a Qualified Claimant.

1.16 "Effective Date" means either (a) the 60th calendar day after a signed order granting final approval of this Agreement has been filed provided no motion to vacate the judgment, appeal, writ or

other appellate proceeding having been filed; or (b) the seventh (7th) calendar day after any motion to vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of this Agreement and there is no right to pursue further remedies or relief, whichever is later.

1.17 "Final Approval Date" means the date a signed order granting final approval of this Agreement is filed with the Court.

1.18 "Gross Settlement Amount" is the sum of One Million One Hundred Thousand Dollars and No Cents (\$1,100,000.00).

1.19 "LWDA" means the California Labor and Workforce Development Agency.

1.20 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for distribution to Qualified Claimants, as described in this Agreement, after deduction of Plaintiffs' attorneys' fees and litigation costs, Claims Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representatives.

1.21 "Notice of Settlement" means the document substantially in the form attached hereto as Exhibit 1.

1.22 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.23 "PAGA" means Private Attorneys General Act.

1.24 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.25 "PAGA Claim Period" means from April 17, 2019 up to either (1) the date a signed order preliminarily approving the settlement is filed, or (2) February 2, 2021, whichever is earlier.

1.26 "Parties" mean Defendants and Plaintiffs.

1.27 "Preliminary Approval Date" means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.28 "QSF" means a Qualified Settlement Fund set up by the Claims Administrator for the benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this

Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain the property of Defendants until the payments required under the Agreement are made.

1.29 "Qualified Claimant" means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.30 "Qualified Claimant's Released Claims" means all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

1.31 "Qualifying Workweeks" are weeks worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members, workweeks shall be defined as the total length of service (in days) in California during the Class Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall be construed from Defendants' records.

1.32 "Released PAGA Claims" means all PAGA claims for civil penalties contained in Plaintiffs' letters to the LWDA and/or operative Complaint through the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

1.33 "Released Parties" means Defendants, as well as Defendants' owners, officers, shareholders, directors, agents, employees, attorneys, and insurers.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about April 17, 2020, Plaintiffs sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime wages, failure to pay minimum wages, failure to pay reimbursement for expenses, failure to provide accurate wage statements, failure to pay final wages, violation of Labor Code sections 558 and 558.1, failure to maintain accurate records, and failure to provide meal and rest periods. Plaintiffs sent an amended letter on June 19, 2020 to include allegations of failure

1 to pay reporting time and failure to pay prevailing wages. The LWDA did not respond to the notices
2 within the statutorily required time frame and, as such, Plaintiffs became authorized to act as a Private
3 Attorneys General on all alleged PAGA claims.

4 2.2 On or about May 6, 2020, Plaintiffs filed a class action Complaint in Sacramento County
5 Superior Court on behalf of themselves and Class Members. Plaintiffs filed a First Amended Complaint
6 on approximately June 30, 2020 to include additional claims, including a PAGA cause of action based on
7 the violations alleged in the notices to the LWDA on behalf of themselves and Aggrieved Employees.
8 Plaintiff's First Amended Complaint alleges failure to pay minimum wages, failure to pay overtime,
9 failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements,
10 waiting time penalties, unfair competition, failure to reimburse expenses, violation of the PAGA, failure
11 to pay prevailing wages, and failure to pay reporting time.

12 2.3 Through informal discovery, Defendants and Defendants' Counsel provided Class
13 Counsel with copies of all applicable versions of its employee handbook, information on Class Members
14 including, but not limited to, Class Members' workweeks, dates of employment, total number of Class
15 Members, as well as timecard data and payroll reports for a randomly selected sample of Class Members.

16 2.4 On December 14, 2020, the Parties participated in a lengthy mediation with private
17 mediator Russ J. Wunderli. At the conclusion of the mediation, the Parties were able to come to a
18 resolution. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at
19 arm's length.

20 2.5 Discussions between Plaintiffs and Class Counsel, between counsel for the Parties,
21 document productions, extensive legal analysis, the provision of information by Defendants to Plaintiffs
22 and the detailed analysis of the records, including expert analysis, have permitted each side to assess the
23 relative merits of the claims and the defenses to those claims.

24 2.6 In the Action, Plaintiffs contend that Defendants violated California law by 1) failing to
25 pay putative class members for all time spent at the shop and all time spent driving from the shop to the
26 first jobsite or from the last jobsite back to the shop; 2) failing to pay putative class members reporting
27 time or wages owed for time spent where Defendants required them to report to the shop or jobsite, but
28 ultimately sent them home without any work; 3) failing to authorize and permit putative class members to

1 take all meal and rest periods; 4) failing to pay putative class members all prevailing wages owed for work
2 on public works jobs; 5) failing to pay putative class members all overtime wages owed on public works
3 jobs; 6) failing to incorporate the value of prevailing wage rates into putative class members' regular rates
4 of pay for the purpose of calculating overtime wages on non-public works jobs where putative class
5 members worked on public works and non-public works jobs in the same workweek; and 7) failing to
6 reimburse putative class members for the use of their personal cellphones, vehicles, and tools for work.
7 Defendants have denied each of Plaintiffs' claims and Defendants have denied that this Action is
8 appropriate for class certification for anything other than settlement purposes. The agreed upon Gross
9 Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the
10 underlying claims and the class data supporting these claims. The Parties, with the assistance of the
11 mediator, also assessed appropriate discounts to the potential liability based on Defendants' factual and
12 legal contentions and defenses.

13 2.7 The Parties agree that the above-described investigation and evaluation, as well as
14 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
15 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiffs, Class
16 Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the Action be settled
17 in a manner and upon such terms and conditions set forth herein in order to avoid further expense,
18 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
19 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
20 Plaintiffs, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for
21 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts
22 and circumstances.

23 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

24 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
25 of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
26 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
27 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
28 conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the

Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

4.2 Individuals entitled to recover under this Agreement will include only those individuals who are identified as being within the scope of this Agreement under Section 4.1.

4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data request to the Claims Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time his or her employment with Defendants ended; (c) the years during which such employee was employed with Defendants; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or

otherwise submitted to the Claims Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event more than two business days) transmit the data requests to Defendants' Counsel and request that Defendants review their records.

4.4 If Defendants do agree that the person listed in a data request is a Class Member and/or Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person who submitted the data request, at the address designated for that purpose in the data request. All provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements sent in response to data requests, and any person who submits a data request and is sent a Notice of Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved Employee for all other purposes.

4.5 If Defendants do disagree that the person listed in a data request is a Class Member and/or Aggrieved Employee, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute. Defendants' records shall control unless the individual submitting the data request provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendants' Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendants' Counsel and Class Counsel submit the dispute to the Claims Administrator. The decision by the Claims Administrator shall be final and there shall be no right of appeal.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendants shall pay the Gross Settlement Amount of One Million One Hundred Thousand Dollars and No Cents (\$1,100,000.00). Funding of the Gross Settlement Amount shall occur within twenty-one (21) days after the Final Approval Date to be held in trust in a QSF by the Claims Administrator until the Effective Date. The Gross Settlement Amount includes payments to Qualified

1 Claimants, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action
2 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering
3 the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement,
4 the Enhancement Payment to the Class Representatives and the PAGA Payment. Any monies necessary
5 to satisfy Defendants' tax obligations (e.g. employer FICA, FUTA and SDI contributions on wage
6 payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross
7 Settlement Amount.

8 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of
9 35% or \$385,000 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
10 Defendants have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does
11 not exceed the \$385,000 threshold. Class Counsel will also be entitled to reimbursement for advanced
12 litigation expenses not to exceed \$10,000, which shall be paid from the Gross Settlement Amount.
13 Defendants have agreed to not oppose Class Counsel's request for reimbursement for advanced litigation
14 expenses so long as they do not exceed the \$10,000 threshold. The Claims Administrator will issue Class
15 Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that
16 the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts
17 not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Qualified
18 Claimants on a pro rata basis.

19 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
20 Settlement Amount and shall not exceed \$12,500. The difference between any actual costs and the
21 allocated \$12,500 shall be added to the Net Settlement Amount.

22 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiffs, shall apply to the Court for
23 an Enhancement Payment to each of the Class Representatives in an amount not to exceed Fifteen
24 Thousand (\$15,000) to compensate for the risks, time, and expense of their involvement in the Action and
25 securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to
26 the Claim Amount Plaintiffs would otherwise be due under the Agreement as a Qualified Claimant.
27 Defendants have agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiffs
28 so long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as

1 a non-wage payment and reported on an IRS Form 1099. In the event that the Court awards less than the
2 Enhancement Payment amount requested, then any portion of the requested amount not awarded to the
3 Class Representatives shall be added to the Net Settlement Amount to be distributed to Qualified
4 Claimants on a pro rata basis.

5 5.5 PAGA Payment: Twenty Thousand (\$20,000) of the Gross Settlement Amount shall be
6 allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will
7 be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata
8 basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA
9 Payment shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro
10 rata basis.

11 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or
12 PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by
13 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
14 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc. and the Center for Workers' Rights. No portion of
15 the Gross Settlement Amount will revert to Defendants for any reason.

16 5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants
17 and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
18 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not
19 entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits
20 under any company bonus or other compensation or benefit plan or agreement in place during the period
21 covered by the Agreement, nor will it entitle any Qualified Claimant Aggrieved Employee to any increased
22 retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is
23 the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments
24 to be made by Defendants to the Qualified Claimants and Aggrieved Employees in connection with this
25 Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan
26 document that might have been in effect during the period covered by this Agreement).

27 5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved
28 Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement

Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representatives, the Claims Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Qualified Claimants as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved Employees are as follows:

5.9.1 One Third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

5.9.2 Two Thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive an IRS Form 1099-MISC.

5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

1 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting
2 and payment of their share of any federal, state and/or municipal income or other taxes on payments made
3 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants' Counsel free and
4 harmless from any claims resulting from treatment of such payments as non-taxable, including the
5 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.
6 No party has made any representation to any of the other Parties as to the taxability of any payments
7 pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved
8 Employees, the payments to Class Counsel, the payments to the Class Representatives, the payroll tax
9 liability of Defendants, or the allocation of the Net Settlement Amount or PAGA Payment to wage and
10 non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this
11 Agreement.

12 5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this
13 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
14 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
15 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount,
16 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and
17 void as described in Section 3 because the Court, in its independent determination, finds that the
18 Agreement does not meet the standards for settlement approval, then Defendants and Plaintiffs shall be
19 equally responsible for the costs of the Claims Administrator incurred between the date the Agreement
20 was executed and the date of such event.

21 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
22 only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for
23 establishing class certification have been met and are met.

24 5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes
25 of settlement only, Class Counsel and Plaintiffs are adequate representatives for Class Members and
26 Aggrieved Employees.

1 **6. RELEASE**

2 6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified
3 Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to
4 all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in
5 interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's
6 Released Claims against any of the Released Parties.

7 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
8 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
9 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
10 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
11 Claims against any of the Released Parties.

12 6.3 Release of Claims by Class Representatives: Upon the Effective Date, the Class
13 Representatives, on behalf of themselves, and their heirs, executors, administrators, and representatives,
14 shall and do hereby forever release, discharge and agree to hold harmless Released Parties from any and
15 all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages,
16 actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees
17 and costs), known or unknown, at law or in equity, which each may have as of the signing of this
18 Settlement, arising out of or in any way connected with their employment with Defendants including, the
19 PAGA Released Claims, claims that were asserted or could have been asserted in the Action, and any and
20 all transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement is
21 fully executed. Without limiting the generality of the foregoing, this release shall include, but not be
22 limited to, any and all claims under the (a) Americans With Disabilities Act, as amended; (b) Title VII of
23 the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as
24 amended; (e) the Age Discrimination in Employment Act, as amended; (f) the Fair Labor Standards Act,
25 as amended; (g) the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i)
26 the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family
27 and Medical Leave Act; (l) the Civil Rights Act of 1966; (m) the California Fair Employment and Housing
28 Act; (n) the California Constitution; (o) the California Labor Code; (p) the California Government Code;

(q) the California Civil Code; (r) the California Wage Orders, and (s) any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. Notwithstanding the release language in this Section and Sections 6.3.1-6.3.2, nothing in this Agreement shall be interpreted to constitute a waiver by Ricardo Gomez Senior of any accrued, but unused, sick leave under Defendants' policies.

6.3.1 Class Representatives specifically acknowledge that they are aware of and familiar with the provisions of Section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or 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.

6.3.2 Class Representatives, being aware of Section 1542, hereby expressly waive and relinquish all rights and benefits each may have under Section 1542 as well as any other statutes or common law principles of a similar effect. Class Representatives may hereafter discover facts in addition to or different from those which each now knows or believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates and agrees that, upon the Effective Date, each shall and hereby does fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts.

7. SETTLEMENT ADMINISTRATION

7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts,

including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members and Aggrieved Employee whose address or contact information as provided to the Claims Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving, independently reviewing, and resolving any challenges (in consultation with Class Counsel and Defendants' Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which

will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's and Aggrieved Employee's estimated Claim Amount.

7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendants shall provide the Claims Administrator with the name, last known mailing address, last known telephone number, Social Security Number, start and end date of employment (if any) of each Class Member, and any other information the Claims Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined herein. The Claims Administrator shall review the data to determine the number of Qualifying Workweeks for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days after receipt of such address information, the Claims Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The Claims Administrator shall maintain all information received from Defendants confidential to itself, and Defendants' Counsel. However, Class Counsel shall be able to review the breakdown of Qualified Workweeks and estimated Claim Amounts for Class Members and Aggrieved Employees prior to mailing for quality assurance provided the personal identifying information is redacted and/or omitted.

7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement is returned to the Claims Administrator as non-delivered on or before the conclusion of the Notice Period,

the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within five (5) calendar days. Following each search that does not result in a corrected address, for those Class Members who appear to be current employees of Defendants at the time of the Preliminary Approval Date, the Claims Administrator shall contact Defendants' Counsel for assistance and Defendants shall cooperate in good faith with the Claims Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they are active employees of Defendants. In the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, dispute, or objection shall be the end of the Notice Period or 10 days from the date of the re-mailing, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the Releases contained in Section 6.

7.5 Responses to Notice of Settlement:

7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (*i.e.*, *Gomez, et al. v. Kleary Masonry, Inc., et al.*, 34-2020-00278067); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound

1 by all terms of the Agreement and any order or final judgment thereon, regardless of whether they
2 otherwise have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this
3 Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt
4 out of being a Class Member.

5 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes
6 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
7 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and
8 Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
9 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
10 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
11 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify
12 the case name and number (*i.e. Gomez, et al. v. Kleary Masonry, Inc., et al.*, 34-2020-00278067) (e) be
13 signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline
14 stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the
15 Court and serve the notice on Class Counsel and Defendants' Counsel, if they intend to appear at the final
16 approval hearing.

17 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
18 Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)
19 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
20 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
21 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two
22 business days) forward all such disputes to Defendants' Counsel and request that Defendants review the
23 dispute. Defendants' records shall presumptively control unless the Class Member can produce
24 documentation evidencing other periods of employment worked. If Defendants do agree with submitted
25 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
26 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
27 Class Member's Claim Amount. If Defendants do not agree with the submitted information, Defendants'
28 Counsel will promptly advise Class Counsel of the dispute, which includes turning over any

documentation submitted by the Class Member as part of the dispute. Defendants' Counsel and Class Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendants' Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator or Court.

7.5.4 Deficient Opt-Outs, Objections, or Disputes: In the event that a deficient opt-out, objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency shall be the end of the Notice Period or 10 days from the date of the deficiency letter, whichever is later.

7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

7.7 Claims Administrator Declaration Regarding Notice Period: Within twenty-one (21) days after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the statistics and responses of settlement administration to date and all the Claims Administrators' obligations under Sections 5.8 to 5.9-5.9.3, 7.1 to 7.5.4, and 7.9.

7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiffs: Within seven (7) calendar days after the Final Approval Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiffs, the PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel. Defendants shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Claims Administrator within twenty-one (21) days after the Final Approval Date to be held in trust in a QSF. On the Effective Date, the Claims Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to

Plaintiffs, the 75% portion of the PAGA Payment payable to the LWDA, Claims Administrator Costs, and payment to Qualified Claimants and/or Aggrieved Employees as required under this Agreement and approved by Court.

7.8.1 The Claims Administrator shall wire the Court-approved attorneys' fees and costs to Class Counsel unless other method is requested by Class Counsel. Class Counsel shall provide the Claims Administrator with the pertinent taxpayer identification number and payment instructions after the Final Approval Date.

7.8.2 The Claims Administrator shall send a check by mail for the Court-approved Enhancement Payment to the Class Representatives, care of Class Counsel unless other method is requested by Class Counsel.

7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim Amount.

7.8.4 The Claims Administrator shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this Agreement. Defendants agree to reasonably cooperate with the Claims Administrator to the extent necessary to determine the amount of the payroll tax payment required.

7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred twenty (120) calendar days of issuance. After one hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash their settlement checks, the Claims Administrator shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the

Court's final approval order has been complied with, and that all the obligations of the Claims Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 days after the Final Approval Date
Last day for Defendants to fund settlement	Within 21 calendar days after Final Approval Date

Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	The Effective Date
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary

approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1 Plaintiffs' motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing Plaintiffs and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiffs; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate as to the Class Members.

9.1.2 Defendants shall not oppose Plaintiffs' motion for approval of the proposed Agreement.

9.1.3 The Parties shall cooperate with each other and the Claims Administrator during the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and appropriate to assure effective communication to individual Class Members of information about their rights and obligations under this Agreement.

9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Claim Administrator's mailings including tracing and re-mailing efforts.

9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an Enhancement Payment to the Class Representatives; 3) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)

Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the Agreement and the Court's orders.

9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist the Claims Administrator as needed or requested in the process of identifying and locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each other and assist the Claims Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Claims Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

9.4 Notice to LWDA: Plaintiffs agrees to provide notice to the Labor and Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

10. MISCELLANEOUS TERMS

10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendants may, at its election, rescind the Agreement and all actions taken in its furtherance will be thereby null and void. Defendants must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Claims Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Claims Administrator Costs shall be paid by Defendants. Defendants have represented that there are no more than 21,861 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 24,047.1 (*i.e.*, greater than 10% more than 21,861), then the Gross Settlement

Amount shall be increased proportionally by the workweeks in excess of 21,861, multiplied by the workweek value. For example, if there were 11,900 workweeks represented to exist during the Class Period, but there are actually 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per workweek, Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 workweeks – 11,900 workweeks = 3,100 workweeks x \$5.00/workweek).

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

1 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
2 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
3 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
4 and discharged in this Agreement.

5 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
6 signing this Agreement Defendants are waiving any rights to appeal from the Court's approval of the
7 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
8 Plaintiffs are waiving any right or ability to opt out of this Agreement during the Notice Period or
9 otherwise.

10 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
11 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
12 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

13 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval Date,
14 judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties
15 to enforce the terms therein.

16 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
17 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
18 execution of such other documents and the taking of such other action as may reasonably be necessary to
19 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
20 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
21 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

22 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
23 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
24 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
25 Complaint, the representative character of the Action, the validity of any of the claims that were or could
26 have been asserted by Plaintiffs and/or Class Members in the Action, or of any liability or guilt of
27 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
28 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiffs, the Class Members,

or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or wrongdoing toward Plaintiffs, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation.

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

To Plaintiffs and the Class:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

To Defendants:

Lisa V. Ryan
Cook Brown, LLP
2407 J Street, Second Floor
Sacramento, CA 95816

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

10.11 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement. This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Claims Administrators, successors, and assigns.

10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiffs, may recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided in this Agreement. The Parties stipulate and agree that the Sacramento County Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil

Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

10.13 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

10.14 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they 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.

10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement may be executed on behalf of all Class Members by the Class Representatives.

10.16 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiffs, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and effect of originals.

10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of California without giving effect to that State's choice of law principles.

10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement, or any provision thereof.

1 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could
2 be construed as retaliation against any Class Members for participating or seeking to participate in this
3 class action settlement. The Parties will not discourage any class member from participating or seeking
4 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
5 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
6 shall be entitled to further attorneys' fees and costs.

7 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
8 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
9 Each party acknowledges that there is no representation, inducement, promise or agreement which has
10 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
11 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
12 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

13 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
14 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

15 10.22 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
16 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
17 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

18 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
19 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
20 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

21 10.24 Captions: The captions and section numbers in this Agreement are inserted for the reader's
22 convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this
23 Agreement.

24 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
25 attorneys, as of the day and year herein set forth.

For Plaintiffs:

Date: 1/14/2021


Ricardo Gomez

Date: 1/14/2021


Ricardo Gomez, Sr.

For Defendants:

Date:

By:
For Kleary Masonry, Inc.

Date:

Michael G. Kleary

Date:

Nick Kleary

Date:

Diana Kleary

APPROVED AS TO FORM

Shimoda Law Corp.

Dated: 1/15/21

By: 
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiffs and Aggrieved
Employees

APPROVED AS TO FORM

COOK BROWN, LLP

Dated:

By:
Lisa V. Ryan
Attorney for Defendants

1 For Plaintiffs:

2 Date: _____

4 Date: _____

6 For Defendants:

7 Date: 1/21/2021

10 Date: 1/21/2021

13 Date: 1-21-21

16 Date: 1/21/21

17 APPROVED AS TO FORM

19 Date: _____

23 APPROVED AS TO FORM

25 Date: 1-22-21

Ricardo Gomez

Ricardo Gomez, Sr.

By: 
For Kleary, Kleary, Inc.

Michael G. Kleary

Nick Kleary

Diana Kleary

Shimoda Law Corp.

By: _____
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiffs and Aggrieved
Employees

COOK BROWN, LLP

By: 
Lisa V. Ryan
Attorney for Defendants

Exhibit A

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

RICARDO GOMEZ and RICARDO GOMEZ,
SR., individually and on behalf of all other
similarly situated employees,

Plaintiffs,

vs.

KLEARY MASONRY, INC., a California
Corporation; MICHAEL KLEARY, an
individual; NICK KLEARY, an individual;
DIANA KLEARY, an individual; and DOES 1 to
100, inclusive,

Defendants.

Case No. 34-2020-00278067

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees from May 6, 2016 up to _____ (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on _____, you are receiving notice of a proposed class action settlement between Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. ("Plaintiffs" or "Class Representatives"), and Defendants Kleary Masonry, Inc., Michael Kleary, Nick Kleary, and Diana Kleary ("Defendants") on behalf of Class Members as defined above. You are receiving this notice because Defendants' records indicate you fall within the definition of "Class Member." Defendants' records also indicate that you worked _____ workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be _____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On May 6, 2020, Plaintiffs, former employees, filed a Complaint against Defendants in the California Superior Court for the County of Sacramento on behalf of themselves and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2020-00278067. The Class Period is from May 6, 2016 up to _____ (the "Class Period").

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves and Class Members. Plaintiffs alleged that Defendants violated California law by 1) failing to pay overtime wages; 2) failing to pay minimum wages; 3) failing to provide meal periods; 4) failing to provide rest periods; 5) failing to provide accurate wage statements; 6) failing to timely pay final wages; 7) engaging in unfair competition; 8) failing to reimburse expenses; 9) failing to pay prevailing wages; 10) failing to pay reporting time pay; and 11) failing to maintain accurate records. Defendants have denied all of Plaintiffs' allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange

of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants agrees to pay a total sum of One Million One Hundred Thousand Dollars and No Cents (\$1,100,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$385,000, attorneys' costs not to exceed \$10,000, Claims Administrator Costs estimated not to exceed \$12,500, Class Representatives' Enhancement Payment of \$15,000 each, and \$20,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$20,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees from April 17, 2019 up to _____.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendants' records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than _____. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period.

Aggrieved Employees will be deemed to have released all PAGA claims for civil penalties contained in Plaintiffs' letters to the LWDA and/or operative Complaint through the PAGA Claim Period.

The individuals released ("Released Parties") include means Defendants, as well as Defendants' owners, officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendants have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$385,000, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representatives and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section ILC above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e.*, *Gomez, et al. v. Kleary Masonry, Inc., et al.*, 34-2020-00278067); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than _____. If you submit a request to opt out which is not postmarked by _____, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e.*, *Gomez, et al. v. Kleary Masonry, Inc., et al.*, 34-2020-00278067) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiffs and Defendants at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiffs and Defendants. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendants and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 53, 813 6th St. Sacramento, CA 95814, on _____ at 1:30 p.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendants' Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716

Lisa V. Ryan
Cook Brown LLP
2407 J St., Second Floor
Sacramento, CA 95816
Phone: (916) 442-3100
Facsimile: (916) 442-4227
On behalf of Defendants

Facsimile: (916) 760-3733

On behalf of Plaintiffs

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

Exhibit B

FILED BY FAX

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiffs RICARDO GOMEZ and RICARDO GOMEZ, SR.
6 on behalf of themselves and similarly situated employees

7
8 SUPERIOR COURT OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO

10 RICARDO GOMEZ and RICARDO
11 GOMEZ, SR., individually and on behalf of
12 all others similarly situated,

13 Plaintiffs,

14 vs.

15 KLEARY MASONRY, INC., a California
16 Corporation;
17 MICHAEL G. KLEARY, an individual;
18 NICK KLEARY, an individual;
DIANA KLEARY, an individual; and
DOES 1 to 100, inclusive,

19 Defendants.
20
21
22
23

Case No. 34-2020-00278067

CLASS ACTION

SECOND AMENDED COMPLAINT FOR
DAMAGES:

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime
3. Failure to Provide Meal Periods
4. Failure to Provide Rest Periods
5. Failure to Provide Accurate Wage Statements
6. Waiting Time Penalties
7. Unfair Competition
8. Failure to Reimburse Expenses
9. Private Attorneys General Act
10. Failure to Pay Prevailing Wages
11. Failure to Pay Reporting Time Pay

JURY TRIAL DEMANDED

24
25 Plaintiffs RICARDO GOMEZ and RICARDO GOMEZ, SR. ("Plaintiffs"), individuals, hereby
26 file this Class Action Complaint against Defendants KLEARY MASONRY, INC., a California
27 Corporation; and DOES 1 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are
28 informed and believe, and on the basis of that information and belief, alleges as follows:

FILED/ENDORSED

JAN - 5 2021

By: R. San Miguel
Deputy Clerk

INTRODUCTION

1
2 1. This is a class action and representative Private Attorneys General Act ("PAGA") action
3 brought by Plaintiffs for minimum wages, overtime wages, prevailing wages, reporting time pay, meal
4 and rest period violations, unpaid reimbursements, wage statement violations, waiting time penalties,
5 and unfair competition under the California Labor Code, Industrial Welfare Commission Wage Order
6 ("Wage Order") No. 16-2001, and California Business & Professions Code.

PARTIES

7
8 2. Plaintiff RICARDO GOMEZ is an individual over the age of eighteen (18) and is now
9 and/or at all times mentioned in this Complaint was a resident of the State of California.

10 3. Plaintiff RICARDO GOMEZ, SR. is an individual over the age of eighteen (18) and is
11 now and/or at all times mentioned in this Complaint was a resident of the State of California.

12 4. Plaintiffs are informed and believe, and thereupon allege, KLEARY MASONRY, INC. is
13 now and/or at all times mentioned in this Complaint a California Corporation and the owner and
14 operator of an industry, business and/or facility licensed to do business and actually doing business in
15 the State of California.

16 5. Plaintiffs are informed and believe, and thereupon allege, that MICHAEL G. KLEARY is
17 an owner, director, officer, or managing agent of KLEARY MASONRY, INC. responsible for creating
18 and/or implementing KLEARY MASONRY, INC.'s unlawful policies and practices and causing the
19 Labor Code violations outlined in the First through Sixth and Eighth through Eleventh Causes of Action.
20 As such MICHAEL G. KLEARY is individually liable pursuant to California Labor Code section 558.1.

21 6. Plaintiffs are informed and believe, and thereupon allege, that NICK KLEARY is an
22 owner, director, officer, or managing agent of KLEARY MASONRY, INC. responsible for creating
23 and/or implementing KLEARY MASONRY, INC.'s unlawful policies and practices and causing the
24 Labor Code violations outlined in the First through Sixth, and Eighth through Eleventh Causes of
25 Action. As such NICK KLEARY is individually liable pursuant to California Labor Code section 558.1.

26 7. Plaintiffs are informed and believe, and thereupon allege, that DIANA KLEARY is an
27 owner, director, officer, or managing agent of KLEARY MASONRY, INC. responsible for creating
28 and/or implementing KLEARY MASONRY, INC.'s unlawful policies and practices and causing the

1 Labor Code violations outlined in the First through Sixth and Eighth through Eleventh Causes of Action.
2 As such DIANA KLEARY is individually liable pursuant to California Labor Code section 558.1.

3 8. DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of
4 KLEARY MASONRY, INC., MICHAEL G. KLEARY, NICK KLEARY, and DIANA KLEARY,
5 corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiffs will
6 seek to amend this Complaint to allege the true names and capacities of these DOE defendants when
7 they are ascertained. At all times mentioned herein, each defendant was the agent or employee of each
8 of the other defendants and was acting within the course and scope of such agency or employment. The
9 defendants are jointly and severally liable to Plaintiffs.

10 9. All defendants, and each of them, are now and/or at all times mentioned in this
11 Complaint, were members of and/or engaged in a joint employment, joint venture, partnership and
12 common enterprise, and were acting within the course and scope of, and in pursuance of said joint
13 employment, joint venture, partnership, and common enterprise.

14 10. All defendants, and each of them, are now and/or at all times mentioned in this
15 Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this
16 Complaint.

17 11. All defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
18 wrongs, complaints, injuries, and/or damages alleged in this Complaint.

19 JURISDICTION AND VENUE

20 12. The Sacramento Superior Court has jurisdiction in this matter due to alleged violations of
21 California Labor Code, Business and Professions Code, and Industrial Welfare Commission Wage Order
22 ("Wage Order") 16.

23 13. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
24 Defendants' reside in Sacramento County and some of the wrongful acts and violations of law asserted
25 herein occurred within Sacramento. Additionally, Defendants' obligation to pay wages, including
26 minimum wages, overtime wages, and meal and rest period premiums arose in Sacramento County
27 pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal3d 403, 414 (1984).

28 //

14. Plaintiffs sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as Private Attorney Generals on behalf of themselves and other aggrieved employees. Pursuant to California Labor Code section 2699.3, Plaintiffs gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA") on approximately April 17, 2020 and June 19, 2020. Plaintiffs provided facts and legal bases for their claims within the notices to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiffs also submitted the \$75.00 filing fee. The April 17, 2020 and June 19, 2020 notices were also sent via certified mail to Defendants. Plaintiffs are informed and believe that, to date, the LWDA has not provided any response to Plaintiffs' notice correspondences. Accordingly, Plaintiffs are informed and believe that they have exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of themselves and all aggrieved employees. See Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved employees includes, but is not limited to all of Defendants' non-exempt, hourly employees who performed work in California.

CLASS ALLEGATIONS

15. Plaintiffs brings the First through Eighth Causes of Action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure § 382. The class(es) which Plaintiffs seek to represent are composed of, and defined, as follows:

All individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees from May 6, 2016 to the present.

16. This action may be maintained as a class action because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

17. Numerosity: The Plaintiff Class is so numerous that the individual joinder of all members is impracticable. While the actual number of class members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that more than approximately 50 individuals were subjected to the practices outlined in this Complaint relating to the First through Eighth Causes of Action.

11

1 18. Common Questions Predominate: Common questions of law and fact exist as to all
2 members of the Plaintiff Class and predominate over questions that affect only individual class
3 members. These common questions of law and fact include, without limitation, the following:

- 4 (1) Whether Defendants had a policy and/or practice of paying putative class members
5 for all hours worked;
- 6 (2) Whether Defendants had a policy and/or practice of paying reporting time pay for
7 each workday that putative class members were required to report to the work site but
8 not put to work;
- 9 (3) Whether Defendants had a policy and/or practice of paying the putative class for all
10 overtime hours worked;
- 11 (4) Whether Defendants had a policy and/or practice of paying putative class members all
12 prevailing wages owed;
- 13 (5) Whether Defendants had a policy and practice authorizing legally compliant meal
14 periods;
- 15 (6) Whether Defendants had a policy and practice authorizing legally compliant rest
16 periods;
- 17 (7) Whether Defendants had a policy and/or practice authorizing and permitting the
18 putative class to take second meal periods when they worked more than ten (10) hours
19 in a day;
- 20 (8) Whether Defendants had a policy and/or practice authorizing and permitting the
21 putative class to take third rest periods when they worked more than ten (10) hours in
22 a day;
- 23 (9) Whether putative class members were given paystubs that complied with California
24 Labor Code section 226;
- 25 (10) Whether as a result of Defendants' payroll policies, or a lack thereof, putative class
26 members received all wages, due and owing, at the time of their
27 termination/separation; and
28

1 (11) Whether Defendants had a policy and/or practice to reimburse the putative class for
2 expenses incurred for work.

3 19. Typicality: Plaintiffs' claims are typical of the claims for the members of the Plaintiff
4 Class. Plaintiffs also sustained damages arising out of Defendants' common course of conduct in
5 violation of the law as complained of herein. As a result, each putative class member will have the
6 same basis for unpaid wage claims as do Plaintiffs.

7 20. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of
8 the Plaintiff Class. Plaintiffs have no interests which are adverse to those of absent class members.
9 Additionally, Plaintiffs have retained counsel who has substantial experience in complex civil
10 litigation and employment law matters.

11 21. Superiority: A class action is superior to other available means for the fair and
12 efficient adjudication of the controversy since individual joinder of all members of the class is
13 impracticable. Class action treatment will permit a larger number of similarly situated employees to
14 prosecute their common claims in a single forum simultaneously, efficiently, and without the
15 unnecessary duplication of effort and expense that numerous individual actions would engender.
16 Further, as damages suffered by each individual member of the class may be relatively small, the
17 expenses and burden of the individual litigation would make it difficult or impossible for individual
18 members of the class to redress wrongs done to them, and an important public interest will be served
19 by addressing the matter as a class action. The cost to the court system of adjudication of such
20 individualized litigation would be substantial. Individualized litigation would also present the
21 potential for inconsistent or contradictory judgments.

22 22. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
23 management of this action that would preclude its maintenance as a class action.

24 GENERAL ALLEGATIONS

25 23. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 22 as though fully
26 set forth herein.

27 24. Plaintiff Ricardo Gomez, Jr. worked for Defendants from approximately 2014 to April
28 2020 as an hourly, non-exempt employee. Plaintiff Ricardo Gomez, Sr. similarly worked for

1 Defendants within the last year prior to the filing of this Complaint. Similarly situated employees also
2 worked for Defendants as non-exempt, hourly employees.

3 25. Generally, Plaintiffs and similarly situated employees were required to drive to
4 Defendants' shop in the morning to pick up tools, materials, and/or equipment for work and drive to
5 Defendants' shop at the end of the day to return the tools, materials, and/or equipment as needed.
6 Plaintiffs and similarly situated employees would also be required to appear at the shop in the morning
7 in order to attend necessary meetings or to receive job assignments. However, Defendants did not pay
8 Plaintiffs and similarly situated employees for their time spent at the shop in the morning and driving to
9 the first jobsite or for the time spent driving back to the shop at the end of the day from the last jobsite
10 and time spent unloading equipment and materials. Because the locations of the job sites varied from
11 day to day, Plaintiffs and similarly situated employees would have to check in with supervisors via their
12 personal cell phone either the night before or the morning of in order to know exactly when Plaintiffs
13 and similarly situated employees needed to arrive at the shop, complete their tasks, and still have enough
14 time to travel to the first job site.

15 26. There were several occasions when Plaintiffs and similarly situated employees were
16 instructed to report to the shop in the morning to receive their job assignment. Plaintiffs and similarly
17 situated employees would sometimes wait at the shop for an hour or more before receiving their job
18 assignment. There were also occasions where Defendants told Plaintiffs and similarly situated
19 employees to just go home after they had been waiting at the shop because there was no work that day.
20 Plaintiffs and similarly situated employees were not paid for the time they spent at the shop, and if they
21 were sent home without work, did not receive any pay that day at all. Defendants would also instruct
22 Plaintiffs and similarly situated employees to report to the jobsite on rainy days and wait to see if the
23 rain was going to clear up. If the rain did not clear, Defendants would send Plaintiffs and similarly
24 situated employees home, and Plaintiffs and similarly situated employees did not receive any pay for
25 that day.

26 27. On days when Plaintiffs and similarly situated employees reported to the jobsite rather
27 than going to the shop, Plaintiffs and similarly situated employees generally began loading their trucks
28 early in the morning, for example around 4:00 a.m. or 5:00 a.m., with their personal tools. Typically,

1 Plaintiffs and similarly situated employees would arrive at the jobsite and start working about 15
2 minutes before their scheduled start time. Defendants instructed Plaintiffs and similarly situated
3 employees to arrive early to unload tools and supplies from trucks and prepare supplies they would be
4 using that day. Defendants did not pay Plaintiffs and similarly situated employees for this time.

5 28. Although Plaintiffs typically began work much earlier (e.g., 4:00 a.m.), Defendants
6 recorded Plaintiffs and similarly situated employees' start time or instructed Plaintiffs and similarly
7 situated employees to record their start time as the time they were scheduled to begin work at the first
8 jobsite, for example 7:00 a.m., and to record their end time as the time they left the last jobsite. As a
9 result, Defendants failed to pay Plaintiffs and similarly situated employees all minimum and overtime
10 wages they were owed and failed to keep accurate records of employees' hours worked.

11 29. Defendants failed to reimburse Plaintiffs and similarly situated employees for the use of
12 their personal phones, personal vehicles, and personal tools. Plaintiffs and similarly situated employees
13 would use their personal vehicles to transport their personal tools to the jobsite, pick up tools and
14 supplies from the shop, and drive to the jobsites. Plaintiffs and similarly situated employees would use
15 their personal cellphones to check in with supervisors for job assignments among other necessary
16 communications. Defendants did not have any policy to reimburse Plaintiffs and similarly situated
17 employees for the use of their personal cellphones, vehicles or tools.

18 30. Plaintiffs and similarly situated employees regularly missed their meal and rest periods
19 due to Defendants' lack of policies, the workload demands imposed by Defendants, and the failure to
20 properly communicate meal and rest period requirements. For example, Plaintiffs and similarly situated
21 employees frequently did not get any meal period at all, received a meal period shorter than 30 minutes,
22 or began their meal period after their fifth hour of work, especially on days when cement was delivered
23 to the jobsite. Plaintiffs and similarly situated employees had to be working when the cement was
24 delivered so that the work could be completed before the cement dried and so that multiple cement
25 deliveries could be accommodated. Defendants did not have any policy to authorize and permit rest
26 periods. For example, if Defendants saw employees trying to take a short break to get some water or sit
27 down, they would tell the employees to go home if they weren't going to work. Plaintiffs and similarly
28 situated employees also frequently worked over ten (10) hours in a day, however, Defendants did not

1 have any policy or practice to authorize and permit Plaintiffs and similarly situated employees to take
2 second meal periods or third rest periods. Plaintiffs and similarly situated employees did not waive their
3 second meal periods. Defendants did not pay Plaintiffs and similarly situated employees missed meal
4 and rest period premiums.

5 31. Defendants failed to pay Plaintiffs and similarly situated employees all prevailing wages
6 and overtime wages they were owed. For example, Plaintiffs and similarly situated employees would
7 work jobs they believed were public works jobs or jobs where a State Inspector/State Superintendent
8 would inform employees that they were working on a public works job and that they should be getting
9 prevailing wages, but then Defendants would not pay the prevailing wages. In addition, Defendants
10 would not pay Plaintiffs and similarly situated employees any overtime wages on certain prevailing
11 wage jobs for the State. When Plaintiffs and similarly situated employees worked overtime hours on
12 these jobs, Defendants only paid them straight time. Furthermore, on those occasions where Plaintiffs
13 and similarly situated employees worked on public works jobs earning prevailing wages and non-
14 prevailing wage jobs in the same work week, Defendants failed to take into account the value of the
15 prevailing wages earned when calculating Plaintiffs' and similarly situated employees' regular rate of
16 pay for the purpose of paying overtime on non-prevailing wage jobs.

17 32. As a result of Defendants' policies and practices described above, Plaintiffs and similarly
18 situated employees were not given accurate wage statements itemizing their total regular and overtime
19 hours worked and corresponding rates of pay, total regular and overtime prevailing wage hours worked
20 and corresponding rates of pay, meal and rest period premiums, or correct amount of gross and net
21 wages earned.

22 33. Defendants also failed to timely pay Plaintiffs and similarly situated employees the wages
23 owed to them upon their termination or separation, including minimum and overtime wages, reporting
24 time pay, prevailing wages, and meal and rest period premiums.

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CAUSES OF ACTION
FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to All Defendants)

34. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 33 as though fully set forth herein.

35. For the three (3) years preceding the filing of this Action, Defendants were required to compensate Plaintiffs and similarly situated employees with at least the State's minimum wage at the time of \$10.00 per hour for all time worked from January 1, 2016, until December 31, 2016, \$10.50 per hour for all time worked from January 1, 2017, until December 31, 2017, \$11.00 per hour for all time worked from January 1, 2018, to December 31, 2018, \$12.00 per hour for all time worked from January 1, 2019 to December 31, 2019, and \$13.00 per hour for all time worked from January 1, 2020 to the present. *See, e.g.,* Minimum Wage Order 2019; Labor Code § 1194; IWC Wage Order No. 16-2001, § 4. Further, "each workday that an employee is required to report to a work site and does report, but is not put to work or is furnished less than half of his/her usual or schedule day's work, the employer shall pay him/her for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay, which shall not be less than the minimum wage." *See* IWC Wage Order No. 16-2001, § 5(B).

36. Defendants failed to consider all compensable time, including time spent loading their trucks with tools in the morning, time spent preparing at the jobsite prior to their scheduled start time, time spent at Defendants' shop in the morning, driving to the first jobsite, driving back to the shop at the end of the day from the last jobsite, and time spent at the shop at the end of the day when calculating Plaintiffs' and similarly situated employees' hours worked. Defendants further failed to pay Plaintiffs for those instances when Plaintiffs and similarly situated employees were asked to report to the shop or jobsite and later sent home without work. As a result, Plaintiffs and similarly situated employees were not paid all minimum wages.

37. Plaintiffs and similarly situated employees were not exempt to the State's Wage Orders. Defendants were aware of their obligation to pay the minimum wages but failed to do so.

1 38. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
2 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
3 the extent pertinent as if set forth here in full.

4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME**
6 **(As to All Defendants)**

7 39. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 38 as though
8 fully set forth herein.

9 40. During the period Plaintiffs and similarly situated employees were employed by
10 Defendants, Defendants were required to compensate them at one and one-half (1½) times the
11 regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per
12 week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per
13 day or in excess of eight (8) hours per day on the seventh (7th) day of work. See, e.g., Cal. Labor
14 Code §§ 510, 1194.

15 41. Plaintiffs and similarly situated employees regularly worked in excess of eight (8)
16 hours in a day and forty (40) hours each week, but Defendants did not pay Plaintiffs and similarly
17 situated employees all overtime owed to them because they failed to account for time spent loading
18 their trucks with tools in the morning, time spent preparing at the jobsite prior to their scheduled start
19 time, time spent at Defendants' shop in the morning, driving to the first jobsite, driving back to the
20 shop at the end of the day from the last jobsite, and time spent at the shop at the end of the day when
21 calculating Plaintiffs' and similarly situated employees' hours worked. Defendants further failed to
22 account for time spent during those instances when Plaintiffs and similarly situated employees were
23 asked to report to the shop or jobsite and later sent home without work. Defendants also failed to
24 pay overtime wages on certain prevailing wage jobs.

25 42. Plaintiffs and similarly situated employees were non-exempt employees under Wage
26 Order 16-2001 and California Labor Code section 510.

27 43. Defendants' conduct described herein violates California Labor Code sections 510 and
28 1194, and applicable Wage Order. As a proximate result of Defendants' conduct, Plaintiffs and
similarly situated employees have been damaged and deprived of overtime wages for three (3) years

1 from the filing of this Complaint. Plaintiffs and similarly situated employees now seek these wages,
2 attorney's fees and costs, and interest pursuant to California Labor Code section 1194.

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PROVIDE MEAL PERIODS**
5 **(As to All Defendants)**

6 44. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 43 as though
7 fully set forth herein.

8 45. An employer must provide an employee a meal period in accordance with the
9 applicable Wage Order, and Labor Code sections 226.7 and 512.

10 46. Labor Code sections 226.7 and 512 and Wage Order 16-2001, section 10(A) require
11 an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each
12 work period of more than five (5) hours.

13 47. Labor Code section 512 further provides that employers may not employ employees
14 for a work period for more than ten (10) hours per day without providing the employee with a second
15 meal period of at least thirty (30) minutes. However, if the total hours worked is no more than
16 twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the
17 first meal period.

18 48. Plaintiffs allege that Defendants failed to authorize and permit meal periods, including a
19 second meal period when Plaintiffs and similarly situated employees worked more than ten (10) hours in
20 a day. Plaintiffs and similarly situated employees regularly missed their meal periods due to
21 Defendants' lack of policies, the workload demands imposed by Defendants and the failure to properly
22 communicate meal and rest period requirements. Defendants failed to pay Plaintiffs and similarly
23 situated employees applicable meal period premiums for all missed meal periods.

24 49. As a proximate cause of Defendants' failure to permit meal periods as legally
25 required, Plaintiffs and similarly situated employees are entitled to one (1) hour of pay at their
26 regular rate of compensation for each meal period not provided, as a wage, from three (3) years from
27 the filing of this Complaint. See Labor Code § 226.7 and Wage Order 16-2001, § 10(B).

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FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(As to All Defendants)

50. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 49 as though fully set forth herein.

51. An employer must provide an employee a rest period in accordance with the applicable Wage Order and Labor Code section 226.7.

52. Labor Code section 226.7 and Wage Order 16-2001, section 11(A) require an employer to provide a meal period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

53. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly situated employees to take rest breaks, including a third rest breaks of at least ten (10) minutes when Plaintiffs and similarly situated employees worked over ten (10) hours in a day. Plaintiffs regularly missed their rest periods due to Defendants' lack of policies, the workload demands imposed by Defendants and the failure to properly communicate meal and rest period requirements. Defendants failed to pay all missed rest period premiums owed to Plaintiffs and similarly situated employees.

54. As a proximate cause of Defendants' failure to "authorize and permit" rest periods, Plaintiffs and similarly situated employees are entitled to one (1) hour of pay at their regular rate of compensation for each rest period not provided, as a wage, from three (3) years from the filing of this Complaint. See Labor Code § 226.7 and Wage Order 16-2001, § 11(B).

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(As to All Defendants)

55. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 54 as though fully set forth herein.

56. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

1 (1) gross wages earned, (2) total hours worked by the employee,
2 except for any employee whose compensation is solely based on a
3 salary and who is exempt from payment of overtime under subdivision
4 (a) of Section 515 or any applicable order of the Industrial Welfare
5 Commission, (3) the number of piece-rate units earned and any
6 applicable piece rate if the employee is paid on a piece-rate basis, (4)
7 all deductions, provided that all deductions made on written orders of
8 the employee may be aggregated and shown as one item, (5) net wages
9 earned, (6) the inclusive dates of the period for which the employee is
10 paid, (7) the name of the employee and the last four digits of his or her
11 social security number or an employee identification number other
12 than a social security number, (8) the name and address of the legal
13 entity that is the employer and, if the employer is a farm labor
14 contractor, as defined in subdivision (b) of Section 1682, the name and
15 address of the legal entity that secured the services of the employer,
16 and (9) all applicable hourly rates in effect during the pay period and
17 the corresponding number of hours worked at each hourly rate by the
18 employee. The deductions made from payment of wages shall be
19 recorded in ink or other indelible form, properly dated, showing the
20 month, day, and year, and a copy of the statement and the record of
21 the deductions shall be kept on file by the employer for at least three
22 years at the place of employment or at a central location within the
23 State of California.

24 57. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an
25 itemized statement or failed to provide an accurate and complete itemized statement showing the
26 requirements set forth in Labor Code section 226(a). Specifically, Defendants failed to itemize
27 Plaintiffs' and similarly situated employees' total regular and overtime hours worked on regular and
28 prevailing wage jobs and the corresponding rates of pay, meal and rest period premiums, and accurate
gross and net wages.

58. Additionally, Plaintiffs allege that they and similarly situated employees suffered
injury as a result of Defendants' failure to provide accurate and complete information as required by
any one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a). Plaintiffs
and similarly situated employees were not able to promptly and easily determine their total hours
worked from their paystubs alone. Additionally, Plaintiffs and similarly situated employees suffered
confusion over whether they received all wages owed and were prevented from effectively
challenging information on their wage statements.

1 59. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiffs and
2 similarly situated employees were damaged as stated in the section below entitled "DAMAGES," which
3 is incorporated here to the extent pertinent as if set forth here in full.

4
5 **SIXTH CAUSE OF ACTION**
6 **WAITING TIME PENALTIES**
7 **(As to All Defendants)**

8 60. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 59 as though fully
9 set forth herein.

10 61. An employer must pay an employee who is terminated all unpaid wages immediately
11 upon termination. See Labor Code § 201.

12 62. An employer must pay an employee who resigns all unpaid wages within seventy-two
13 (72) hours of their resignation. See Labor Code § 202.

14 63. Plaintiffs and similarly situated employees did not receive all wages, including minimum
15 and overtime wages, prevailing wages, reporting time pay, and meal and rest period premiums upon
16 their termination or resignation.

17 64. An employer who willfully fails to pay an employee wages in accordance with Labor
18 Code §§ 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. See
19 Labor Code § 203.

20 65. Defendants knew of their obligation to pay Plaintiffs and similarly situated employees all
21 wages owed when their employment ended. Indeed, Defendants' failure to do so was conscious
22 disregard of the law as Defendants were aware of the unpaid hours Plaintiffs and similarly situated
23 employees were working. Such conduct shows Defendants' knowledge of their obligation pay
24 minimum wages and overtime compensation upon separation and their willful refusal.

25 66. As a proximate result of the Defendants' conduct, Plaintiffs and similarly situated
26 employees have been damaged and deprived of their wages and thereby seek their daily rate of pay
27 multiplied by thirty (30) days for Defendants' failure to pay all wages due.

28 //

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SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to Defendants Klearv Masonry, Inc. and DOES 1 to 100)

67. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 66 as though fully set forth herein.

68. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

69. Plaintiffs and similarly situated employees were not paid all wages during their employment, as Defendants did not pay them all minimum wages, overtime wages, prevailing wages, reporting time pay, and meal and rest period premiums.

70. Plaintiffs are also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

71. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to restitution as a result of Defendants' unfair business practices, including, but not limited to, interest and penalties pursuant to B&P §§ 17203, 17208, all in an amount as yet unascertained but subject to proof at trial, for ~~four (4) years~~ from the filing of this Complaint.

EIGHTH CAUSE OF ACTION
FAILURE TO PAY REIMBURSEMENT EXPENSES
(As to All Defendants)

72. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 71 as though fully set forth herein.

73. Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

1 74. Defendants required Plaintiffs and similarly situated employees to use their personal cell
2 phones, personal vehicles, and personal tools for work purposes. Defendants did not reimburse
3 Plaintiffs and similarly situated employees for these expenses.

4 75. Defendants' conduct described herein violated California Labor Code section 2802. As a
5 proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged
6 as stated in the section below titled "DAMAGES."

7 **NINTH CAUSE OF ACTION**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **(As to All Defendants)**

10 76. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 75 as though fully
11 set forth herein.

12 77. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the
13 following provisions of the Labor Code in their dealings with Plaintiffs and other similarly situated
14 current and former employees:

- 15 • Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to
16 Pay Overtime Wages)
- 17 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay
18 Minimum Wages)
- 19 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements)
- 20 • Violation of Labor Code §§ 226, 226.3, 1776 (Failure to Provide Accurate Wage
21 Statements)
- 22 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 23 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
24 Work in Any Industrial Welfare Commission Order)
- 25 • Violation of Labor Code §§ 226.3, 1174, 1198; IWC Wage Order No. 16, § 6(A)
26 (Failure to Maintain Accurate Records)
- 27 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order No. 16, §§10(A) and 10(B)
28 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

- Violation of Labor Code § 226.7; IWC Wage Order No. 16, § 11(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Wage Order No. 16, § 5 (Failure to Pay Reporting Time)
- Violation of Labor Code §§ 1771, 1774 (Failure to Pay Prevailing Wages)

78. Plaintiffs seek civil penalties against Defendants as provided in the Labor Code, or if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

79. Plaintiffs seek these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

TENTH CAUSE OF ACTION
FAILURE TO PAY PREVAILING WAGES
(As to All Defendants)

80. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 79 as though fully set forth herein.

81. California Labor Code section 1771 states, "[e]xcept for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works." California Labor Code section 1774 states, "[t]he contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract."

82. Plaintiffs worked on public works jobs but were not paid the specified prevailing wage regular and overtime rates

83. Defendants failed to consider all compensable time, including time spent loading their trucks with tools in the morning, time spent preparing at the jobsite prior to their scheduled start time, time spent at Defendants' shop in the morning, driving to the first jobsite, driving back to the shop at the end of the day from the last jobsite, and time spent at the shop at the end of the day when calculating Plaintiffs' and similarly situated employees' hours worked. Defendants further failed to pay Plaintiffs

1 for those instances when Plaintiffs and similarly situated employees were asked to report to the shop or
2 jobsite and later sent home without work. As a result, Plaintiffs and similarly situated employees were
3 not paid all minimum wages.

4 84. Plaintiffs and similarly situated employees were not exempt to the State's Wage Orders.
5 Defendants were aware of their obligation to pay the minimum wages but failed to do so.

6 85. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9 **ELEVENTH CAUSE OF ACTION**
10 **FAILURE TO PAY REPORTING TIME**
11 **(As to All Defendants)**

12 86. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 85 as though
13 fully set forth herein.

14 87. Pursuant to its authority under California Labor Code section 1173, the Industrial
15 Welfare Commission promulgated Wage Order 16-2001. Wage Order 16-2001 mandates that "[e]ach
16 workday that an employee is required to report to a work site and does report, but is not put to work or is
17 furnished less than half of his/her usual or scheduled day's work, the employer shall pay him/her for half
18 the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
19 hours at the employee's regular rate of pay, which shall not be less than the minimum wage." See IWC
20 Wage Order No. 16-2001, § 5(B). Defendants failed to pay Plaintiffs for those instances when Plaintiffs
21 and similarly situated employees were asked to report to the shop or jobsite and later sent home without
22 work. As a result, Plaintiffs and similarly situated employees were not paid all minimum wages.

23 88. Plaintiffs and similarly situated employees were not exempt to the State's Wage Orders.
24 Defendants were aware of their obligation to pay the minimum wages but failed to do so.

25 89. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
26 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
27 the extent pertinent as if set forth here in full.

28 //

DAMAGES

WHEREFORE Plaintiffs request relief as follows:

1. A jury trial;

2. As to the First Cause of Action:

- a. Wages in an amount to be proven at trial;**
- b. Interest for the wages due pursuant to Labor Code section 1194;**
- c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;**
- d. Liquidated damages pursuant to Labor Code section 1194.2;**

3. As to the Second Cause of Action:

- a. Wages in an amount to be proven at trial;**
- b. Interest for the wages due pursuant to Labor Code section 1194;**
- c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;**

4. As to the Third and Fourth Causes of Action:

- a. Wages in an amount to be proven at trial;**
- b. Attorney's fees and costs and interest pursuant to Labor Code sections 218.5 and 218.6, and to California Code of Civil Procedure section 1021.5;**

5. As to the Fifth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which the violation occurred and one hundred dollars (\$100) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000);**
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(c);**

6. As to the Eighth Cause of Action:

- a. All reimbursement expenses earned and owing in an amount to be proven at trial;**
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);**

1 **7. As to the Ninth Cause of Action:**

- 2 a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- 3 b. For those Labor Code sections, the violation of which there is no civil penalty
- 4 provided, the default penalty provided in Labor Code section 2699(f): for any initial
- 5 violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For
- 6 any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per
- 7 pay period;
- 8 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 9 d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

10 **8. As to the Tenth Cause of Action:**

- 11 a. Wages in an amount to be proven at trial;
- 12 b. Interest for the wages due pursuant to Labor Code section 1194;
- 13 c. For reasonable attorney's fees and costs incurred pursuant to Labor Code sections
- 14 1194, 1021.5, and 218.5;

15 **9. As to the Eleventh Cause of Action:**

- 16 a. Wages in an amount to be proven at trial;
- 17 b. Interest for the wages due pursuant to Labor Code section 1194;
- 18 c. For reasonable attorney's fees and costs incurred pursuant to Labor Code sections
- 19 1194, 1021.5, and 218.5;

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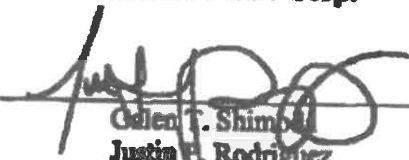
28 //

1 10. For such other and further relief as this Court may deem just and proper, including, but
2 not limited to:

- 3 a. Wages as proven at trial;
4 b. Injunctive and Declaratory relief
5 c. Reasonable attorney's fees and costs as provided by law; and
6 d. Interest.

7
8 Dated: December 23, 2020

Shimoda Law Corp.

9
10 By: 

Golen T. Shimoda
Justin V. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiffs

1 *Gomez, et al v. Kleary Masonry, Inc., et al.*
2 *Sacramento County Superior Court of California 34-2020-00278067*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On January 5, 2021, I served the following documents on the party below:

- 9 • Second Amended Complaint for Damages

10 Lisa V. Ryan (SBN: 217802)
11 Cook Brown, LLP
12 2407 J Street, 2nd Floor
13 Sacramento, CA 95816
14 Telephone: (916) 442-3100
15 Facsimile: (916) 442-4227
16 Email: lryan@cookbrown.com

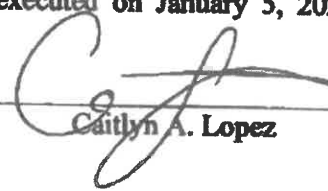
17 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
18 processing of correspondence for mailing with the United States Postal
19 Service and that each day's mail is deposited with the United States Postal
20 Service that same day in the ordinary course of business. On the date set
21 forth above, I served the aforementioned document(s) on the parties in
22 said action by placing a true copy thereof enclosed in a sealed envelope
23 with postage thereon fully prepaid, for collection and mailing on this date,
24 following ordinary business practices, at Elk Grove, California, addressed
25 as set forth above.

26 [] [By Personal Service] By personally delivering a true copy thereof to the
27 office of the addressee above.

28 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct, and that this declaration was executed on January 5, 2021, at Elk Grove,
25 California

26 
Caitlyn A. Lopez

27
28
PROOF OF SERVICE

RECEIVED
CIVIL DROP BOX

2021 JAN -5 PM 12:11

GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

Exhibit C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

June 19, 2020

For Online Filing:

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

Re: *Ricardo Gomez, et al. v. Kleary Masonry, Inc., et al.*

Dear Labor Commissioner,

Our office previously filed a notice with the Labor and Workforce Development Agency on behalf of Claimants Ricardo Gomez, Jr. and Ricardo Gomez, Sr. on or about April 17, 2020. In this letter we seek to amend our prior notice to include additional related facts, theories, and claims to support the alleged violations. Accordingly, we are providing you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Kleary Masonry, Inc.
11297 Coloma Road
Rancho Cordova, CA 95670

Michael G. Kleary
11297 Coloma Road
Rancho Cordova, CA 95670

Nick Kleary
5077 Cold Springs Drive
Foresthill, CA 95631

Diana Kleary
5251 Davinci Drive
El Dorado Hills, CA 95762

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Kleary Masonry, Inc., Michael G. Kleary, Nick Kleary, and Diana Kleary (hereinafter referred to as "Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Claimants and all similarly situated employees, pursuant to Labor Code section 2699(a). Specifically, similarly situated employees shall include, but is not limited to all of Defendants' non-exempt, hourly employees who



performed work in California. Claimants are entitled to represented the scope of these similarly situated employees pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all of the violations pursued in PAGA action).

A. FACTS

Claimant Ricardo Gomez, Jr. worked for Defendants from approximately 2014 to the April 2020 as an hourly, non-exempt employee. Claimant Ricardo Gomez, Sr. similarly worked for Defendants from within the one-year statute of limitations. Similarly situated employees also worked for Defendants as non-exempt, hourly employees.

Generally, Claimants and similarly situated employees were required to drive to Defendants' shop in the morning to pick up tools, materials, and/or equipment for work and drive to Defendants' shop at the end of the day to return the tools, materials, and/or equipment as needed. Claimants and similarly situated employees would also be required to appear at the shop in the morning in order to attend necessary meetings or to receive job assignments. However, Defendants did not pay Claimants and similarly situated employees for their time spent at the shop in the morning and driving to the first jobsite or for the time spent driving back to the shop at the end of the day from the last jobsite and time spent unloading equipment and materials. Because the locations of the job sites varied from day to day, Claimants and similarly situated employees would have to check in with supervisors via their personal cell phone either the night before or the morning of in order to know exactly when Claimants and similarly situated employees needed to arrive at the shop, complete their tasks, and still have enough time to travel to the first job site.

There were several occasions when Claimants and similarly situated employees were instructed to report to the shop in the morning to receive their job assignment. Claimants and similarly situated employees would sometimes wait at the shop for an hour or more before receiving their job assignment. There were also occasions where Defendants told Claimants and similarly situated employees to just go home after they had been waiting at the shop because there was no work that day. Claimants and similarly situated employees were not paid for the time they spent at the shop, and if they were sent home without work, did not receive any pay that day at all. Defendants would also instruct Claimants and similarly situated employees to report to the jobsite on rainy days and wait to see if the rain was going to clear up. If the rain did not clear, Defendants would send Claimants and similarly situated employees home, and Claimants and similarly situated employees did not receive any pay for that day.

On days when Claimants and similarly situated employees reported to the jobsite rather than going to the shop, Claimants and similarly situated employees generally began loading their trucks early in the morning, for example around 4:00 a.m. or 5:00 a.m., with their personal tools.



Typically, Claimants and similarly situated employees would arrive at the jobsite and start working about 15 minutes before their scheduled start time. Defendants instructed Claimants and similarly situated employees to arrive early to unload tools and supplies from trucks and prepare supplies they would be using that day. Defendants did not pay Claimants and similarly situated employees for this time.

Although Claimants typically began work much earlier (*e.g.*, 4:00 a.m.), Defendants recorded Claimants and similarly situated employees' start time or instructed Claimants and similarly situated employees to record their start time as the time they were scheduled to begin work at the first jobsite, for example 7:00 a.m., and to record their end time as the time they left the last jobsite. As a result, Defendants failed to pay Claimants and similarly situated employees all minimum and overtime wages they were owed and failed to keep accurate records of employees' hours worked.

Defendants failed to reimburse Claimants and similarly situated employees for the use of their personal phones, personal vehicles, and personal tools. Claimants and similarly situated employees would use their personal vehicles to transport their personal tools to the jobsite, pick up tools and supplies from the shop, and drive to the jobsites. Claimants and similarly situated employees would use their personal cellphones to check in with supervisors for job assignments among other necessary communications. Defendants did not have any policy to reimburse Claimants and similarly situated employees for the use of their personal cellphones, vehicles or tools.

Claimants and similarly situated employees regularly missed their meal and rest periods due to Defendants' lack of policies, the workload demands imposed by Defendants, and the failure to properly communicate meal and rest period requirements. For example, Claimants and similarly situated employees frequently did not get any meal period at all, received a meal period shorter than 30 minutes, or began their meal period after their fifth hour of work, especially on days when cement was delivered to the jobsite. Claimants and similarly situated employees had to be working when the cement was delivered so that the work could be completed before the cement dried and so that multiple cement deliveries could be accommodated. Defendants did not have any policy to authorize and permit rest periods. For example, if Defendants saw employees trying to take a short break to get some water or sit down, they would tell the employees to go home if they weren't going to work. Claimants and similarly situated employees also frequently worked over ten (10) hours in a day, however, Defendants did not have any policy or practice to authorize and permit Claimants and similarly situated employees to take second meal periods or third rest periods. Claimants and similarly situated employees did not waive their second meal periods. Defendants did not pay Claimants and similarly situated employees missed meal and rest period premiums.

Defendants failed to pay Claimants and similarly situated employees all prevailing wages and overtime wages they were owed. For example, Claimants and similarly situated employees



would work jobs they believed were public works jobs or jobs where a State Inspector/State Superintendent would inform employees that they were working on a public works job and that they should be getting prevailing wages, but then Defendants would not pay the prevailing wages. Further, Defendants would not pay Claimants and similarly situated employees any overtime wages on certain prevailing wage jobs for the State. When Claimants and similarly situated employees worked overtime hours on these jobs, Defendants only paid them straight time.

As a result of Defendants' policies and practices described above, Claimants and similarly situated employees were not given accurate wage statements itemizing their total regular and overtime hours worked and corresponding rates of pay, total regular and overtime prevailing wage hours worked and corresponding rates of pay, meal and rest period premiums, or correct amount of gross and net wages earned.

Defendants also failed to timely pay Claimants and similarly situated employees the wages owed to them upon their termination or separation, including minimum and overtime wages, reporting time pay, prevailing wages, and meal and rest period premiums.

Michael G. Kleary, Nick Kleary, and Diana Kleary are the owners, directors, officers, and/or managing agents of Kleary Masonry, Inc. and caused each and every one of the aforementioned Labor Code violations.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees overtime for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay overtime for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Claimants and similarly situated employees worked over eight (8) hours per day and forty (40) hours per week and were not paid overtime wages. Claimants and all similarly situated employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)

During the period Claimants and similarly situated employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour



that they worked. *See, e.g.*, IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Claimants and similarly situated employees for all hours worked. Thus, Claimants and similarly situated employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay all reimbursements for use of personal cellphones, personal tools, and personal vehicles for work by Claimants and similarly situated employees. This was in violation of the law.

Count Four – Violation of Labor Code §§ 226, 226.3, 1776 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (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 only 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” For the reasons stated above, Defendants failed to comply with these requirements with respect to Claimants and similarly situated employees. This is in violation of the law.

Count Five – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum and overtime wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Claimants and similarly situated employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.



Count Six – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants by and through their agents, violated Claimants' and similarly situated employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This is against the law.

Count Seven – Violation of Labor Code §§ 226.3, 1174, 1198 and Wage Order No. 16, § 6(A) (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Claimants and similarly situated employees' wage records and hours worked. This was against the law.

Labor Code section 1198 provides the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The records requirement in Wage Order No. 16, § 6(A) is a "standard condition of labor fixed by the commission." *See* Cal. Labor Code § 1198. It provides, "Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including ... time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded ... Total hours worked during the payroll period and applicable rates of pay..." *See* Wage Order No. 16, § 6(A)(1)-(3). Defendants failed to keep accurate records in compliance with Wage Order No. 16, § 6(A) and Labor Code § 1198. This was against the law.

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Count Eight - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 10(A) and 10(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 10(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. Labor Code section 512 and Wage Order No. 16, section 10(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Claimants and similarly situated employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Nine – Violation of Labor Code § 226.7 and Wage Order No. 16, § 11(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 11(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Claimants and similarly situated employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Ten – Violation of Wage Order No. 16, § 5 (Failure to Pay Reporting Time)

“Each workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day’s work, the employer shall pay him/her for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay, which shall not be less than the minimum wage.” *See IWC Wage Order No. 16, § 5.* For the reasons stated above, Defendants did not pay Claimants and similarly situated employees all reporting time pay they were owed. This is against the law.

Count Eleven – Violation of Labor Code §§ 1171, 1774 (Failure to Pay Prevailing Wages)

During the period Claimants and similarly situated employees were employed by Defendants they were entitled to be paid a prevailing wage for all work performed on public works projects. *See Cal. Lab. Code §§ 1771, 1774.* For the reasons stated above, Defendants did



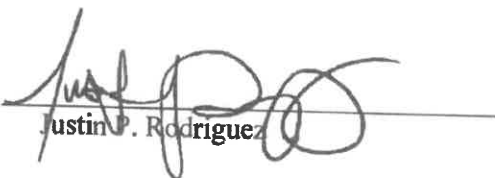
Page 8 of 8

not pay Claimants and similarly situated employees all prevailing wages owed to them. This is against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: 
Justin P. Rodriguez

JPR:bb
cc: Client via e-mail

Ricardo Gomez, et al. v. Kleary Masonry, Inc., et al.

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Caitlyn A. Lopez, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On June 19, 2020, I served the following documents on the party below:

- Amended Private Attorney General Act Letter

Kleary Masonry, Inc. 11297 Coloma Road Rancho Cordova, CA 95670	Michael G. Kleary 11297 Coloma Road Rancho Cordova, CA 95670
Nick Kleary 5077 Cold Springs Drive Foresthill, CA 95631	Diana Kleary 5251 Davinci Drive El Dorado Hills, CA 95762

[XXX] [By Certified Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 19, 2020, at Sacramento, California.


Caitlyn A. Lopez

Exhibit D

Date	Description	Amount
4/17/2020	Payment to LWDA - PAGA Filing Fee	\$75.00
4/21/2020	Administration/Copy Fee - Phone, Fax, Scan, Westlaw Legal Research Fees	\$500.00
5/6/2020	Payment to Court - Complaint Fee Superior Court	\$435.00
5/6/2020	Service Fee to Court - Complaint	\$40.00
5/20/2020	Mileage - discovery mail to client (CL)	\$2.83
6/16/2020	Service Fee to Court - Complex Fees	\$40.00
6/16/2020	Payment to Court - Complex Fees	\$1,000.00
6/19/2020	Postage - Amended PAGA Letter to Employers	\$16.80
6/29/2020	Service Fee to Court - First Amended Complaint and Amended Summons	\$40.00
8/24/2020	Service Fee to Court - Proof of Service of Summons	\$40.00
10/29/2020	Mediation - Mediation fee	\$2,750.00
12/14/2020	Mediation - Data Entry Berger Consulting Group Invoice	\$742.50
12/22/2020	Service Fee to Court - Case Management Statement	\$40.00
12/24/2020	Service Fee to Court - Stipulation and Proposed Order Granting Leave to Amend Complaint	\$40.00
12/24/2020	Payment to Court - Stipulation and Proposed Order Granting Leave to Amend Complaint	\$20.00
1/5/2021	Postage - Priority Mailing Second Amended Complaint and Filed Stipulation to opposing counsel	\$7.15
1/26/2021	Payment to Court - Preliminary Approval Motion	\$60.00
1/26/2021	Service Fee to Court - Preliminary Approval Motion	\$40.00
1/26/2021	Priority Mail - Preliminary Approval Motion to OC	\$7.40
3/2/2021	Service Fee - Proposed Order Granting Preliminary Approval to Court	\$40.00
3/9/2021	Service Fee - Amended Proposed Order Granting Preliminary Approval to Court	\$40.00
3/25/2021	Service Fee - Case Management Statement to Court	\$40.00
5/25/2021	Payment to Court - Stipulation and Proposed Order to Continue Hearing	\$20.00
5/26/2021	Service Fee - Amended Stipulation and Proposed Order to Continue Hearing	\$40.00
5/26/2021	Payment to Court - Amended Stipulation and Proposed Order to Continue Hearing	\$20.00
6/2/2021	Payment to Court - Letter to Request Hearing Date Continuance	\$20.00
6/2/2021	Service Fee - Letter to Request Hearing Date Continuance to Court	\$40.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	Service Fee to Court - Final Approval Motion	\$40.00
Anticipated	UPS to OC - Final Approval Motion	\$32.00
Anticipated	Service Fee to Court - Case Management Statement	\$40.00
Anticipated	Service Fee to Court - Compliance Hearing	\$40.00
Total:		\$6,368.68

Exhibit E

1 Galen T. Shimoda (Cal. State Bar No. 226752)
 2 Justin P. Rodriguez (Cal. State Bar No. 278275)
 3 Brittany V. Berzin (Cal. State Bar No. 325121)

Shimoda Law Corp.

9401 East Stockton Boulevard, Suite 120

Elk Grove, CA 95624

Telephone: (916) 525-0716

Facsimile: (916) 760-3733

Attorneys for Plaintiffs RICARDO GOMEZ and RICARDO GOMEZ, SR.
 on behalf of themselves and similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

RICARDO GOMEZ and RICARDO GOMEZ,
 SR., individually and on behalf of all others
 similarly situated,

Plaintiffs,

vs.

KLEARY MASONRY, INC., a California
 Corporation;

MICHAEL G. KLEARY, an individual;

NICK KLEARY, an individual;

DIANA KLEARY, an individual; and DOES 1
 to 100, inclusive,

Defendants.

Case No. 34-2020-00278067

CLASS ACTION

**DECLARATION OF JUSTIN P.
 RODRIGUEZ IN SUPPORT OF
 PLAINTIFFS' MOTION FOR FINAL
 APPROVAL OF CLASS ACTION AND PAGA
 SETTLEMENT**

Reservation No. 2555119

Date: September 30, 2021

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama Mesiwala

Filed: 5/6/2020

FAC Filed: 6/30/2020

SAC Filed: 1/5/2021

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. ("Plaintiffs")
4 herein. I am making this declaration on behalf of the named Plaintiffs, the putative class members, and
5 in support of Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement ("Motion").
6 A true and correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and
7 Release ("Agreement") in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiffs' contention
9 that Defendants Kleary Masonry, Inc., Michael G. Kleary, Nick Kleary, and Diana Kleary
10 ("Defendants") failed to pay minimum wages, failed to pay overtime, failed to provide meal periods,
11 failed to provide rest periods, failed to provide accurate wage statements, failed to timely pay final
12 wages, engaged in unfair competition, failed to reimburse expenses, violated the PAGA, failed to pay
13 prevailing wages, and failed to pay reporting time. Plaintiffs also alleged liability for civil penalties
14 under the Private Attorneys General Act ("PAGA"). These claims were based on allegations that
15 Defendants violated California law by 1) failing to pay putative class members for all time spent at the
16 shop and all time spent driving from the shop to the first jobsite or from the last jobsite back to the
17 shop; 2) failing to pay putative class members reporting time or wages owed for time spent where
18 Defendants required them to report to the shop or jobsite, but ultimately sent them home without any
19 work; 3) failing to authorize and permit putative class members to take all meal and rest periods; 4)
20 failing to pay putative class members all prevailing wages owed for work on public works jobs; 5)
21 failing to pay putative class members all overtime wages owed on public works jobs; 6) failing to
22 incorporate the value of prevailing wage rates into putative class members' regular rates of pay for the
23 purpose of calculating overtime wages on non-public works jobs where putative class members worked
24 on public works and non-public works jobs in the same workweek; and 7) failing to reimburse putative
25 class members for the use of their personal cellphones, vehicles, and tools for work. The PAGA,
26 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
27 violations.

28 //

1 3. Plaintiffs are the only named representatives in this matter. From our initial
2 investigations of Plaintiffs' claims and documents, we believed these claims had merit and could be
3 maintained as a class action. We filed the action on or about May 6, 2020. Plaintiffs exhausted
4 administrative remedies through the Labor and Workforce Development Agency ("LWDA") prior to
5 amending the Complaint to add a PAGA claim. Plaintiffs filed notices with the LWDA on April 17,
6 2020 and June 19, 2020 setting forth the facts and theories of liability. A true and correct copy of the
7 operative notice filed with the LWDA is being filed with this Motion as Exhibit C. Copies of the
8 notices were also sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the
9 LWDA at that time. There was no response by the LWDA regarding its intent to investigate the claims
10 alleged in Plaintiffs' notices for more than 65 days. As such, Plaintiffs became authorized to commence
11 a civil action under the PAGA and filed a First Amended Complaint to include a PAGA cause of action
12 on June 30, 2020. Plaintiffs filed a Second Amended Complaint on January 5, 2021 to include
13 additional allegations and claims relating to Plaintiff's overtime claims and the June 19, 2020 PAGA
14 notice. A true and correct copy of Plaintiffs' operative Complaint is filed with this Motion as Exhibit
15 B. A copy of the January 5, 2021, complaint was uploaded to the LWDA, after we received an
16 endorsed copy back from Court.

17 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

18 5. Defendants are represented in this matter by Lisa V. Ryan, Esq. of Cook Brown, LLP.
19 From the beginning, Defendants have contested the merits of this case, the suitability of the case for
20 class action or representative treatment, the manageability of the case at trial, and Plaintiffs' ability to
21 prove a violation in each pay period for each employee among other defenses and contentions they
22 made challenging the propriety of this action. Defendants further contended that, even assuming there
23 was a finding supporting the imposition of PAGA penalties, the Court would likely exercise its
24 discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to
25 comply with Labor Code obligations by Defendants. Notwithstanding its agreement to settle this
26 matter, Defendants believe the practices Plaintiffs are contending are unlawful either do not exist or, to
27 the extent they do exist, fully comply with all state and federal employment laws with respect to
28

1 Plaintiffs and Class Members. Also, Defendants have contended that this matter is not appropriate for
2 class certification outside of this proposed class settlement.

3 6. Based on the expected testimony from Plaintiffs and Class Members, a review of
4 Defendants' policies and procedures and other documents relating to the alleged claims, information on
5 the number of Class Members, Class Members' dates of employment, and a representative sample of
6 Class Members' payroll data, the scope of the potential damages to Plaintiffs and Class Members in
7 light of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations
8 that have taken place, I am convinced that the proposed settlement is in the best interest of the class.
9 The length and risks of trial and other normal perils of litigation that impact the value of the claims were
10 also considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect
11 of potential class certification issues as well as the uncertainty of class certification, the difficulties of
12 complex litigation, and the lengthy process of establishing specific damages and various possible delays
13 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
14 PAGA could be substantially cut at the discretion of the Court even if Plaintiffs were successful on
15 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
16 at separation, which would eliminate the value of the waiting time penalty entirely. Overall, I believe it
17 is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation
18 and potentially obtain zero funds to the class due to legal or factual issues in the case.

19 7. My office, including my partner, Galen T. Shimoda, my paralegals, and myself, along
20 with Plaintiffs' assistance, thoroughly investigated the merits of the claims and potential damages for
21 such claims. The parties engaged in informal discovery and exchange of documents, including a
22 representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies
23 for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all
24 aspects of the asserted claims, including certification issues, merits issues, damages, the scope and
25 configuration of Class Members, the content and implementation of the wage and hour policies at issue,
26 issues relating to manageability concerns at trial, among other relevant areas. Our office also secured
27 numerous declarations with the assistance of Plaintiffs. These declarations were crucial as Class
28 Members gave additional information regarding their experience of the policies and practices at issue.

1 From the production and declarations we were able to determine information critical to a reliable
2 damages analysis such as the average hourly rate, average daily hours worked, average number of
3 workweeks and pay periods that had potential violations based on the asserted claims, the frequency
4 with which violations occurred in a given week and/or pay period, and the number for former
5 employees. This information allowed my office to assess both liability and damages and create an
6 accurate damages model. Plaintiffs assisted in all aspects of this litigation including providing factual
7 information relating to Plaintiffs' and similarly situated employees' employment conditions, providing a
8 substantial number of documents, and answering questions regarding Defendants' factual contentions in
9 this matter. This was important because it directly related to our ability to maintain this case as a class
10 action and our ability to obtain a favorable settlement for the class.

11 8. Throughout this litigation our office had numerous communications with Defendants'
12 Counsel discussing our respective positions. The parties engaged in mediation on December 14, 2020
13 using an experienced mediator, Russ J. Wunderli. It was only after approximately eight (8) months of
14 extensive, arm's length negotiations and informal discovery that the parties were able to reach a
15 settlement, which only occurred after a full-day mediation. The negotiations were at all times
16 contentious and adversarial, though still professional in nature.

17 9. The parties reviewed and analyzed substantial amounts of data regarding the class
18 claims. At mediation and in connection with Plaintiffs' preliminary approval motion, Plaintiffs'
19 damages calculations were based on there being 21,861 workweeks. Based on our analysis and review
20 of all relevant documents and Class Member information in connection with mediation and utilizing the
21 21,861 workweeks to extrapolate the findings from the sample data out to the class, I determined that
22 the maximum likely damages for the asserted class claims was approximately \$10,464,591.90, which
23 included the maximum civil penalties under the PAGA. The maximum exposure for PAGA penalties
24 was determined to be approximately \$6,112,431.70, based on the counts alleged to the LWDA and the
25 class data available at mediation. Based on our research, we did not find any prior Labor
26 Commissioner or court decisions that stated Defendants' practices and/or policies were improper. As
27 such, a "subsequent violation" may not be found for penalty calculation purposes and the exposure
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1 analysis here is based on an “initial violation” valuation being adopted by any fact finder if this matter
2 went to trial.

3 10. After preliminary approval, the parties worked with the Claims Administrator to
4 implement the Court’s order and effectuate notice to Class Members as more fully set forth in the
5 Declaration of Lindsay Kline, submitted with this Motion. As part of this process, Class Member
6 information, including dates of employment and workweeks, was submitted to the Claims
7 Administrator for review and audit to confirm the individual allocations of the Net Settlement Amounts
8 for each individual Class Member, which is included in the Notice of Settlement sent to Class
9 Members. During this review and audit process it was determined that the workweek data information
10 pulled by Defendants and relied on by Plaintiffs for the initial calculations inadvertently omitted data
11 for individuals who were already employed before the beginning of the Class Period. Workweek data
12 had only been pulled for Class Members who started employment during the Class Period. This
13 omission, in connection with the normal and expected increase in workweeks that can occur during the
14 time between the data being pulled for mediation and preliminary approval, caused an increase in
15 workweeks from 21,861 workweeks to 39,070.21 workweeks and an increase in Class Members from
16 445 individuals to 589 individuals.

17 11. Knowing that data issues such as this can sometimes occur in class litigation and
18 wanting to account for such potential contingencies, Plaintiffs negotiated to include Section 10.1 in the
19 Agreement, which ensures that the per workweek value negotiated in a settlement will remain
20 approximately the same for Class Members in the event of a substantial increase in workweeks. It
21 allows all other percentage allocations and Net Settlement Amount calculation formulas keyed to the
22 Gross Settlement Amount to remain the same in the settlement while increasing the Gross Settlement
23 Amount, effectively modifying the negotiated value to remain as if the parties accounted for and knew
24 of the data issues prior to entering into any settlement. Based on the formula set forth in Paragraph
25 10.1, the Gross Settlement Amount increased from \$1,100,000.00 to \$1,621,432.00. Because this was
26 such a substantial increase the parties had to further confer about serious financial concerns in being
27 able to pay this large, additional amount and whether any further negotiations or Court approved
28 modifications needed to happen as a result of any potential inability to pay. Ultimately, no

1 modifications to the Agreement were necessary as Defendants confirmed their ability to fund the
2 increased Gross Settlement Amount. The Notice of Settlement sent to Class Members included the
3 new Gross Settlement Amount and all other updated numbers that resulted from the increased Gross
4 Settlement Amount.

5 12. After accounting for the increased workweeks and utilizing the findings from the
6 informal discovery Class Member sample data, I have determined the maximum likely damages for the
7 asserted claims is \$15,991,820.51, which included the maximum civil penalties under the PAGA. The
8 maximum exposure for PAGA penalties under the increased weeks is approximately \$9,184,383.04.
9 As noted above, these calculations utilize an “initial violation” valuation because there were not any
10 prior Labor Commissioner or Court decisions stating Defendants’ practices or policies were improper.

11 13. I believe the PAGA penalties in this case may be reduced however due to the fact that
12 the penalties would be in addition to amounts owed for substantive violations and much of the penalties
13 are based on violations due to technical non-compliance with the Labor Code. Furthermore,
14 Defendants produced a substantial number of documents that a Court may find demonstrates a good
15 faith attempt at compliance that merits the reduction of civil penalties. Courts regularly cut civil
16 penalties on PAGA claims where statutory penalties for the same violations are assessed as well. The
17 statutorily authorized discretion that Courts have used to reduce penalties ranges substantially. *See*
18 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
19 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
20 Thus, civil penalties may be cut to approximately \$1,653,188.95 (82% reduction) or lower given the
21 derivative recovery. Taking this into account, the likely recovery if Plaintiffs were successful at trial on
22 proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties
23 would be approximately \$8,380,626.42. Taking this into account, the \$1,621,432 Gross Settlement
24 Amount under the Agreement represent approximately 19.4% of the maximum likely value in this
25 matter. After deducting from the Gross Settlement Amount the proposed allocations for attorneys’ fees
26 (\$567,501.20) and costs (\$6,368.68), any Enhancement Payment to the Class Representatives
27 (collectively \$30,000), Claims Administrator Costs (\$11,759), and the 75% portion of the PAGA
28 Payment to the LWDA (\$15,000), there is a net settlement fund of \$990,803.12. The net recovery

1 under the Agreement represents approximately 11.8% of the maximum likely value in this matter. The
2 new average recovery for Class Members is approximately \$1,682.18. For comparison, the average
3 Class Member recovery and gross and net recovery percentages stated in Plaintiffs' preliminary
4 approval motion calculations were \$1,455.06, 19.8% and 11.3% respectively. Thus, notwithstanding
5 the substantial increase in workweeks, the value obtained in the settlement remains the same as what
6 the Court originally approved on March 16, 2021. I believe the Agreement represents a reasonable
7 compromise of claims based on the legal and factual disputes in this case. The ability to secure a
8 guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed
9 to further litigation and potentially recover nothing, was a motivating factor in reaching this
10 Agreement.

11 14. I am a shareholder at Shimoda Law Corp. In agreeing to represent Plaintiffs and take on
12 the case for all Class Members, I agreed to take this case on a contingency basis, meaning that I would
13 take a percentage of any settlement or judgment should we recover a monetary amount. I took a risk
14 that we would not recover any money in this matter if we were unsuccessful at trial. I also took on the
15 risk that the case may not be certified as a class action and/or be subject to an unfavorable summary
16 judgment ruling. However, I believe it is important to make sure employees are able to find affordable
17 representation in order to ensure that employers are complying with all their legal obligations towards
18 employees and paying employees all their hard-earned wages.

19 15. My law firm is a boutique law practice that focuses primarily in employment litigation,
20 emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a
21 Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the
22 Philosophy program. I was one of only two recipients of this award out of the entire Philosophy
23 Department. After U.C. Davis, I attended the University of the Pacific, McGeorge School of Law,
24 graduating in 2011 and receiving a Juris Doctorate. I graduated in the top 20% of my class and was a
25 member of the Traynor Honor Society at McGeorge. Other academic achievements of mine include
26 receiving a Witkin Award (top grade) in my legal research and writing course, a Witkin Award in
27 complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative
28 Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for

1 the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being
2 selected as a Sacramento County Bar Association Diversity Fellow in 2009. I was also a member of
3 the Employment and Labor Law Society and an officer for the Latino Law Students Association from
4 2009 to 2010.

5 16. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
6 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Since 2017, I have
7 received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards.
8 From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). In September 2018, I
9 was a panel speaker for the Sacramento County Bar Association Labor and Employment Law Section’s
10 presentation of “*Epic Systems*, PAGA, and the Future of Employment Arbitration in California.” In
11 July 2020, I was a panel speaker for the Association of Defense Counsel of Northern California &
12 Nevada presentation of “Class Actions and PAGA Claims.” My practice focuses on complex civil
13 litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act
14 (“FLSA”) claims. I am actively involved in most all of the complex litigation handled by our firm.
15 Class and/or PAGA actions I have litigated or am currently litigating, including the instant case,
16 includes, but is not limited to, the following:

- 17 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 18 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 19 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 20 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup.
21 Ct.);
- 22 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-
23 0012080 (San Joaquin Sup. Ct.);
- 24 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 25 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 26 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
27 Sup. Ct.);
- 28 • *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.

1 Ct.);

- 2 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 3 • *Bershell v. Dignity Health Methodist Hospital Sacramento, et al.*, Case No. 34-2017-
- 4 00222269 (Sac. Sup. Ct.);
- 5 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
- 6 00271174 (Sac. Sup. Ct.);
- 7 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 8 Ct.);
- 9 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac.
- 10 Sup. Ct.);
- 11 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880
- 12 (Sac. Sup. Ct.);
- 13 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 14 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 15 Ct.);
- 16 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 17 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 18 00209613 (Sac. Sup. Ct.);
- 19 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 20 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-
- 21 2017-00222101 (Sac. Sup. Ct.);
- 22 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 23 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 24 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 25 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup.
- 26 Ct.);
- 27 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac.
- 28 Sup. Ct.);

- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);

- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

17. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

18. My partner, Galen T. Shimoda, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour

1 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
2 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
3 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
4 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
5 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
6 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
7 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
8 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
9 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
10 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
11 as a Super Lawyer from 2014 to present.

12 19. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
13 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
14 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
15 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
16 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
17 Federal Courts, including up to certification, settlement, preliminary and final approval, and
18 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
19 Some of the class action and/or PAGA cases he is litigating and/or have litigated as lead or co-counsel
20 include the following:

- 21 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 22 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 23 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 24 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 25 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 26 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 27 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 28 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);

- 1 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
2 Sup. Ct.);
- 3 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 4 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
5 Ct.);
- 6 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
7 Ct.);
- 8 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
9 Sup. Ct.);
- 10 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 11 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
12 Ct.);
- 13 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 14 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
15 00209613 (Sac. Sup. Ct.);
- 16 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 17 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 18 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 19 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 20 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
21 Sup. Ct.);
- 22 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 23 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
24 Sup. Ct.);
- 25 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 26 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 27 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 28 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);

- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

20. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

21. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),

1 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
2 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiffs and our firm have been able to secure an
3 identifiable benefit on behalf of the class and equity counsels that the cost of the representation should
4 be born equally amongst all class members receiving these benefits. The settlement recovery provides
5 an excellent result and is the product of substantial time and effort in analyzing the facts and law
6 applicable to this case. I agreed to take this case on a contingency and as a class action with the
7 possibility that I would not receive any compensation for my time and efforts due to issues regarding
8 the merits and/or certification and have carried that risk over the course of the case. I have reviewed
9 fee arrangements and Court ordered fee awards in similar class cases and I believe that the Thirty-Five
10 (35%) fee request is within the accepted ranges and eminently reasonable in light of the results obtained
11 for the putative class, which average a new payout of \$1,682.18 and a high net payout of \$6,266.47. In
12 my experience with contingency cases in employment law cases, the typical percentage negotiated
13 between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class
14 action litigation, my experience in my own firm and working with several other firms has been that the
15 typical percentage negotiated between parties and approved by a court ranges from thirty to forty
16 percent (30% to 40%) based on the same factors. I have also reviewed several recent Federal District
17 Court Cases where the Court has approved common fund based fee requests. These cases include *In re*
18 *Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*,
19 USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern
20 District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern
21 District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-
22 01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122, and *Willis et*
23 *al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695, which are cited in
24 Plaintiffs' Memorandum of Points and Authorities. I believe my request of \$567,501.20 (35% of the
25 Gross Settlement Amount) for attorneys' fees is justified given the results obtained on behalf of the
26 class. Moreover, at this time, my firm has advanced all costs for Plaintiffs and Class Members and has
27 not received any compensation whatsoever for our time expended in this case. The expected costs
28 through final approval are \$6,368.68. Attached as Exhibit D is a true and correct copy of the costs

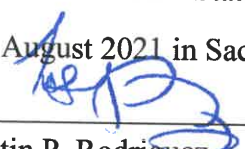
1 incurred prior to the filing of this Motion and the expected costs incurred through the final approval and
2 fairness hearing. The difference in the actual costs and the originally allocated \$10,000.00 under the
3 Agreement will be added to the Net Settlement Amount.

4 22. I have used several class action administrator companies in the wage and hour class
5 actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer
6 the prop class settlement. Under the estimated settlement the difference between the originally allocated
7 \$12,500 and the actual administration costs of \$11,759 will be paid to the putative Class on a pro rata
8 basis.

9 23. A copy of the Agreement and this Motion was submitted to the LWDA for review at the
10 same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(1)(2).
11 A true and correct copy of documents demonstrating the settlement documents were provided to the
12 LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit E.

13 24. After the Class Notice was mailed to Class Members, my office actively assisted any
14 and all Class Members who contacted us for assistance in correcting their workweek allocations. Five
15 (5) Class Members contacted my office for help disputing the number of workweeks allocated to them.
16 The workweek allocations were ultimately corrected for these individuals by the Claims Administrator
17 to the number of weeks we were able to confirm in coordination with the Class Members through the
18 use of documents and records provided by the Class Members. Additionally, two Class Members were
19 identified as having excess workweeks allocated that exceeded the amount of weeks they actually
20 worked. This was also corrected by the Claims Administrator.

21 25. I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed this 23 day of August 2021 in Sacramento, California.

23
24 
Justin P. Rodriguez

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda Law Corp.**
5 9401 East Stockton Blvd., Suite 120
6 Elk Grove, CA 95624
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8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiffs RICARDO GOMEZ and RICARDO GOMEZ, SR.
10 on behalf of themselves and similarly situated employees

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

RICARDO GOMEZ and RICARDO GOMEZ,
SR., individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

KLEARY MASONRY, INC., a California
Corporation;
MICHAEL G. KLEARY, an individual;
NICK KLEARY, an individual;
DIANA KLEARY, an individual; and DOES 1
to 100, inclusive,

Defendants.

CASE NO.: 34-2020-00278067

CLASS ACTION

**DECLARATION OF LINDSAY KLINE
REGARDING NOTICE AND
SETTLEMENT ADMINISTRATION**

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DECLARATION OF LINDSAY KLINE

I, LINDSAY KLINE, hereby declare:

1. I am employed as a Case Manager by Simpluris, Inc. ("Simpluris"), the claims administrator in the above-entitled action. Our Corporate Office address is 3194-C Airport Loop Dr., Costa Mesa, CA 92626. My telephone number is (714) 640-5635. I am over twenty-one years of age and authorized to make this declaration on behalf of Simpluris and myself.

2. Simpluris is a Class Action Settlement Administration company located in Costa Mesa, California. It was founded by individuals who have each managed hundreds of settlements, along with professionals in the areas of Software Development, Third-Party Claims Administration, Mail-House Operations, and Call Center Support Management.

3. Simpluris was approved by Counsel for Ricardo Gomez and Ricardo Gomez Jr., ("Plaintiffs"), and Kleary Masonry, Inc., Diana Kleary, Michael G. Kleary and Nick Kleary ("Defendants"), (collectively the "Parties"), to provide settlement administration services in the *Gomez et al. v. Kleary Masonry, Inc. et al.* case ("Settlement"). In this capacity, Simpluris was charged with (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiffs, Class Counsel and Class Members; (d) translating, printing and mailing the Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement ("Notice"), in English and Spanish, to Class Members; (e) receiving and validating Requests for Exclusion, Objections or Disputes of Workweeks submitted by Class Members; (f) calculating Employer Payroll Taxes and providing appropriate forms and calculations to Defendants; (g) mailing settlement checks, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders Simpluris to perform.

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TOLL FREE TELEPHONE HELPLINE

4. A toll-free telephone number was included in the Class Notice for the purpose of allowing the Class Members to call Simpluris and to make inquiries regarding the Settlement. The system is accessible 24 hours a day, 7 days a week, and will remain in operation throughout the

1 settlement process. Callers have the option to speak with a live call center representative during normal
2 business hours or to leave a message and receive a return call during non-business hours. Spanish-
3 speaking representatives are available during normal business hours. The toll-free telephone number
4 included in the Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final
5 Court Approval of Settlement was (888) 369-3780 and was live on June 16, 2021.

6 **NOTIFICATION TO THE CLASS**

7 5. On March 17, 2021, Simpluris received the Court-approved Notice. The Notice advised
8 Class Members of their right to request exclusion from the Settlement, object to the Settlement, dispute
9 workweeks, do nothing, and the implications of each such action. The Notice advised Class Members
10 of applicable deadlines and other events, including the Final Approval Hearing, and how Class
11 Members could obtain additional information.

12 6. On April 1, 2021, Defense Counsel provided Simpluris with a mailing list ("Class List")
13 containing Class Members' names, most recent mailing address, Social Security numbers and dates of
14 employment for each Class Member during the Class Period. The Class List contained data for five
15 hundred eighty nine (589) Class Members.

16 7. The mailing addresses contained in the Class List were processed and updated utilizing
17 the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service. The
18 NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any
19 individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA
20 would be utilized in connection with the mailing of the Notice. Simpluris was able to locate thirty five
21 (35) updated addresses using NCOA prior to the mailing of the Notice.

22 8. On June 16, 2021, Notice was mailed to five hundred eighty nine (589) Class Members
23 with addresses contained in the Class List via First Class mail or updated via the NCOA search. A copy
24 of the Class Notice, in English and Spanish, is attached hereto as **Exhibit A**.

25 9. A total of one hundred twenty (120) Class Notices were returned to Simpluris. Of these,
26 five (5) were returned with a forwarding address. If a Class Member's Class Notice was returned by the
27 USPS as undeliverable and without a forwarding address, Simpluris performed an advanced address
28

1 search (i.e. skip trace) on all of these addresses by using Accurant, a reputable research tool owned by
2 Lexis-Nexis. Simpluris used the Class Member's name and previous address to locate a current
3 address. Through the advanced address searches, Simpluris was able to locate sixty three (63) updated
4 addresses and Simpluris promptly mailed a Class Notice to those updated addresses. Seven (7) re-mails
5 were requested by Class Members. Ultimately, there were forty five (45) Class Notices that were
6 undeliverable.

7 **REQUESTS FOR EXCLUSION, OBJECTIONS AND DISPUTES**

8 10. The deadline for Class Members to submit a Request for Exclusion, Object to the
9 Settlement or Dispute work weeks was July 31, 2021.

10 11. As of this date, Simpluris has not received any Requests for Exclusion from Class
11 Members.

12 12. As of this date, Simpluris has not received any Objections to the Settlement from Class
13 Members.

14 13. As of this date, Simpluris has received five (5) Disputes regarding work weeks from
15 Class Members. These Disputes were resolved consistent with the information and request submitted
16 by the Class Members.

17 14. Additionally, two (2) Class Members were found to have been inadvertently credited
18 with additional work weeks due to a missing date of rehire in the original class list. Simpluris updated
19 their work weeks and resent a Notice Packet along with a cover letter explaining the calculation.
20 Neither Class Member responded with a dispute.

21 **CLASS MEMBER AWARDS**

22 15. As of this date, there are five hundred eighty nine (589) Class Members who will be
23 paid their portion of the Net Settlement Fund.

24 16. The Net Settlement Fund of \$990,803.12 available to pay Class Members was
25 determined by subtracting the Class Counsel's Fees (\$567,501.20), Class Counsel's Litigation Costs
26 (\$6,368.68), Named Plaintiffs Service Awards (collectively, \$30,000.00), PAGA LWDA payment
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1 (\$15,000.00), and the Administration Costs (\$11,759.00) from the Maximum Settlement Amount
2 (\$1,621,432.00).

3 17. The *average estimated payment* is \$1,682.18 and the *highest estimated payment* is
4 \$6,266.47.

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6 **ADMINISTRATION COSTS**

7 18. Simpluris' total costs for services in connection with the administration of this
8 Settlement, including fees incurred and anticipated future costs for completion of the administration, are
9 \$11,759.00. Simpluris' work in connection with this matter will continue with the calculation of the
10 settlement checks, issuance and mailing of those settlement checks, etc., and to do the necessary tax
11 reporting on such payments.
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14 I declare under penalty of perjury under the laws of the State of California that the foregoing is
15 true and correct. Executed this 16th day of August 2021, in Costa Mesa, CA.

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17  _____

18 Lindsay Kline
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EXHIBIT A

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

RICARDO GOMEZ, ET AL V. KLEARY MASONRY, INC., ET AL

Case No. 34-2020-00278067

**NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT, AND HEARING DATE FOR FINAL COURT
APPROVAL OF SETTLEMENT**

«IMbFullBarcodeEncoded»

«FirstName» «LastName»

«Address1» «Address2»

SIMID «SIMID»
«Barcode»

«City», «State» «Zip»-«ZipDPC3»

ATTENTION: all individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees from May 6, 2016 up to February 2, 2021 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on February 2, 2021, you are receiving notice of a proposed class action settlement between Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. (“Plaintiffs” or “Class Representatives”), and Defendants Kleary Masonry, Inc., Michael Kleary, Nick Kleary, and Diana Kleary (“Defendants”) on behalf of Class Members as defined above. You are receiving this notice because Defendants’ records indicate you fall within the definition of “Class Member.” Defendants’ records also indicate that you worked «MERGED_WW_CALC» workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be \$«MERGED_EstSettAmnt_CALC». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On May 6, 2020, Plaintiffs, former employees, filed a Complaint against Defendants in the California Superior Court for the County of Sacramento on behalf of themselves and Class Members. The term “Action” means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2020-00278067. The Class Period is from May 6, 2016 up to February 2, 2021 (the “Class Period”).

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves and Class Members. Plaintiffs alleged that Defendants violated California law by 1) failing to pay overtime wages; 2) failing to pay minimum wages; 3) failing to provide meal periods; 4) failing to provide rest periods; 5) failing to provide accurate wage statements; 6) failing to timely pay final wages; 7) engaging in unfair competition; 8) failing to reimburse expenses; 9) failing to pay prevailing wages; 10) failing to pay reporting time pay; and 11) failing to maintain accurate records. Defendants have denied all of Plaintiffs’ allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants agree to pay a total sum of One Million Six Hundred Twenty-One Thousand Four Hundred Thirty-Two Dollars and No Cents (\$1,621,432) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$567,501.20, attorneys' costs not to exceed \$10,000, Claims Administrator Costs estimated not to exceed \$12,500, Class Representatives' Enhancement Payment of \$15,000 each, and \$20,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$20,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all individuals who have, or continue to, perform work for Defendants in California as non-exempt, hourly employees from April 17, 2019 up to February 2, 2021.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendants' records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than July 31, 2021. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period.

Aggrieved Employees will be deemed to have released all PAGA claims for civil penalties contained in Plaintiffs' letters to the LWDA and/or operative Complaint through the PAGA Claim Period.

The individuals released ("Released Parties") includes Defendants, as well as Defendants' owners, officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendants have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$567,501.20, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representatives and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e.*, *Gomez, et al. v. Kleary Masonry, Inc., et al.*, 34-2020-00278067); (d) be signed; and (e) be post-marked no later than **July 31, 2021**. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

Gomez v. Kleary Masonry, Inc., P.O. Box 26170 Santa Ana, CA 92799
P.O. Box 26170
Santa Ana, CA 92799

The request to opt out must be postmarked no later than July 31, 2021. If you submit a request to opt out which is not postmarked by July 31, 2021, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not receive their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e.*, *Gomez, et al. v. Kleary Masonry, Inc., et al.*, 34-2020-00278067) (e) be signed; and (f) be post-marked no later than July 31, 2021. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiffs and Defendants at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiffs and Defendants. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendants and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 53, 813 6th St. Sacramento, CA 95814, on September 30, 2021 at 1:30 p.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

Copies of all documents filed in this lawsuit may be accessed online at <https://www.simpluris.com/case-information> by typing in the name of this case. If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendants' Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Fax: (916) 760-3733
On behalf of Plaintiffs

Lisa V. Ryan
Cook Brown LLP
2407 J St., Second Floor
Sacramento, CA 95816
Phone: (916) 442-3100
Fax: (916) 442-4227
On behalf of Defendants

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL (888) 369-3780.

BY ORDER OF THE COURT

CORTE SUPERIOR DE CALIFORNIA
PARA EL CONDADO DE SACRAMENTO

RICARDO GOMEZ, ET AL V. KLEARY MASONRY, INC., ET AL

Caso No. 34-2020-00278067

**NOTIFICACIÓN DE ACUERDO DE ACCIÓN DE CLASE PROPUESTO Y ACUERDO EN VIRTUD DE LA PAGA, Y
FECHA DE AUDIENCIA PARA HOMOLOGACIÓN DEFINITIVA DEL ACUERDO POR PARTE DE LA CORTE**

«IMbFullBarcodeEncoded»

«FirstName» «LastName»

«Address1» «Address2»

SIMID «SIMID»
«Barcode»

«City», «State» «Zip»-«ZipDPC3»

A LA ATENCIÓN DE: Todas las personas que hayan realizado o continúen realizando trabajos para los Demandados dentro de California como empleados no exentos por hora entre el 6 de mayo del 2016 y el 2 de febrero del 2021 (los "Miembros de la Clase").

POR FAVOR, LEA ATENTAMENTE ESTA NOTIFICACIÓN. ESTA NOTIFICACIÓN SE RELACIONA CON UN ACUERDO PROPUESTO EN UNA LITIGACIÓN DE ACCIÓN DE CLASE Y EL POSIBLE DESEMBOLSO DE LOS FONDOS DEL ACUERDO PARA USTED. SI USTED ES MIEMBRO DE LA CLASE, ESTA NOTIFICACIÓN CONTIENE INFORMACIÓN IMPORTANTE SOBRE SU DERECHO A PARTICIPAR O EXCLUIRSE DEL ACUERDO SEGÚN EL PROCEDIMIENTO QUE SE DESCRIBE A CONTINUACIÓN.

Conforme a una orden de la Corte Superior del Condado de Sacramento (la "Corte") que concede la homologación preliminar de este acuerdo de acción de clase, celebrado el 2 de febrero del 2021, se lo está notificando sobre un acuerdo de acción de clase propuesto entre los Demandantes Ricardo Gomez y Ricardo Gomez, Sr. (los "Demandantes" o "Representantes de la Clase"), y los Demandados Kleary Masonry, Inc., Michael Kleary, Nick Kleary y Diana Kleary (los "Demandados") en nombre de los Miembros de la Clase según se definen más arriba. Usted recibió esta notificación porque los registros de los Demandados indican que cae dentro de la definición de "Miembro de la Clase". Los registros de los Demandados también indican que trabajó «MERGED_WW_CALC» semanas de trabajo durante el Período de la Clase aplicable (según se define más abajo), lo que significa que su parte de las ganancias del acuerdo se estima en \$«MERGED_EstSettAmnt_CALC». Su parte real de las ganancias del acuerdo variarán según la cantidad total de Miembros de la Clase que elijan participar y la resolución de toda disputa sobre semanas de trabajo según se describe en esta notificación.

Los términos del Acuerdo y una descripción del caso se identifican en esta notificación. Conforme a la Orden de la Corte, POR LA PRESENTE, SE LE NOTIFICA LO SIGUIENTE:

I. ANTECEDENTES DEL CASO

El 6 de mayo del 2020, los Demandantes, exempleados, iniciaron una Demanda en contra de los Demandados en la Corte Superior de California para el Condado de Sacramento en nombre de sí mismos y de los Miembros de la Clase. El término "Acción" se refiere a la acción de clase putativa pendiente en la Corte Superior de California para el Condado de Sacramento, Caso No. 34-2020-00278067. El Período de la Clase es entre el 6 de mayo del 2016 y el 2 de febrero del 2021 (el "Período de la Clase").

En la Acción, los Demandantes buscaban obtener salarios no pagos, intereses, sanciones legales, sanciones civiles, honorarios y costos en su propio nombre y en nombre de los Miembros de la Clase. Los Demandantes alegaban que los Demandados violaron la legislación de California al 1) no pagar salarios por horas extra; 2) no pagar los salarios mínimos; 3) no brindar períodos de comida; 4) no brindar períodos de descanso; 5) no brindar talones de cheque correctos; 6) no pagar todos los salarios adeudados al momento de la desvinculación; 7) participar en competencia desleal; 8) no reembolsar gastos; 9) no pagar salarios contractuales; 10) no pagar por el tiempo informado; y 11) no mantener registros precisos. Los Demandados han negado todas las acusaciones de los Demandantes. La Acción ha sido litigada activamente. Ha habido investigaciones en curso, y se ha producido un intercambio extenso de documentación e información. Además, las Partes han participado en una mediación que duró un día completo y fue facilitada por un tercero neutral. En función de las negociaciones y de todos los hechos y las circunstancias que se conocen, incluidos los diversos riesgos e incertidumbres relacionados con las acciones legales, las Partes llegaron a un Acuerdo para toda la clase. Al llegar a un acuerdo, las Partes evitarán los riesgos asociados a un largo proceso de litigación. A pesar de estar conforme con el Acuerdo y de apoyarlo, los Demandados continúan negando todas las acusaciones y los reclamos. Los Demandados han celebrado este acuerdo para resolver por completo, de manera plena y para siempre esta Acción sobre la base de los términos establecidos en el Acuerdo para evitar la carga y los gastos asociados con el litigio continuo.

Página 1 de 4

NOTIFICACIÓN DE ACUERDO DE ACCIÓN DE CLASE PROPUESTO
Y FECHA DE AUDIENCIA PARA HOMOLOGACIÓN DEFINITIVA DEL ACUERDO POR PARTE DE LA CORTE

¿Preguntas? Llame: (888) -369-3780

«Barcode»
«Barcode_120514»

SIMID «SIMID»

Las Partes han celebrado una Estipulación Conjunta con respecto al Acuerdo de Acción de Clase y al Acuerdo en virtud de la PAGA y una Exoneración (el "Acuerdo"), que la Corte ha homologado en forma preliminar. El Acuerdo aplica a todos los Miembros de la Clase como se define arriba. El término "Miembro de la Clase" no incluye las personas que presentan una solicitud de exclusión válida (como se explica a continuación). Si usted es un Miembro de la Clase, tiene la oportunidad de participar en el Acuerdo o excluirse del Acuerdo. Esta notificación tiene por objeto informarlo acerca de cómo puede participar o excluirse del Acuerdo.

II. RESUMEN DEL ACUERDO PROPUESTO

A. El importe del Acuerdo

Conforme a los términos del Acuerdo, los Demandados aceptan pagar una suma total de Un Millón Seiscientos Veintiún Mil Cuatrocientos Treinta Y Dos Dólares (\$1,621,432) (el "Importe Bruto del Acuerdo"). De este Importe Bruto del Acuerdo se deducirán sumas aprobadas por la Corte en concepto de honorarios de abogados que no superen el 35% del Importe Bruto del Acuerdo que equivale a \$567,501.20, costos de los abogados que no superen los \$10,000, Costos del Administrador de la Demanda que se estima que no superarán los \$12,500, un Aumento en el Pago para los Representantes de la Clase de \$15,000 para cada uno, \$20,000 por sanciones alegadas en virtud de la PAGA (el "Pago en virtud de la PAGA"), lo que tendrá como resultado un "Importe Neto del Acuerdo". Los impuestos correspondientes al empleador de la parte asignada a salarios los pagarán los Demandados, por separado del Importe Bruto del Acuerdo. Tal como se explica más adelante, el importe de la parte de cada Miembro de la Clase del Importe Neto del Acuerdo dependerá de la cantidad de semanas trabajadas por los Miembros participantes de la Clase durante el Período de la Clase. De los \$20,000 asignados a resolver los reclamos en virtud de la PAGA, el 75% del Pago en virtud de la PAGA se destinará a la Agencia de Trabajo y Desarrollo de la Fuerza Laboral del Estado de California y el 25% del Pago en virtud de la PAGA se dividirá entre los Empleados Agraviados, que se definen como todas las personas que trabajaron, o siguen trabajando, para los Demandados en California como empleados no exentos por hora desde el 17 de abril del 2019 al 2 de febrero del 2021.

El número de semanas que trabajó durante el Período de la Clase y su parte estimada del Importe Neto del Acuerdo y del Pago en virtud de la PAGA (el "Importe del Reclamo") se indican en la primera página de esta notificación. El importe real recibido puede ser mayor o menor que el importe indicado, en función de la cantidad real de semanas trabajadas por los Miembros participantes de la Clase, la resolución de cualquier disputa con respecto a las semanas de trabajo y las distribuciones finalmente aprobadas y asignadas por la Corte. Sin embargo, si los Miembros de la Clase se excluyen no tendrá efecto en las asignaciones de los Empleados Agraviados para los Reclamos en virtud de la PAGA.

B. Importes del Reclamo y Asignación entre los Miembros de la Clase y los Empleados Agraviados

Los Demandados pagarán los Importes del Reclamo a través del Administrador de la Demanda, como se describe a continuación, a cada Miembro de la Clase que no se excluya del acuerdo y a los Empleados Agraviados. Todos los Importes del Reclamo estarán sujetas a los impuestos correspondientes. Las partes han acordado, en función de las alegaciones en la Acción, que todos los Importes del Reclamo pagaderos a los Miembros de la Clase elegibles se asignarán del Importe Neto del Acuerdo y se pagarán como 2/3 en concepto de intereses en disputa, sanciones legales y otros daños no salariales, para lo cual se emitirán Formularios del IRS 1099-MISC, y 1/3 en concepto de salarios disputados, para los cual se emitirá Formularios del IRS W-2. El Pago en virtud de la PAGA a los empleados Agraviados se pagará 100% como sanciones civiles.

El pago a los Miembros de la Clase que no se excluyen y a los Empleados Agraviados no requiere la presentación de un formulario de demanda. La parte de cada Miembro de la Clase se determinará dividiendo el total de las semanas trabajadas dentro del Período de la Clase por el total de las semanas trabajadas por todos los Miembros de la Clase dentro del Período de la Clase. La fracción luego se multiplicará por el Importe Neto del Acuerdo para llegar a la parte individual del Miembro de la Clase del Importe Neto del Acuerdo. La parte de cada Empleado Agraviado del 25% del Pago en virtud de la PAGA se determinará dividiendo el total de las semanas trabajadas dentro del Período de Reclamo en virtud de la PAGA por el total de las semanas trabajadas por todos los Empleados Agraviados dentro del Período de Reclamo en virtud de la PAGA. La fracción luego se multiplicará por la parte del 25% del Pago en virtud de la PAGA para llegar a la parte individual del Empleado Agraviado. El recibo de los Importes del Reclamo no dará derecho a ningún Miembro de la Clase o Empleado Agraviado a compensación o beneficios adicionales conforme a un plan o acuerdo de compensación, retiro o beneficio que esté implementado durante el periodo cubierto por el Acuerdo.

C. Cálculos basados en los registros de los Demandados y resolución de disputas sobre semanas laborales

Para cada Miembro de la Clase, el monto pagadero será calculado por el Administrador de la Demanda a partir de los registros de los Demandados. Los registros de los Demandados se presumen correctos a menos que se brinden pruebas en contrario al Administrador de la Demanda. Los registros de los Demandados y toda prueba adicional serán revisados por el Administrador de la Demanda en caso de una disputa sobre la cantidad de semanas de trabajo trabajadas por un Miembro de la Clase en forma individual. Si un Miembro de la Clase impugna la exactitud de los registros de los Demandados, el Miembro de la Clase debe presentar todos los documentos justificativos que acrediten las semanas de trabajo adicionales. La impugnación debe (a) identificar la naturaleza de la impugnación; (b) proporcionar cualquier información o documentación que respalde la impugnación; (c) estar firmada; y (d) tener sello postal, a más tardar, del 31 de julio del 2021. El Administrador de la Demanda resolverá la impugnación según los registros y la evidencia provista. La decisión del Administrador de la Demanda sobre todas las impugnaciones será definitiva y vinculante.

D. Exoneración de los reclamos

Para los Miembros de la Clase que no se excluyan y para los Empleados Agraviados, le Acuerdo contiene las siguientes exoneraciones:

Se considerará que los Miembros de la Clase que no se excluyan han exonerado todos los reclamos contenidos en la Demanda, y todo reclamo adicional por salarios y horas laborales que podría haberse presentado sobre la base de los hechos alegados en la Demanda vigente, durante el Período de la Clase.

Se considerará que los Empleados Agraviados exoneran todos los reclamos en virtud de la PAGA por sanciones civiles contenidos en las cartas de los Demandantes a la LWDA y/o en la Demanda vigente durante el Período de los Reclamos en virtud de la PAGA.

Las personas exoneradas ("Partes Exoneradas") incluyen a los Demandados, así como también sus funcionarios, accionistas, directores, agentes, empleados, abogados y aseguradoras.

Los Miembros de la Clase pueden hablar con uno de los abogados designados como Abogado de la Clase (que se enumeran a continuación) de manera gratuita, o bien puede hablar con su propio abogado si los Miembros de la Clase tienen preguntas sobre los Reclamos Exonerados y lo que significan.

E. Costos y honorarios de abogados

Los Demandados han aceptado pagar los honorarios y los costos de abogados del Abogado de la Clase que establezca la Corte, hasta un máximo del 35% del Importe Bruto del Acuerdo, que equivale a \$567,501.20 y costos de abogados que no superen los \$10,000. Los costos y los honorarios del Abogado de la Clase se pagarán y se deducirán del Importe Bruto del Acuerdo.

F. Razonabilidad del Acuerdo

Todos los abogados de las Partes de la Acción consideran que los montos a pagar a los Miembros de la Clase, Empleados Agraviados y los montos en concepto de costos y honorarios de abogados son justos y razonables. Los Representantes de la Clase y el Abogado de la Clase respaldan este Acuerdo. Entre los motivos de justificación, se encuentran las defensas frente a la responsabilidad potencial de los Demandados, el riesgo inherente al juicio de la causa principal, el riesgo de que se rechace la certificación de la clase y los retrasos asociados con la litigación.

III. ¿CUÁLES SON SUS DERECHOS COMO MIEMBRO DE LA CLASE?

A. Participar en el Acuerdo.

Si desea participar en el acuerdo y considera que su información sobre semanas de trabajo es correcta, **no necesita tomar ninguna otra acción.** El pago se le realizará automáticamente de conformidad con los términos del Acuerdo y la Orden de la Corte. Si desea impugnar el cálculo de semanas de trabajo, puede seguir los procedimientos que se describen en la Sección II.C más arriba. La legislación de California protege a los Miembros de la Clase de represalias basadas en su decisión de participar en el Acuerdo.

B. Excluirse del Acuerdo

Si no desea participar en el Acuerdo, puede excluirse presentando una solicitud escrita en forma oportuna al Administrador de la Demanda (es decir "Solicitud de Exclusión"). La solicitud de exclusión debe (a) indicar su nombre completo y fecha de nacimiento; (b) incluir una declaración que indique que no desea ser un Miembro de la Clase, no desea participar en el acuerdo, y/o desea ser excluido del acuerdo; (c) identificar el nombre y número de caso (*es decir, Gomez, et al. v. Kleary Masonry, Inc., et al.*, 34-2020-00278067); (d) estar firmado; y (e) tener sello postal de, a más tardar, el **31 de julio del 2021**. Para solicitar la exclusión el formulario debe estar firmado, contener la fecha y enviarse mediante Correo de los EE.UU. de Primera Clase o su equivalente a:

Gomez v. Kleary Masonry, Inc., P.O. Box 26170 Santa Ana, CA 92799

P.O. Box 26170

Santa Ana, CA 92799 Santa Ana, CA 92799

La solicitud de exclusión debe tener sello postal del 31 de julio del 2021 o una fecha anterior. Si envía una solicitud para excluirse que no tenga fecha de correo postal de antes del 31 de julio del 2021, inclusive, su solicitud para excluirse será rechazada, y quedará obligado por la exoneración, y por todos los demás términos del Acuerdo. Si envía la solicitud de exclusión desde dentro de los Estados Unidos, esta debe enviarse a través del Servicio Postal de los Estados Unidos por correo de primera clase o equivalente. No utilice una máquina franqueadora ya que puede que así no aparezca un sello postal en el sobre que contiene su solicitud de exclusión. Cualquier Miembro de la Clase que presente una solicitud de exclusión completa y a tiempo para excluirse, al momento de su recepción por parte del Administrador de la Demanda, dejará de ser un Miembro de la Clase y no recibirá su parte del pago del Acuerdo de la Clase. Los Empleados Agraviados no pueden excluirse del Acuerdo y recibirán su parte del pago de PAGA sin importar si se excluyen de la Clase.

C. Oposición al Acuerdo

Si no se excluye del acuerdo, puede oponerse a los términos de este. Sin embargo, si la Corte rechaza su oposición, quedará sujeto a los términos del Acuerdo. Puede solicitarle a la Corte que rechace la homologación del Acuerdo mediante la presentación de una oposición. No puede solicitar a la Corte que ordene un acuerdo por un importe mayor; la Corte solo puede homologar o rechazar el acuerdo. Si la corte no otorga la homologación, no se realizarán pagos del acuerdo, y el juicio continuará. Si eso es lo que desea que suceda, debe oponerse. La oposición debe(a) contener su nombre completo y fecha de nacimiento; (b) brindar evidencia de que es, de hecho, un Miembro de la Clase; (c) indicar los motivos para la/la oposición(es), incluyendo cualquier análisis y/o documentación respaldatoria; (d) identificar el nombre y número de caso (*i.e. Saavedra, et al. v. SMF Global, Inc., et al.*, 34-2020-00278067) (e) estar firmado; y (f) tener fecha de sello postal de antes del 31 de julio del 2021. . La oposición debe enviarse al Administrador de la Demanda a la dirección identificada en la Sección III.B y al abogado de los Demandantes y de los Demandados a las direcciones identificadas en la Sección IV de esta Notificación.

Si envía una oposición por escrito como se indica arriba, podrá también comparecer en la Audiencia de Homologación Definitiva, ya sea personalmente o a través de su propio abogado, para afirmar su oposición. Sin embargo, deberá presentar un aviso de intención de comparecer ante la Corte y notificar a los abogados de los Demandantes y los Demandados. Si comparece con su propio abogado, usted es responsable de pagarle al abogado.

IV. EFFECTOS DEL ACUERDO: RECLAMOS Y DERECHOS EXONERADOS

Luego de la homologación definitiva del acuerdo otorgada por la Corte, cada Miembro de la Clase que no se excluya del acuerdo y cada Empleado Agraviado exonerará a los Demandados y a las Partes Exoneradas de los reclamos exonerados como se describen más arriba. En otras palabras, si fue empleado como Miembro de la Clase por los Demandados en California durante el Período de la Clase, y no se excluye del acuerdo, se considerará que celebró esta exoneración y que exoneró los reclamos que se describen arriba. Además, se le prohibirá demandar a los Demandados y a las Partes Exoneradas con respecto a los reclamos cubiertos por este acuerdo. Si el acuerdo no es homologado por la Corte o no se vuelve definitivo por algún motivo, el litigio podrá continuar.

V. AUDIENCIA DE HOMOLOGACIÓN DEFINITIVA DEL ACUERDO

La Corte celebrará una audiencia en el Departamento 53, 813 6th Street, Sacramento, CA 95814 el 30 de septiembre del 2021 a las 1:30 p.m. a fin de decidir si finalmente homologa el acuerdo como justo, razonable y adecuado. También se le solicitará a la Corte la aprobación de la solicitud del Abogado de la Clase del pago de los honorarios y costas de abogados. La audiencia podrá posponerse sin ninguna notificación adicional a los Miembros de la Clase. No es necesario que se presente a esta audiencia, a menos que desee oponerse al acuerdo.

VI. INFORMACIÓN ADICIONAL

Podrá acceder en línea a copias de todos los documentos presentados en este juicio en <https://www.simpluris.com/case-information> ingresando el nombre de este caso. Si desea obtener información adicional sobre este juicio y sus procedimientos, puede comunicarse con el Abogado de la Clase o el Abogado de los Demandados, mediante la siguiente información:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Teléfono: (916) 525-0716
Fax: (916) 760-3733

En nombre de los Demandantes

Lisa V. Ryan
Cook Brown LLP
2407 J St., Second Floor
Sacramento, CA 95816
Teléfono: (916) 442-3100
Fax: (916) 442-4227
En nombre de los Demandados

**POR FAVOR, NO CONTACTE A LA CORTE O AL SECRETARIO DE LA CORTE POR TELÉFONO PARA OBTENER INFORMACIÓN SOBRE EL ACUERDO O EL PROCESO DE DEMANDA.
SI TIENE ALGUNA PREGUNTA, LLAME AL (888) 369-3780.**

POR ORDEN DE LA CORTE

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733
5

6 Attorneys for Plaintiffs RICARDO GOMEZ and RICARDO GOMEZ, SR.
on behalf of themselves and similarly situated employees
7
8

9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 RICARDO GOMEZ and RICARDO GOMEZ,)
12 SR., individually and on behalf of all others)
similarly situated,)

13 Plaintiffs,

14 vs.
15

16 KLEARY MASONRY, INC., a California
Corporation;)
17 MICHAEL G. KLEARY, an individual;)
18 NICK KLEARY, an individual;)
19 DIANA KLEARY, an individual; and DOES 1)
to 100, inclusive,)

20 Defendants.
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Case No. 34-2020-00278067

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. 2555119

Date: September 30, 2021

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama Mesiwala

Filed: 5/6/2020

FAC Filed: 6/30/2020

SAC Filed: 1/5/2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on September 30, 2021, at 1:30 p.m., in Department 53 before
4 Hon. Shama Mesiwala, presiding. Named Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr.
5 ("Plaintiffs") filed this putative class action on May 6, 2020. The operative Complaint alleges that
6 Defendants Kleary Masonry, Inc., Michael G. Kleary, Nick Kleary, and Diana Kleary ("Defendants")
7 violated California law by failing to pay minimum wages, failing to pay overtime wages, failing to
8 provide meal and rest periods, failing to provide accurate wage statements, failing to pay all wages due
9 upon termination, failing to reimburse expenses, failing to pay prevailing wages, failing to properly
10 calculate the regular rate for overtime purposes, failing to pay reporting time pay, and engaging in
11 unfair competition. Plaintiffs have also alleged Defendants are liable for a civil penalties under the
12 Private Attorneys General Act ("PAGA") based on these violations. Plaintiffs sought attorneys' fees
13 and costs as part of this Action. Defendants denied all of Plaintiffs' claims and denied that this case
14 was appropriate for class treatment. No class has been certified. The class action settlement was
15 preliminarily approved by this Court on March 16, 2021.

16 The parties have agreed to settle the class and PAGA claims. Defendants will provide
17 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
18 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
19 Release ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
20 Agreement. The Court, having received and considered Plaintiffs' Motion for Final Approval of Class
21 Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of Settlement,
22 and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

23 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
24 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is
26 appropriate under the California Code of Civil Procedure and related case law:

27 All individuals who have, or continue to, perform work for Defendants in
28 California as non-exempt, hourly employees from May 6, 2016 up to
February 2, 2021.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement.

4 The Court finds that Class Members meet the ascertainability and numerosity requirements since
5 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
6 the definition and the number of Class Members would make joinder impractical. The commonality and
7 predominance requirements are met for settlement purposes since there are questions of law and fact
8 common to Class Members. The common questions of law or fact in this case all stem from Plaintiffs'
9 contentions that Defendants caused the violations outlined above by 1) failing to pay putative class
10 members for all time spent at the shop and all time spent driving from the shop to the first jobsite or
11 from the last jobsite back to the shop; 2) failing to pay putative class members reporting time or wages
12 owed for time spent where Defendants required them to report to the shop or jobsite, but ultimately sent
13 them home without any work; 3) failing to authorize and permit putative class members to take all meal
14 and rest periods; 4) failing to pay putative class members all prevailing wages owed for work on public
15 works jobs; 5) failing to pay putative class members all overtime wages owed on public works jobs; 6)
16 failing to incorporate the value of prevailing wage rates into putative class members' regular rates of pay
17 for the purpose of calculating overtime wages on non-public works jobs where putative class members
18 worked on public works and non-public works jobs in the same workweek; and 7) failing to reimburse
19 putative class members for the use of their personal cellphones, vehicles, and tools for work. The
20 PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from
21 these violations. Additionally, Class Members seek the same remedies under state law. The typicality
22 requirement for settlement purposes is also satisfied since the claims of the class representatives based
23 on the same facts and legal theories as those applicable to the class members.

24 The Court also finds that certifying the settlement class is required to avoid each Class Member
25 from litigating similar claims individually. This settlement will achieve economies of scale for Class
26 Members with relatively small individual claims and conserve the resources of the judicial system.
27
28

1 The Court finds that Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. and Plaintiffs' counsel,
2 Galen T. Shimoda and Justin P. Rodriguez of the Shimoda Law Corp., to be adequate representatives of
3 the settlement class. The Court appoints them as class representative and class counsel, respectively.

4 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

5 The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit
6 A. After the settlement was preliminarily approved on March 16, 2021, the Parties and the Claims
7 Administrator determined there was an increase in workweeks during the Class Period, triggering an
8 increase to the Gross Settlement Amount under the terms forth in Section 10.1 of the Agreement.
9 Pursuant to the terms of the Agreement under Section 10.1 and the increase from 21,861 to 39,070.21
10 workweeks for Class Members during the Class Period, the Gross Settlement Amount is now
11 \$1,621,432.00. The Court finds that the terms of the Agreement, including the Gross Settlement
12 Amount of \$1,621,432.00, falls within the range of reasonableness and is fair, reasonable, adequate for
13 the class. The Court also acknowledges that Class Members were able to object to the settlement
14 through the administration process and at a fairness hearing. No such objections were made by the class
15 members and zero class members opted out of the settlement.

16 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
17 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
18 grants final approval to the Agreement and all terms therein as if stated here in full, including the
19 \$1,621,432.00 Gross Settlement Amount.

20 The Court orders that Plaintiffs Ricardo Gomez and Ricardo Gomez, Sr. will receive \$15,000
21 each as a Class Representative Enhancement Payment in addition to any amount Plaintiffs may be
22 entitled to under the Agreement's pro rata distribution formula for Plaintiffs' time and effort on behalf of
23 Class Members.

24 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
25 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are stated by the
26 Administrator to be \$11,759. The difference between the actual cost of the Claims Administrator
27 originally allocated amount of \$12,500.00 will be redistributed to Qualified Claimants on a pro-rata
28 basis.

1 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
2 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
3 accurately traced as set forth in the Agreement, Plaintiffs and Class Counsel were able to negotiate on
4 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
5 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
6 *v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
7 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
8 thirty five percent (35%) of the Gross Settlement Amount, *i.e.* \$567,501.20, to be appropriate
9 compensation for Class Counsel. The attorneys' fees request is within the range that has been approved
10 by other Courts in similar cases and is reasonable in light of the circumstances of this case, the
11 substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the
12 recovery over the course of this case, which included potential loss at summary judgment, certification,
13 and/or trial proceedings. Additionally, the Court orders that up to \$6,368,68 of the settlement proceeds
14 will be paid to Class Counsel for reasonable costs incurred in this case. The difference between the
15 actual costs incurred and the originally allocated amount of \$10,000 shall be paid to the Qualified
16 Claimants on a pro-rata basis.

17 The Court approves of the Twenty Thousand (\$20,000) PAGA Payment, which shall be paid
18 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
19 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
20 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
21 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
22 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
23 furthering the purpose of the Labor Code and LWDA.

24 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
25 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
26 paid out 50/50 to Capital Pro Bono, Inc. and the Center For Workers' Rights.

The releases and waivers for Class Members who did not opt out of being bound by the Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representatives are also approved by the Court as set forth in the Agreement.

3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT, OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT

The Court finds that the Notice of Settlement, which is Exhibit A to the Declaration of Lindsay Kline, and the maintaining of a website where Class Members could access, free of charge, all documents filed with the Court fairly and adequately advised Class Members of this litigation, the terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class Period, their estimated pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing. The Court further finds that the website and Notice of Settlement and distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

4. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Final Approval Date
Last day for Defendants to fund settlement	Within 21 calendar days after the Final Approval Date

1 2 3 4	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	The Effective Date
5 6 7	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
8 9 10	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
11 12	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

13
14 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
15 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the
16 Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
17 Agreement.

18 **IT IS SO ORDERED.**

19
20 Date: _____

21 By: _____
22 Judge of the Superior Court
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1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
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5 Attorneys for Plaintiffs RICARDO GOMEZ and RICARDO GOMEZ, SR.
6 on behalf of themselves and similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

11 RICARDO GOMEZ and RICARDO GOMEZ,
12 SR., individually and on behalf of all others
similarly situated,

13 Plaintiffs,

14 vs.
15

16 KLEARY MASONRY, INC., a California
Corporation;
17 MICHAEL G. KLEARY, an individual;
18 NICK KLEARY, an individual;
DIANA KLEARY, an individual; and DOES 1
19 to 100, inclusive,

20 Defendants.
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Case No. 34-2020-00278067

CLASS ACTION

PROOF OF SERVICE

Reservation No. 2555119

Date: September 30, 2021

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Shama Mesiwala

Filed: 5/6/2020

FAC Filed: 6/30/2020

SAC Filed: 1/5/2021

Trial Date: None Set

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On August 24, 2021, I served the following documents on the party below:

- 9 • PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF
- 10 CLASS ACTION AND PAGA SETTLEMENT
- 11 • MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S
- 12 MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 13 • EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL
- 14 APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 15 • DECLARATION OF JUSTIN P. RODRIGUEZ IN SUPPORT OF PLAINTIFF'S MOTION
- 16 FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 17 • DECLARATION OF LINDSAY KLINE REGARDING NOTICE AND SETTLEMENT
- 18 ADMINISTRATION
- 19 • [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL
- 20 OF CLASS ACTION AND PAGA SETTLEMENT

21 Lisa V. Ryan (SBN: 217802) 22 Alexis M. Gabrielson (SBN: 298738) 23 Cook Brown, LLP 24 2407 J Street, 2 nd Floor 25 Sacramento, CA 95816 26 Telephone: (916) 442-3100 27 Facsimile: (916) 442-4227 28 Email: lryan@cookbrown.com	
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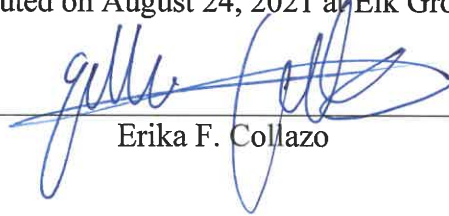
20 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
21 processing of correspondence for mailing with the United States Postal
22 Service and that each day's mail is deposited with the United States Postal
23 Service that same day in the ordinary course of business. On the date set forth
24 above, I served the aforementioned document(s) on the parties in said action
25 by placing a true copy thereof enclosed in a sealed envelope with postage
26 thereon fully prepaid, for collection and mailing on this date, following
27 ordinary business practices, at Elk Grove, California, addressed as set forth
28 above.

25 [] [By Personal Service] By personally delivering a true copy thereof to the
26 office of the addressee above.

27 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
28 above. No error was reported by the e-mail service that I used.

1 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
2 personally delivered via the following overnight courier service: UPS.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct, and that this declaration was executed on August 24, 2021 at Elk Grove, California

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6 _____
7 Erika F. Collazo
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