

**Electronically Filed
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County of Santa Clara,
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Case #20CV368917
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MARK WARD, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SEAGATE US LLC, a Delaware limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20CV368917

**DECLARATION OF MAI TULYATHAN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 6, 2021
Time: 1:30 P.M.
Dept.: 1

Complaint Filed: August 9, 2019
Trial Date: Not Set

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I, Mai Tulyathan, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Named Plaintiff Mark Ward (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. On or about June 10, 2020, Plaintiff sent his written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code §§ 201-203, 226, and 246, pursuant to the PAGA, Labor Code § 2699. On August 5, 2020, Plaintiff filed his class and PAGA Complaint against Defendant in Santa Clara County Superior Court, alleging causes of action for (1) violation of Labor Code § 226(a), (2) violation of Labor Code §§ 201-203, and (3) violation of the PAGA, Labor Code § 2698, *et seq.*

3. Plaintiff's class and PAGA claims as pled in the Complaint are predicated upon the following allegations. With respect to Plaintiff's wage statement claim, Plaintiff contends that Defendant issued deficient wage statements whenever Shift OT and/or Shift Premium wages were paid. In this regard, Plaintiff contends that said wage statements do not correctly identify the hourly rates of pay and number of hours worked used to calculate said Shift OT and/or Shift Premium wages. With respect to Plaintiff's sick pay regular rate claim, Plaintiff contends that Defendant failed to factor non-discretionary incentives, such as Shift Premium wages, into the calculation of the regular rate for purposes of paying sick pay wages, and thus Plaintiff and employees were underpaid sick pay. As a result of the alleged violations, Plaintiff seeks statutory and civil penalties under the California Labor Code and the PAGA, as well as attorneys' fees and costs.

4. After the filing of the Complaint, the Parties met and conferred and agreed to participate in private mediation. In connection with mediation, the Parties engaged in informal discovery to allow Plaintiff to assess the claims and liability, as well as analyze the maximum exposure of damages and penalties. Through the exchange of informal discovery, Defendant provided Plaintiff's counsel with necessary data including the number of putative class members.

1 the number of wage statements at issue, the hourly rates of pay, as well as information pertaining
2 to Defendant's sick pay, shift premium pay, and wage statement policies and practices. Based on
3 the data provided by Defendant, Plaintiff's counsel conducted an analysis of potential maximum
4 exposure for class and PAGA penalties.

5 5. On January 14, 2021, the Parties engaged in a full-day mediation with mediator
6 Michael J. Loeb, Esq. After thorough investigation and evaluation of the facts and claims, and as
7 a result of the arm's-length negotiations facilitated by Mr. Loeb, the Parties and their counsel
8 ultimately reached the current settlement. Attached as **Exhibit A** is a true and correct copy of
9 the Parties' Joint Stipulation of Class Action and PAGA Settlement and Release.

10 6. The Parties recognize the risk, expense, and delay in continuing litigation with the
11 class and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate.

12 7. Each side has apprised the other of their respective factual contentions, legal
13 theories and defenses, resulting in negotiations taking place between the Parties.

14 8. Based on the class data provided by Defendant, Plaintiff estimated that Defendant
15 would face potential liability of up to approximately \$484,116.00 for Plaintiff's wage statement
16 and sick pay regular rate class claims if Plaintiff succeeded at trial. Specifically, Plaintiff
17 calculated the amount of class wide Labor Code § 226(e) penalties based on 2,857 deficient
18 wage statements with payment for Shift OT and/or Shift Premium wages during the relevant
19 class period. With respect to Plaintiff's sick pay regular rate claim, Plaintiff calculated waiting
20 time penalties under Labor Code § 203 based on 34 putative class members and their average
21 hourly rates of pay.

22 9. With respect to potential liability of Plaintiff's PAGA claim, Plaintiff estimated
23 that Defendant could face civil penalties of up to a maximum \$717,650.00 if Plaintiff were
24 successful at trial.

25 10. The total amount of class and PAGA penalties amount to approximately
26 \$1,201,766, without discounting for potentially losing on any of the causes of action. The
27 Maximum Settlement Amount is **\$330,000**, which is approximately **27.46%** of the maximum
28 class and PAGA penalties.

1 11. Although Plaintiff believes in the merits of the alleged claims and maintains that
2 there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise
3 defenses to the claims and further with respect to the reduction of PAGA penalties and that it
4 could be persuasive to the Court. The Maximum Settlement Amount was premised with this risk
5 in mind, associated with the possibility of the Court significantly reducing Plaintiff's PAGA
6 penalties, along with other attendant risks, even if Plaintiff was to prevail at trial.

7 12. Although Plaintiff believes that both classes can be certified, Plaintiff also
8 believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to
9 Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in
10 the operative Complaint, the possibility of non-certification, and the potential for appeals.

11 13. On a raw average, each participating Wage Statement Class Member may
12 potentially recover approximately **\$1,496.91**. The amount actually paid to each participating
13 Wage Statement Class Member may increase or decrease depending on the actual number of
14 wage statements each class member received between April 6, 2019 and August 7, 2020 with
15 payment for Shift Premium and/or Shift OT wages.

16 14. On a raw average, each participating Sick Pay Class Member may potentially
17 recover approximately **\$1,067.65**. The amount actually paid to each Sick Pay Class Member
18 may fluctuate depending on the number of opt-outs received.

19 15. Any remaining monies from uncashed settlement checks will be distributed to
20 Child Advocates of Silicon Valley. Plaintiff does not have any relationship or connection with
21 or to Child Advocates of Silicon Valley.

22 16. Attached as **Exhibit B** is a true and correct copy of the proposed "Notice of
23 Pendency of Class Action Settlement and Final Hearing" ("Class Notice") to be sent to Class
24 Members.

25 17. From the inception of the case, Class Counsel has zealously represented the
26 interests of the Class. Class Counsel engaged in significant discussions with opposing counsel to
27 obtain informal data on behalf of the Class. This settlement was obtained for the benefit of the
28 Class, as opposed to the individual Class Representative.

1 18. I have spent significant time researching and pursuing the claims that have been
2 alleged in this action. The Parties engaged in informal discovery in connection with mediation,
3 and participated in the exchange of class data and Defendant's pertinent policies and practices.
4 Based on my review of all the documents and information, and based on my experience in class
5 action litigation, I believe this settlement to be fair, adequate, and reasonable.

6 19. I was retained based upon a contingency fee arrangement wherein Plaintiff's
7 counsel agreed to advance all costs and receive no fee unless a recovery was accomplished.
8 Specifically, had Plaintiff failed to prevail in this case, counsel for Plaintiff would have spent a
9 significant amount of time, money and other resources without any benefit or return. In addition,
10 had Plaintiff also failed to prevail in the present case, Defendant would have been able to seek
11 costs in connection with their defense of the case.

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

25 21. I am currently an associate at the law firm Diversity Law Group, P.C., an
26 employment law firm that has handled numerous wage and hour class and individual actions, on
27 both plaintiff and defense sides. The firm currently has cases in numerous state courts, including
28 the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior Court, San

1 Diego County Superior Court, Monterey County Superior Court, as well as the United States
2 District Courts for the Central, Northern, Southern, and Eastern Districts of California.

3 22. I am currently handling and/or have handled numerous wage and hour class action
4 and PAGA lawsuits, including *Magadia v. Wal-Mart Associates, Inc., et al.* (Case Number 5:17-
5 cv-00062-LHK); *Garcia v. Wal-Mart Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-
6 MDD); *Hernandez v. Wells Fargo Bank, N.A.* (Case Number 16CV299319); *Lao v. H & M*
7 *Hennes & Mauritz, L.P.* (Case Number 5:16-cv-333 EJD); *Arroyo v. Int'l Paper Company* (Case
8 Number 5:17-cv-06211-BLF); *Baker v. California Forensic Medical Group, Inc., et al.*, Judicial
9 Council Coordination Proceeding No. 4999 (Lead Case No. 17CV003723); and *Garcia v. Apex*
10 *Systems, LLC, et al.* (Case Number RG19014709).

11 23. In 2018, I argued before the California Court of Appeal, Second Appellate
12 District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case
13 Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.*
14 (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In
15 that same year, I also assisted the firm in successfully obtaining class certification and partial
16 summary judgment by the United States District Court, Central District of California in the case
17 of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the
18 bench trial in that same case in December 2018, and obtained a \$102 million judgment for the
19 class against Walmart.

20 24. I have also been approved as class counsel in numerous other wage/hour class
21 actions. Most recently, I was approved as class counsel in the cases *Garcia v. Wal-Mart*
22 *Associates, Inc., et al.* (Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan, LLC, et al.*
23 (Case Number 17CV314186), *Song v. THC – Orange County, Inc.* (Case No. 8-17-cv-965-JLS
24 (DFM)), and *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case No. 16-CV-299319).
25 Moreover, I was granted final approval as class counsel in *California Forensic Medical Group*
26 *Wage and Hour Cases* (Case No. JCCP4999), *Valles v. Community Hospital of the Monterey*
27 *Peninsula* (Case No. 17CV003452), *Chavez v. Hugo Boss Retail, Inc.* (Case No. 18CV322644),
28 *Hernandez v. Wells Fargo Bank National Ass'n, et al* (Case No. 16-CV-299319), *Mendez v.*

1 *Falcon Trading Company* (Case No. 19CV004512), and *Khan v. Amy's Kitchen, Inc.* (Case No.
2 SCV-266127). I acted as lead counsel in these cases listed above.

3 25. My co-counsel and I will adequately represent the Class Members in this action.
4 Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this
5 lawsuit to its conclusion. I have no conflicts with the Class and will adequately represent the
6 Class.

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

9 Executed on this 14th day of April, 2021, at Los Angeles, California.

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12 _____
13 Mai Tulyathan
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EXHIBIT A

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Attorneys for Defendant
SEAGATE US LLC

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

MARK WARD, an as individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SEAGATE US LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20-CV-368917

*Assigned to the Hon. Sunil L. Kulkarni
Dept. 1*

CLASS ACTION

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

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND**
2 **RELEASE**

3 This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or
4 “Stipulation of Settlement”) is made and entered into by and between plaintiff Mark Ward
5 (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated,
6 and defendant Seagate US LLC (“Defendant”), subject to the terms and conditions herein and the
7 Court’s approval.

8 **A. Definitions.**

9 1. Plaintiff and the Settlement Class (as defined below) and Defendant are
10 collectively referred to herein as “the Parties.”

11 2. Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C. and William L.
12 Marder of Polaris Law Group LLP are counsel of record for Plaintiff. For purposes of this
13 settlement, they shall be designated as “Class Counsel.”

14 3. The “Action” means the case entitled “*MARK WARD, as an individual and on*
15 *behalf of all others similarly situated, Plaintiffs, v. SEAGATE US LLC, a Delaware limited*
16 *liability company, and DOES 1 through 50, inclusive, Defendants,”* Case No. CV-20-368917,
17 pending before the Superior Court of the State of California for the County of Santa Clara.

18 4. The “Class Members” shall consist of the members of two settlement classes: (1)
19 all current and former non-exempt employees employed by Defendant in California who were
20 paid Shift Premium wages and/or Shift OT wages between April 6, 2019 and August 7, 2020
21 (“the Wage Statement Class”); and (2) all non-exempt employees employed by Defendant in
22 California who received Shift Premium and sick pay in the same workweek, and whose
23 employment ended (either voluntarily or involuntarily) at any time from April 6, 2017 through
24 August 7, 2020 (“the Sick Pay Class”). These two classes, collectively, shall be referred to herein
25 as “the Settlement Class.”

26 **B. General.**

27 5. On August 5, 2020, Plaintiff initiated the Action by filing a Complaint on behalf of
28 himself and all others similarly situated asserting claims for (1) violation of Labor Code section

1 226(a) on behalf of current and former employees who have received Shift OT and/or Shift
2 Premium; (2) violation of Labor Code sections 201-203 on behalf of certain former employees
3 who had received sick pay and non-discretionary incentives including Shift Premium in the same
4 workweek; and (3) violation of Labor Code section 2698, *et seq.*, the California Private Attorneys
5 General Act of 2004 (“PAGA”) predicated on violations of Labor Code sections 201-203, 226(a),
6 and 246 (“the Complaint”).

7 6. Defendant denies any liability or wrongdoing of any kind associated with the
8 claims alleged in the Action, and further denies that the Action is appropriate for class treatment
9 for any purpose other than this Settlement. Defendant contends that it has complied at all times
10 with the California Labor Code provisions in question.

11 7. Plaintiff contends that Defendant violated the California Labor Code in several
12 respects, including PAGA, and that this case is appropriate for class certification as well as
13 representative treatment.

14 8. Class Counsel represent that they have conducted a thorough investigation into the
15 facts and law during the prosecution of this Action, including the exchange of informal discovery
16 and the review and verification of statistical data and other facts and information provided by
17 Defendant. In connection with mediation, the Parties participated in informal discovery
18 exchange, consisting of class data, wage statements, and documents and information pertaining to
19 Defendant’s relevant payroll policies and practices. Counsel for the Parties also represent that
20 they have investigated the applicable law as applied to the facts discovered regarding the alleged
21 claims of Plaintiff and potential defenses thereto, and the damages or penalties claimed by
22 Plaintiff.

23 9. On January 14, 2021, the Parties participated in a full-day mediation session with
24 Michael J. Loeb, Esq. of JAMS, a highly-respected mediator with substantial experience
25 resolving wage and hour class actions. The basic terms of this Settlement were reached through a
26 mediator’s proposal accepted by the Parties on that date and memorialized in a Memorandum of
27 Understanding fully-executed on that date.

28 10. Based on their own independent investigation and evaluation, Class Counsel are of

1 the opinion (and will so represent to the Court) that settlement for the consideration and on the
2 terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the best
3 interests of the Class Members in light of all known facts and circumstances, including the risk of
4 significant delay, the risk that the Settlement Class will not be certified by the Court, and the
5 defenses asserted by Defendant. Defendant and its counsel also agree (and will so represent to
6 the Court) that the Settlement is fair, adequate and reasonable and thus should be approved by the
7 Court.

8 11. The Parties agree that the class described herein may be certified and that any
9 motion for preliminary approval seeking, *inter alia*, certification of the class is for purposes of the
10 Settlement only. If for any reason the Settlement is not approved, the certification will have no
11 force or effect and will immediately be revoked. The Parties further agree that certification for
12 purposes of the Settlement is in no way an admission that class certification is proper under the
13 more stringent standard applied for litigation, and that evidence of this limited stipulation for
14 settlement purposes only will not be admissible for any purpose in this or any other proceeding,
15 except to enforce the terms of the Settlement.

16 **C. Terms of Settlement.**

17 12. The financial terms of the Settlement are as follows:

18 (a) **Maximum Settlement Amount:** The Parties agree to settle this Action for
19 a non-reversionary Maximum Settlement Amount of Three Hundred and Thirty Thousand Dollars
20 (\$330,000.00) (“the Maximum Settlement Amount”). The Maximum Settlement Amount
21 includes Class Counsel’s attorneys fees, litigation costs, and expenses (which includes, without
22 limitation, all such fees and costs incurred to date, as well as such fees and costs to be incurred in
23 documenting the settlement, providing any notices required as part of the Settlement, securing
24 Court approval of the Settlement, and obtaining judgment in the Action); the service payment to
25 the Class Representative, as approved by the Court; the fees and expenses of the agreed-upon
26 settlement administrator (“the Settlement Administrator”) for administration of the Settlement;
27 and the payment to the California Labor and Workforce Development Agency (“LWDA”)
28 pursuant to the PAGA claims in the Action.

1 (b) **Net Settlement Amount:** “Net Settlement Amount” is defined as the
2 Maximum Settlement Amount less the amounts approved and awarded by the Court for:
3 attorneys’ fees and documented litigation costs and expenses incurred or advanced by Class
4 Counsel, the service payment to the Class Representative, the Settlement Administrator’s costs of
5 administering the Settlement, and the payment to the LWDA pursuant to PAGA.

6 (c) **Calculation of the Individual Payment Amounts:** “Individual Payment
7 Amount” means the portion of the Net Settlement Amount distributable to each Class Member
8 who participates in the Settlement (i.e., who does not submit a Request for Exclusion). The
9 Individual Payment Amounts will be calculated as follows:

10 i. Eighty percent (80%) of the Net Settlement Amount will be
11 apportioned among the Wage Statement Class Members on a pro rata basis, based on the number
12 of wage statements reflecting payment(s) for Shift Premium and/or Shift OT wages issued to each
13 Participating Wage Statement Class Member between April 6, 2019 and August 7, 2020,
14 according to Defendant’s records, as compared to the total number of all such wage statements
15 reflecting payment(s) for Shift Premium and/or Shift OT wages issued to all Participating Wage
16 Statement Class Members during the same period.

17 ii. Twenty percent (20%) of the Net Settlement Amount will be
18 apportioned proportionally among the Participating Sick Pay Class Members on a per capita
19 basis.

20 iii. For tax purposes, the entirety (100%) of each Individual Payment
21 Amount shall be treated as a payment in settlement of claims for penalties and interest sought in
22 the Action, and thus will not be subject to payroll withholding. The Individual Payment Amounts
23 will be reported to the taxing authorities on an IRS Form 1099. Plaintiff and the Class Members
24 will be responsible for paying any taxes that may be owed on amounts they receive under the
25 Settlement, including the amounts being reported on the IRS Form 1099. The Settlement
26 Administrator will be responsible for making all settlement payments due under the Settlement
27 and submitting all required 1099 reports with respect to the settlement payments.

28 (d) **PAGA Payments:** The Parties agree that Ten Thousand Dollars

1 (\$10,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this
2 amount, seventy-five percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), shall
3 be paid to the LWDA, and twenty-five percent (25%), or Two Thousand Five Hundred Dollars
4 (\$2,500.00), shall become part of the Net Settlement Amount to be distributed to Class Members
5 who have not submitted a valid and timely Request for Exclusion pursuant to Paragraph C(12)(c).

6 (e) **Service Payment to the Class Representative:** Subject to Court approval,
7 the Parties agree that Plaintiff will be paid up to Ten Thousand Dollars (\$10,000.00), in addition
8 to whatever payment he is otherwise entitled to receive as a Class Member, as a service payment,
9 in recognition of his efforts and risks in assisting with the prosecution of the Action. This amount
10 will be deducted from the Maximum Settlement Amount. An IRS Form 1099 will be issued to
11 the Class Representative for his service payment. Defendant agrees not to dispute or otherwise
12 object to the service payment if Plaintiff requests a payment that does not exceed \$10,000.

13 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
14 subtracted from the Maximum Settlement Amount in an amount to be set by the Court, taking
15 into account the settlement award that has been made available for the Settlement Class by the
16 efforts of Class Counsel. Class Counsel will request for attorneys' fees award in an amount not to
17 exceed One Hundred and Ten Thousand Dollars (\$110,000.00) (i.e., one-third of the Maximum
18 Settlement Amount), subject to the Court finally approving this Settlement. An IRS Form 1099
19 will be issued to Class Counsel with respect to its award of attorneys' fees. Defendant agrees not
20 to dispute or otherwise object to the attorneys' fee award requested by Class Counsel so long as
21 the request does not exceed \$110,000.00.

22 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
23 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
24 pocket litigation costs and expenses, not to exceed Fifteen Thousand Dollars (\$15,000.00). An
25 IRS Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.
26 Defendant agrees not to dispute or otherwise object to the attorney cost award requested by Class
27 Counsel so long as the request does not exceed \$15,000.00.

28 (h) **Settlement Administration Costs:** The parties initially select Phoenix

1 Settlement Administrators to administer the Settlement, subject to the approval of the Court. The
2 fees and other charges of the Settlement Administrator to administer the Settlement are expected
3 to total no more than Six Thousand Dollars (\$6,000.00), and will be paid from the Maximum
4 Settlement Amount.

5 (i) **Non-reversionary Settlement.** This will be a non-reversionary “all-in”
6 settlement. No unclaimed amounts will revert to Defendant. To the extent any eligible Class
7 Members submit requests to be excluded from the Settlement, the amounts that would otherwise
8 be paid to them under the Settlement will be redistributed to the other Participating Class
9 Members. There will not be a claims process; the members of the Settlement Class will not be
10 required to submit a claim to receive a settlement payment.

11 **D. Release of Claims.**

12 13. **Class Members’ Release of Claims.** Upon the Court’s final approval of this
13 Settlement, Plaintiff and all Settlement Class Members who do not opt out of the Settlement
14 (“Participating Class Members”) will release Seagate, and any of its former and present parents,
15 subsidiaries, divisions, and affiliated companies, and their respective officers, directors,
16 employees, partners, shareholders, agents, successors, assigns, and legal representatives (“the
17 Released Parties”), as follows:

18 (a) **Wage Statement Class.** Members of the Wage Statement Class who do
19 not opt out of the Settlement (“Participating Wage Statement Class Member”) will release the
20 Released Parties from any and all claims, rights, demands, liabilities, and causes of action of
21 every nature and description, whether known or unknown, arising from April 6, 2019 through
22 August 7, 2020, arising out of any violation of Labor Code section 226, including (1) any and all
23 claims for failure to furnish accurate itemized wage statements; (2) all derivative claims for
24 statutory penalties and/or civil penalties under the Private Attorneys General Act of 2004
25 (“PAGA”) premised on Labor Code section 226; (3) pre-judgment interest; and (4) any and all
26 claims for attorneys’ fees and costs.

27 (b) **Sick Pay Class.** Members of the Sick Pay Class who do not opt out of the
28 Settlement (“Participating Sick Pay Class Members”) will release the Released Parties from any

1 and all claims, rights, demands, liabilities, and causes of action of every nature and description,
2 whether known or unknown, arising from April 6, 2017 through August 7, 2020, arising out of
3 any violation for failure to pay sick pay, including (1) any and all claims for waiting time
4 penalties under Labor Code section 203; (2) all derivative claims for statutory penalties and/or
5 civil penalties under PAGA premised on Labor Code sections 201-203 and 246; (3) pre-judgment
6 interest; and (4) any and all claims for attorneys' fees and costs.

7 14. **Plaintiff's Additional Release.** As of the date of final approval of the Settlement,
8 and in consideration for his receipt of a Service Payment, Plaintiff additionally releases all claims
9 relating to his employment with Defendant and the termination of his employment, known or
10 unknown, including but not limited to claims for wrongful discharge; retaliation; intentional
11 infliction of emotional distress; defamation; violation of any federal, state, or other governmental
12 statute, regulation, or ordinance, including, without limitation, violation of Title VII of the Civil
13 Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, the
14 California Fair Employment and Housing Act, the California Family Rights Act, the California
15 Labor Code or any Industrial Welfare Commission Wage Order, and the Employee Retirement
16 Income Security Act. Plaintiff expressly waives and relinquishes all rights and benefits afforded
17 by Section 1542 of the Civil Code of the State of California and does so understanding and
18 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of
19 the State of California states:

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

27 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
28 full and complete release and discharge of Defendant and the Released Parties, Plaintiff expressly
acknowledges that this Settlement is intended to include in its effect all claims that Plaintiff
knows of, as well as all claims that he does not know of or suspect to exist in his favor against
Defendant and the Released Parties, and that this Settlement contemplates the extinguishment of

1 any such claims.

2 **E. Class Notice Process.**

3 15. Within fifteen (15) business days after entry of the Court's order granting
4 preliminary approval, Defendant shall provide to the Settlement Administrator a list of all Class
5 Members in each of the two Settlement Classes as described above, including their names, last
6 known addresses, telephone numbers, and social security numbers, and, for the members of the
7 Wage Statement Settlement Class, the number of wage statements containing Shift Premium
8 and/or Shift OT during the applicable Wage Statement Class Period (April 6, 2019 through
9 August 7, 2020), as reflected in Defendant's records ("Settlement Class Information"). The
10 Settlement Administrator will retain the Settlement Class Information and will not share it with
11 Class Counsel without Defendant's authorization.

12 16. Within ten (10) calendar days after receiving the Settlement Class Information
13 from Defendant, the Settlement Administrator will mail a Notice of Pendency of Class Action
14 Settlement and Final Hearing ("Class Notice") in the form attached hereto as Exhibit 1, and as
15 approved by the Court, to the Class Members, by first class mail.

16 17. The Settlement Administrator will make reasonable efforts to ensure that the Class
17 Notice is sent to all Class Members. Prior to mailing the Class Notice, the Settlement
18 Administrator will perform a search based on the National Change of Address Database for
19 information to update and correct for any known or identifiable address changes.

20 18. It will conclusively be presumed that if an envelope has not been returned within
21 thirty (30) days of the mailing that the Class Member received the Class Notice. In the event of
22 returned or non-deliverable notices, the Settlement Administrator will make reasonable efforts to
23 locate Class Members and re-send the notices. Any Class Notices returned to the Settlement
24 Administrator as non-deliverable before the Response Deadline (as defined in Paragraph 22) shall
25 be re-sent promptly via regular first class mail to the forwarding address affixed thereto. If no
26 forwarding address is provided, the Settlement Administrator shall promptly attempt to determine
27 to updated address using skip-trace, or comparable search, to perform a re-mailing. Class
28 Members who receive a re-mailed Class Notice shall have their Response Deadline extended by

up to fifteen (15) days from the original Response Deadline.

19. Through the Class Notice, each Class Member will be fully advised of the Settlement, the ability to object to the Settlement, the ability to exclude themselves from (“opt out of”) the Settlement by submitting a Request for Exclusion, and the claims to be released. The Class Notice will inform the Class Members of the Court-established deadlines for filing objections and opting out of the Settlement.

20. Each Class Notice will contain personalized information setting forth each Participating Class Member’s estimated Individual Payment Amount under either or both of the Settlement Classes described above. The Class Notice will also set forth the number of wage statements that each Wage Statement Class Member received during the relevant Wage Statement Class Period containing Shift Premium and/or Shift OT wages, according to Defendant’s records. Any Class Members who wish to dispute any of the information listed on their Class Notice may submit evidence to the Settlement Administrator in support of their position. Defendant’s records will be presumed determinative, however, and the Settlement Administrator’s decision on these matters will be final, subject to final resolution by the Court, if necessary. Prior to any resort to the Court, counsel for the Parties will confer in good faith in an attempt to resolve the dispute.

21. All Class Members who do not submit a valid and timely Request for Exclusion according to Paragraphs 22 and 23 will be eligible to receive an Individual Payment Amount, which will be mailed to them after the Court enters an order granting final approval to this Settlement. Those who submit a valid and timely Request for Exclusion will not be eligible to receive a Settlement Payment and will not have standing to raise an objection to the Settlement.

22. The last date for Class Members to submit Requests for Exclusion under Paragraph 23, or their written objections to the Settlement under Paragraph 24, will be forty-five (45) calendar days after the Settlement Administrator initially mails the Class Notice to Class Members (“Response Deadline”).

23. To elect not to participate in the Settlement, a Class Member must submit a written letter indicating their request to be excluded from the Settlement (“Request for Exclusion”). In order to be deemed valid, the Request for Exclusion must: (a) clearly state that the Class Member

1 does not wish to be included in the Settlement; (b) set forth the name, address, telephone number
2 of the Class Member requesting exclusion; (c) be signed by the Class Member; (d) be returned by
3 mail to the Settlement Administrator at the specified address indicated in the Notice Packet; and
4 (e) be postmarked on or before the Response Deadline. The timeliness of submitted Requests for
5 Exclusion will be exclusively determined by valid postmark. No Party will encourage any Class
6 Member to opt out of the Settlement.

7 24. To object to the Settlement, a Class Member must submit his or her objection to
8 the Settlement Administrator in writing, postmarked no later than the Response Deadline. The
9 written objection must include: (a) the name and case number of this lawsuit, *Mark Ward v.*
10 *Seagate US LLC*, Case No. 20-CV-368917; (b) the objector's name, current address, and
11 telephone number; (c) the specific grounds for the objection; and (d) any and all evidence for
12 which the objection is based on. The Settlement Administrator will furnish copies of any such
13 objections to counsel for the Parties within three (3) calendar days after receipt. Objecting Class
14 Members may appear at the final approval hearing, either in person or through counsel retained at
15 their own expense, to have their objections heard, whether or not they had submitted a prior
16 written objection as specified in this paragraph. At no time shall the Parties or their counsel seek
17 to solicit or otherwise encourage or discourage Class Members from submitting an objection.
18 Any Participating Class Member who submits an objection will remain eligible to receive
19 monetary compensation from the Settlement, assuming the Court approves the Settlement. Any
20 Class Member who does not submit an objection according to this Paragraph shall be deemed to
21 have waived any objection(s), shall be conclusively deemed a Participating Class Member, and
22 shall be precluded from making any objection(s) (including by appeal or otherwise) to the
23 Settlement).

24 25. The Settlement Administrator shall provide to the Parties, at least 21 calendar days
25 prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard
26 to the mailing of the Class Notice, any attempts to locate Class Members and re-mail Class
27 Notices, any Requests for Exclusions and written objections received, and any undeliverable
28 Class Notices due to invalid addresses.

1 26. Within thirty (30) business days after the Settlement becomes Final (as defined in
2 Paragraph 27) and Defendant has received wiring instructions, Defendant will make a one-time
3 deposit of the Maximum Settlement Amount into a qualified settlement fund to be established by
4 the Settlement Administrator, from which the Settlement Administrator will have authority to
5 distribute the funds in accordance with the terms of this Stipulation of Settlement. Within ten
6 (10) days thereafter, the Settlement Administrator will distribute the payments to Plaintiff for his
7 awarded Class Representative service payment, to Class Counsel for their awarded attorneys' fees
8 and costs, to the LWDA, and to the Participating Class Members.

9 27. If there are no objections to the Settlement (or if any objections made prior to the
10 date of the final approval hearing have been withdrawn by the time of the final approval hearing),
11 "Final" shall mean the date that the Superior Court has entered its judgment and order granting
12 final approval, without material modification. If any timely objections have been submitted and
13 are not withdrawn, then "Final" shall mean the date that the Settlement has been finally approved
14 by the Superior Court and either (i) the applicable date for seeking appellate review of the Court's
15 final approval order has passed without a timely appeal or request for review having been made;
16 or (ii) the California Court of Appeal or the California Supreme Court has rendered a final
17 judgment affirming the Superior Court's final approval without material modification, and the
18 time for any further appeal has expired.

19 28. Class Members must cash each of their Individual Payment Amount checks within
20 180 calendar days after they are mailed by the Settlement Administrator. The value of any checks
21 uncashed more than 180 days after mailing of the Individual Payment Amount checks shall be
22 distributed to Child Advocates of Silicon Valley, a court-appointed child advocacy program, in
23 accordance with California Code of Civil Procedure section 384.

24 **F. Duties of the Parties Prior to Court Approval.**

25 29. Promptly after execution of this Stipulation of Settlement, Plaintiff shall move the
26 Court for preliminary approval of this Settlement and entry of an order accomplishing the
27 following:

- 28 (a) scheduling a fairness hearing on the question of whether the proposed

1 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
2 (b) approving as to form and content the proposed Class Notice;
3 (c) preliminarily certifying the Class for purposes of settlement;
4 (d) preliminarily approving the PAGA payment of \$7,500 to the LWDA;
5 (e) preliminarily setting the attorneys' fees and costs payable to Class Counsel;
6 (f) preliminarily setting the service payment to the Class Representative; and
7 (g) preliminarily approving Phoenix Settlement Administrators as the
8 Settlement Administrator and its estimated fees and costs of \$6,000.00. Class Counsel shall submit
9 this Stipulation of Settlement in support of Plaintiff's unopposed motion for preliminary approval
10 of the Settlement and concurrently submit a copy to the LWDA as required by PAGA.

11 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

12 30. Promptly after the expiration of the class notice period, the Parties will jointly
13 move the Court for final approval of the Settlement. Class Counsel will prepare the draft motion
14 for final approval for review and comment by Defendant's counsel. Concurrent with its filing of
15 the final approval motion, Plaintiff shall separately file a motion requesting approval of his
16 request for Class Counsel's attorneys' fees and reimbursement of costs and expenses, and the
17 award of the Class Representative's service payment. Defendant will not oppose either motion.

18 31. In connection with the hearing on final approval of the Settlement, Class Counsel
19 will submit proposed final orders at least ten (10) calendar days prior to the scheduled date of the
20 hearing:

21 (a) approving the Settlement, adjudging the terms thereof to be fair, reasonable
22 and adequate, and directing consummation of its terms and provisions;

23 (b) approving Class Counsel's application for an award of attorneys' fees and
24 reimbursement of documented litigation costs and expenses, the service payment to the Class
25 Representative, the payment to the LWDA, and the costs of administering the settlement; and

26 (c) entering judgment in this Action in accordance with this Stipulation,
27 subject to the Court's normal retention of jurisdiction to enforce and oversee implementation of
28 the Settlement.

1 **H. Miscellaneous Provisions:**

2 **32. Representations Regarding Class Size.**

3 Defendant represents and warrants that, according to its records, there are no more than 97
4 Wage Statement Class Members, and that Defendant issued approximately 2,857 wage statements
5 to these Wage Statement Class Members during the applicable Class Period (April 6, 2019
6 through August 7, 2020). Defendant further represents and warrants that, according to its records,
7 there are no more than 34 members of the Sick Pay Class, covering the applicable Class Period
8 from April 5, 2017 through August 7, 2020. If it should be determined that the number of wage
9 statements containing Shift Premium and/or Shift OT Wages actually issued to the Wage
10 Statement Class exceeds 3,000 wage statements, and/or that the actual number of Sick Pay Class
11 Members exceeds 38 individuals, then Defendant shall have the option of either adding a pro rata
12 monetary amount to the increase over those threshold amounts, beyond the Maximum Settlement
13 Amount, or terminating the Settlement.

14 **33. Voiding the Agreement.**

15 A failure of the Court to approve any material condition of this Stipulation of Settlement
16 which effects a fundamental change of the Parties' Settlement, or if the Settlement is reversed or
17 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
18 and unenforceable as to all Parties herein at the option of any Party. Any reduction in the amount
19 of Class Counsel's attorneys' fees, Class Counsel's costs, and/or the service payment to the Class
20 Representative will not, however, constitute a fundamental change of the Settlement and will not
21 be grounds to void the Settlement. Any portion of the attorneys' fees and costs not awarded to
22 Class Counsel will be added to the Net Settlement Proceeds for distribution to the Settlement
23 Class.

24 **34. Parties' Authority.**

25 The signatories hereto represent that they are fully authorized to enter into this Stipulation
26 of Settlement and bind the Parties hereto to the terms and conditions hereof.

27 **35. Mutual Full Cooperation.**

28 The Parties agree to fully cooperate with each other to accomplish the terms of this

1 Stipulation of Settlement, including but not limited to, execution of such documents and such
2 other action as may reasonably be necessary to implement the terms of this Stipulation of
3 Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including all
4 efforts contemplated by this Stipulation of Settlement and any other efforts that may become
5 necessary by order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the
6 terms set forth herein. As soon as practicable after execution of this Stipulation of Settlement,
7 Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all
8 necessary steps to secure the Court's preliminary and final approval of the settlement.

9 **36. No Prior Assignments.**

10 The Parties hereto represent, covenant, and warrant that they have not directly or
11 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
12 person or entity any portion of any liability, claim, demand, action, cause of action or rights
13 released and discharged by this Stipulation of Settlement.

14 **37. No Admission.**

15 Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be
16 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
17 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
18 Stipulation of Settlement with the intention of avoiding further disputes and litigation with the
19 attendant inconvenience and expense. This Stipulation of Settlement is a settlement document
20 and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence
21 408 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action
22 or proceeding to approve the Settlement, and/or interpret or enforce this Stipulation of Settlement.

23 **38. Enforcement Actions.**

24 After entry of judgment, the Court shall have continuing jurisdiction under Code of Civil
25 Procedure § 664.6 for purposes of interpretation and enforcement of the terms of this Stipulation.
26 Except as otherwise provided in this Stipulation of Settlement, in the event that one or more of
27 the Parties to this Stipulation of Settlement institutes any legal action against any other Party to
28 enforce the provisions of this Stipulation of Settlement or to declare rights and/or obligations

1 under this Stipulation of Settlement, the successful Party shall be entitled to recover from the
2 unsuccessful Party reasonable attorneys' fees and costs, including expert witness fees, incurred in
3 connection with any enforcement actions.

4 **39. Notices.**

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

9 **To Plaintiff and the Settlement Class:**

10 Larry W. Lee, Esq.
11 May Tulyathan, Esq.
12 DIVERSITY LAW GROUP, P.C.
13 515 S. FIGUEROA STREET, SUITE 1250
14 LOS ANGELES, CA 90071

15 William L. Marder, Esq.
16 POLARIS LAW GROUP LLP
17 501 San Benito Street, Suite 200
18 Hollister, CA 95023

19 **To Defendant:**

20 Thomas E. Geidt, Esq.
21 GBG LLP
22 601 Montgomery Street, Suite 1150
23 San Francisco, CA 94111

24 **40. Construction.**

25 The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are
26 the result of lengthy, intensive arms' length negotiations between the Parties, and that this
27 Stipulation of Settlement shall not be construed in favor of or against any Party by reason of the
28 extent to which any Party or his or its counsel participated in the drafting of this Stipulation of
Settlement.

1 **41. Captions and Interpretations.**

2 Paragraph titles or captions contained herein are inserted as a matter of convenience and
3 for reference, and in no way define, limit, extend, or describe the scope of this Stipulation of

1 Settlement or any provision hereof. Each term of this Stipulation of Settlement is contractual and
2 not merely a recital.

3 42. **Modification.**

4 This Stipulation of Settlement may not be changed, altered, or modified, except in writing
5 and signed by the Parties hereto, and approved by the Court. This Stipulation of Settlement may
6 not be discharged except by performance in accordance with its terms or by a writing signed by
7 each of the Parties hereto or their attorneys.

8 43. **Integration Clause.**

9 This Stipulation of Settlement contains the entire agreement between the Parties relating
10 to the settlement and transactions contemplated hereby, and all prior or contemporaneous
11 agreements, understandings, representations, and statements, whether oral or written and whether
12 by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived
13 except in writing.

14 44. **Binding on Assigns.**

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

17 45. **Governing Law.**

18 All terms of this Stipulation of Settlement and its exhibits shall be governed by and
19 interpreted according to the laws of the State of California, without giving effect to any conflict of
20 law principles or choice of law principles.

21 46. **Communications.**

22 The Parties and their counsel agree that they will not issue any press releases or initiate
23 any contact with the media about this case and/or the fact, amount, or terms of the Settlement. If
24 counsel for either party receives an inquiry about the Settlement from the media, counsel may
25 respond only after the motion for preliminary approval has been filed and only by confirming the
26 terms of the Settlement. This provision does not apply to prevent any necessary disclosure to the
27 Court to seek approval of the Settlement, any court filings, or any notices of the Settlement that
28 shall be sent to Class Members by the settlement administrator.

1 47. **Signatures of All Class Members Unnecessary to be Binding.**

2 It is agreed that, because the members of the Settlement Class are numerous, it is
3 impossible or impractical to have each Class Member execute this Stipulation of Settlement. The
4 Class Notice, attached hereto as Exhibit 1, will advise all Class Members of the binding nature of
5 the release provided herein and such shall have the same force and effect as if this Stipulation of
6 Settlement were executed by each Class Member.

7 48. **Counterparts.**

8 This Stipulation of Settlement may be executed in counterparts and delivered by
9 electronic scan, pdf, DocuSign, or facsimile. Each of the counterparts, when so executed and
10 delivered, shall be deemed to be an original and, together, shall constitute one and the same
11 instrument, which shall be binding upon and effective as to all Parties.

12 Dated: April ¹²__, 2021

DocuSigned by:

Mark Ward

28C003B8-1751-41B

Mark Ward

Plaintiff and Class Representative

16 Dated: April __, 2021

SEAGATE US LLC

18 By: _____

19 Name: _____

20 Its: _____

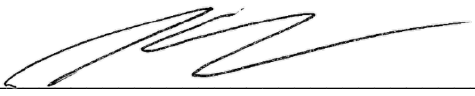
22 **APPROVED AS TO FORM AND CONTENT:**

24 Dated: April 13, 2021

DIVERSITY LAW GROUP, P.C.

and

POLARIS LAW GROUP LLP

26 By:  _____

LARRY W. LEE

Attorneys for Plaintiff Mark Ward, the Class,

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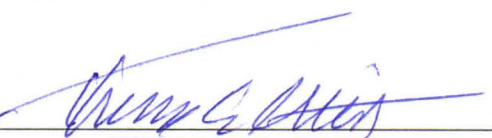
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28

and Aggrieved Employees

Dated: April 9, 2021

GBG LLP

By: 

THOMAS E. GEIDT

Attorneys for Defendant
Seagate US LLC

EXHIBIT B

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

MARK WARD, as an individual and on behalf
of all others similarly situated,

Plaintiffs,

vs.

SEAGATE US LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO: 20-CV-368917

Assigned to the Hon. Sunil R. Kulkani, Dept. 1

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$330,000.00 to pay claims to certain current and former non-exempt employees, as described below, who have been employed in California by Seagate US LLC (“Seagate”) between April 6, 2017 and August 7, 2020.
- The settlement resolves a lawsuit in which it is alleged that Seagate failed to: (1) provide accurate wage statements to certain California employees who received Shift Premium and/or Shift Overtime (OT) wages; and (2) properly calculate sick pay to certain former employees in California who received sick pay and Shift Premium wages in the same workweek, as described more fully below. The settlement avoids the costs and risks from continuing the lawsuit, pays money to employees, and releases Seagate from liability for the alleged violations.
- Lawyers for the employees will ask the Court to award them up to \$110,000 as attorneys’ fees and up to \$15,000 as costs and expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Seagate expressly denies all of the claims in the lawsuit and denies any wrongdoing or liability. The two sides disagree on how much money – if any – could have been awarded if employees won at trial.
- **Your legal rights are affected whether you act or do not act. Please read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Can Do Nothing	You need not take any action if you wish to receive your settlement payment. If the settlement is approved by the Court and you do nothing, you will automatically be mailed a settlement check for your share of the settlement at the address on file with the Settlement Administrator. In exchange for this settlement check, you will release or give up any rights to sue Seagate separate for the same legal claims that are part of this lawsuit (see page 3 for an explanation of the claims you are giving up). If you move, you must notify the Settlement Administrator of your new address.
You Can Exclude Yourself	If you ask to be excluded from the settlement, you will get no payment from the settlement, but you will keep any rights to sue Seagate for the same legal claims that are part of this lawsuit. This is the only option that allows you to be part of any other lawsuit against Seagate asserting the legal claims that were settled in this case. You cannot ask to be excluded <u>and</u> still get a settlement payment. If you ask to be excluded from the settlement, you cannot object to the settlement.
You Can Object To The Settlement	If you do not agree with the settlement, you can object to the settlement according to the procedures described below on pages 5 and 6. The Court may or may not agree with your objection. If the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment. Objecting to the settlement will <u>not</u> exclude you from the settlement.
You Can Attend the Final Approval Hearing	You can ask to speak in Court about the fairness of the settlement at the final fairness hearing. The Court will hold a final fairness hearing to determine whether the settlement is fair, reasonable, and adequate on [DATE], 2021 at [TIME]. More information regarding this hearing is set forth on page 5.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because, according to Seagate's records, you may be a member of the class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On August 5, 2020, Plaintiff Mark Ward filed this class action lawsuit against Seagate in Santa Clara County Superior Court. The lawsuit alleges violations of California Labor Code §§ 201-203, 226(a), and 2698, *et seq.* Specifically, the lawsuit alleges that Seagate failed to provide accurate itemized wage statements in accordance with California law to certain California non-exempt employees whenever Shift Premium and/or Shift OT Wages were paid. The lawsuit also alleges that Seagate failed to pay sick pay wages at the correct regular rate of pay that included non-discretionary incentives such as Shift Premium Wages. Based on these allegations, Plaintiff seeks to recover statutory penalties, civil penalties, attorneys' fees and costs on behalf of himself and other employees affected by these alleged violations (the "Settlement Class"). Seagate denies all of the material allegations in the lawsuit and denies that it did anything wrong.

The Parties have reached an agreement to resolve the claims in the lawsuit. The Court has preliminary approved Plaintiff to represent the Settlement Class. However, the Court has not made any findings with respect to the merits of Plaintiff's claims in the lawsuit.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Seagate. Plaintiff believes he would have prevailed on his claims at a trial. Seagate does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, after thorough investigation into the facts and claims, both sides agreed to a settlement. That way, they each avoid the costs, risks, and uncertainty of a trial, and the employees allegedly affected will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, and adequate and is in the best interests of all Settlement Class Members.

B. Who is in the Settlement Class?

The settlement encompasses a Settlement Class consisting of two separate groups of Seagate non-exempt employees employed in California:

(1) All current and former non-exempt employees who were paid Shift Premium wages and/or Shift OT wages between April 6, 2019 and August 7, 2020 ("the Wage Statement Class"); and

(2) All non-exempt employees who received Shift Premium and sick pay in the same workweek and whose employment ended (either voluntarily or involuntarily) at any time from April 6, 2017 through August 7, 2020 ("the Sick Pay Class").

You may be a member of one or both of these classes.

C. What has Seagate agreed to do?

Seagate will pay \$330,000 (the "Maximum Settlement Amount") to settle the lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) \$7,500 to the California Labor and Workforce Development Agency ("LWDA") as its share of the settlement payment being made under the California Private Attorneys General Act ("PAGA"); (2) Class Counsel's attorneys' fees in an amount set by the Court not to exceed \$110,000, and Class Counsel's documented litigation costs in an amount set by the Court not to exceed \$15,000; (3) a service payment to the Plaintiff in an amount set by the Court,

not to exceed \$10,000 for his service in the lawsuit; and (4) no more than \$6,000 to the settlement administrator for administering the settlement. The portion of the Maximum Settlement Amount remaining after these payments is the Net Settlement Amount, which will be paid out to those Settlement Class Members who do not opt out of the Settlement, as explained below.

D. What are you giving up to get a payment and stay in the Class?

Subject to the Court's approval of the Settlement, Plaintiff and all Settlement Class Members who do not opt out of the Settlement ("Participating Class Members") will release Seagate, and any of its former and present parents, subsidiaries, divisions, and affiliated companies, and their respective officers, directors, employees, partners, shareholders, agents, successors, assigns and legal representatives ("Released Parties"), as follows:

(1) If you are a member of the Wage Statement Class and do not opt out of the Settlement, you will be releasing the Released Parties from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, arising from April 6, 2019 through August 7, 2020, arising out of any violation of Labor Code § 226, including (a) any and all claims for failure to furnish accurate itemized wage statements; (b) all derivative claims for statutory penalties and/or civil penalties under the Private Attorneys General Act of 2004 ("PAGA") premised on Labor Code § 226; (c) pre-judgment interest; and (d) any and all claims for attorneys' fees and costs.

(2) If you are a member of the Sick Pay Class and do not opt out of the Settlement, you will be releasing the Released Parties from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, arising from April 6, 2017 through August 7, 2020, arising out of any violation for failure to pay sick pay, including (a) any and all claims for waiting time penalties under Labor Code § 203; (b) all derivative claims for statutory penalties and/or civil penalties under PAGA premised on Labor Code §§ 201-203 and 246; (c) pre-judgment interest; and (d) any and all claims for attorneys' fees and costs.

The claims being released above under subparagraphs 1 and 2 (collectively, "the Released Claims") do not include a release of *all* legal claims you may have as an employee or former employee of Seagate. The Released Claims are specifically limited to the claims set forth above.

E. How much money will I receive?

Each Participating Class Member will receive an Individual Payment Amount, which is a share of the Net Settlement Amount. The Net Settlement Amount is calculated by deducting attorneys' fees and costs, settlement administration costs, any service payment to the Plaintiff, and the LWDA's share of the PAGA penalty payment from the Maximum Settlement Amount.

Eighty percent (80%) of the Net Settlement Amount will be apportioned among Wage Statement Class Members on a pro rata basis, based on the number of wage statements reflecting payment for Shift Premium and/or Shift OT wages that were issued between April 6, 2019 and August 7, 2020 to each Wage Statement Class Member, as compared to the total number of such wage statements issued to all Wage Statement Class Members.

Twenty percent (20%) of the Net Settlement Amount will be apportioned proportionally among Sick Pay Class Members on a per capita basis.

According to Seagate's records, you received [REDACTED] wage statements containing Shift Premium and/or Shift OT wages as a non-exempt employee in California between April 6, 2019 and August 7, 2020.

Based on this number, your Individual Payment Amount as a member of the Wage Statement Class is estimated to be \$[REDACTED].

According to Seagate's records, you [are] [are not] eligible for a settlement payment as a member of the Sick Pay Class. If you are an eligible member of the Sick Pay Class, because your Seagate employment in California ended between April 6, 2017 and August 7, 2020, and you may have received Shift Premium and sick pay in the same workweek at least once during that period, your Individual Payment Amount as a member of the Sick Pay Class is estimated to be \$[REDACTED].

The actual amount that you receive as a member of either or both of these Settlement Classes could end up being more or less than these amounts, depending on the final settlement terms approved by the Court.

Please be advised that the number of wage statements listed above, and the other information regarding your eligibility as a member of either of the two Settlement Classes, is presumed to be correct unless you submit documents proving otherwise. If you disagree with the information listed above, please submit an explanation and supporting evidence to the Settlement Administrator no later than [45 days after mailing]. In the event of a dispute about the correctness of this information, the Settlement Administrator will resolve the challenge with input from Seagate and Class Counsel, subject to final resolution by the Court if necessary.

F. Will any taxes be taken out of the Individual Payment Amounts?

No. There will be no payroll withholding from your payment, because the entirety of your Individual Payment Amount will be treated as penalties and interest and reported as non-wage income on an IRS Form 1099. The Settlement Administrator will issue 1099 Forms to all Settlement Class Members who cash their checks.

The fact that payroll withholdings will not be made does not mean that the payments are not taxable income to you. Settlement Class Members are responsible for the appropriate payment of any federal, state, and/or local income or payroll taxes due on the settlement payments they receive. The tax issues for each Settlement Class Member are unique to that Class Member. You are advised to obtain tax advice from your own tax advisor with respect to any payments resulting from this settlement. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue, and nothing in this Notice is intended to or should be used by any person for the purpose of avoiding any tax liability or tax penalties.

THE FINAL APPROVAL HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Approval Hearing") on [REDACTED], 2021, at [REDACTED], in Department 1 of the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 95113. The Court will then determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's attorneys; (v) the amount that should be awarded to Plaintiff as a service payment for prosecuting this lawsuit on behalf of other Seagate employees; and (vi) the amount that should be approved for settlement administration costs. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself. The Final Approval Hearing may be continued to another date without further notice.

Due to the ongoing COVID-19 pandemic, Class Members may appear remotely at the Final Approval Hearing and should contact the court clerk for Department 1 at (408) 882-2110 or consult the court's website (www.sccourt.org) for instructions on how to appear remotely.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with your eligibility to receive a settlement payment under the Sick Pay Class and/or the number of wage statements received containing Shift Premium and/or Shift OT wages as indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position. The Settlement Administrator's address is [[Settlement Administrator address](#)].

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself from ("opt out" of) the Settlement Class, but if you choose to do so, you will not receive any benefits or a monetary payment from the proposed settlement. You will not be bound by a judgment in this case, and you will have the right to file your own lawsuit against Seagate for the same claims in this lawsuit in your own separate lawsuit if you wish.

To exclude yourself from the Settlement, you can exclude yourself by writing to the Settlement Administrator stating that you want to be excluded from the *Mark Ward v. Seagate US LLC* settlement.

Be sure to include: (a) your name, address, and telephone number; (b) your signature; and (c) a statement that you wish to be excluded from the *Mark Ward v. Seagate US LLC* settlement. Your letter must be postmarked no later than [[45 days after mailing](#)] and mailed to the Settlement Administrator at [[Settlement Administrator address](#)].

- If you submit a valid and timely request for exclusion, you will no longer be part of the Settlement. You may not object to the Settlement, and will not receive an Individual Payment Amount. However, you will retain all rights you may have against Seagate for the same legal claims made in this lawsuit.
- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you dislike the proposed settlement, you can object to the proposed settlement (or any of its terms). You can object to the proposed settlement by writing to the Settlement Administrator or you may also appear at the Final Approval Hearing to have the Court hear your objections, either in person or through an attorney at your own expense.

If you wish to submit a written objection, you must include: (a) the case name and number of this lawsuit, *Mark Ward v. Seagate US LLC*, Case No. 20-CV-368917; (b) your name, current address, and telephone number; (c) the grounds for your objection; and (d) any and all evidence for which your objection is based on. All written objections and supporting papers must be mailed to the Settlement Administrator at [[Settlement Administrator address](#)]. Written objections must be postmarked no later than [[45 days after](#)

mailing]. However, you may show up and raise an objection at the Final Approval Hearing, either in person or through counsel retained at your own expense, whether or not you provided prior written notice of your objection.

If you submit an objection, you will remain eligible for a monetary payment under the Settlement if the Court approves the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement. You cannot exclude yourself from the Settlement **and** submit an objection to the Settlement.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed Settlement Agreement, which is on file with the Clerk of the Santa Clara Superior Court, 191 N. First Street, San Jose, CA 95113, and may also be reviewed online at **[insert court website link]** or at **[Settlement Administrator's website]**.

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF'S ATTORNEYS: Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, CA 90071, Phone: (213) 488-6555; and William L. Marder of Polaris Law Group LLP, 501 San Benito Street, Suite 200, Hollister, CA 95023, Phone: (831) 531-4214. **DO NOT CALL THE COURT.**

**BY ORDER OF THE SANTA CLARA COUNTY
SUPERIOR COURT OF THE STATE OF CALIFORNIA**