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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MANUEL GODOY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
California corporation; and DOES 1 through 10,
inclusive,
Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

[Assigned to Hon. Randall J. Sherman, Dept.
CX105]

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: December 3, 2021
Time: 10:00 a.m.
Courtroom: Dept. CX105
Judge: Hon. Randall J. Sherman

Action Filed: July 17, 2020
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on December 3, 2021, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department CX105 of the above-captioned Court, located at 751 W. Santa Ana
4 Boulevard, Santa Ana, California 92701, Plaintiff MANUEL GODOY (“Plaintiff”) will and hereby does
5 move this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Preliminarily approving the JOINT STIPULATION OF CLASS ACTION
9 SETTLEMENT (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Moon & Yang, APC, as Class Counsel;

11 4. Appointing Plaintiff as the Class Representative;

12 5. Approving the use of the proposed notice procedure and related notice form;

13 6. Approving Phoenix Settlement Administrators as the third-party administrator;

14 7. Directing that notice be mailed to the Class; and,

15 8. Scheduling a hearing date for motions for final approval of class action settlement
16 and awards of attorneys’ fees and costs.

17 Good cause exists to grant this Motion because:

18 1. The Class meets all of the requirements for class certification for settlement
19 purposes under Code of Civil Procedure § 382;

20 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
21 disputed wage and hour claims asserted by Plaintiff;

22 3. Plaintiff and Class Counsel are adequate to represent the Class;

23 4. The proposed notice procedures and related forms comply with California Rules of
24 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport
25 with due process; and

26 5. Based on the foregoing, notice should be directed to the Class Members and a final
27 fairness hearing should be scheduled (Plaintiff suggests about 150 days after preliminary
28 approval is granted).

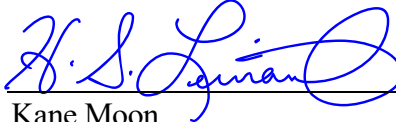
1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
2 which require approval by the Court of a class action settlement and permit the Court to extend the page
3 limit for memoranda.

4 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
5 and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator in
6 support thereof, all papers and pleadings on file with the Court in this action, all matters judicially
7 noticeable, and on such oral and documentary evidence as may be presented in connection with the
8 hearing on the Motion.

9
10 Respectfully submitted,

11 Dated: October 19, 2021

MOON & YANG, APC

12 By: 
13 Kane Moon
14 H. Scott Leviant
15 Lilit Tunyan

16 Attorneys for Plaintiff MANUEL GODOY
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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION.....	1
II. THE MAJOR TERMS OF SETTLEMENT	1
III. FACTUAL AND PROCEDURAL BACKGROUND	4
A. Plaintiff's Claims	4
B. Pre-Mediation Data Production and Analysis.....	5
C. Settlement.....	5
IV. CLASS DEFINITION.....	6
V. DISCUSSION.....	7
A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382.....	7
1. The Members of the Class Are Both Objectively Ascertainable and Sufficiently Numerous.	8
2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.....	9
3. Plaintiff's Claims Are Typical of Those of the Class.	10
4. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class.....	11
5. Proceeding as a Class Action is Superior to Individual Actions.....	12
B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendants' Potential Liability Exposure and the Risks of Continued Litigation	12
1. Class Action Settlements Are Subject to Review and Approval.	12
2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.	13

1	3.	The Settlement Represents a Fair, Adequate, and Reasonable Compromise of	
2		Class Members’ Claims Based on Defendant’s Estimated Liability Exposure	
3		Given the Risks Continued Litigation Would Entail.	14
4	4.	The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and	
5		Reasonable.	18
6	5.	The Proposed Enhancement Awards to Plaintiff Is Fair, Adequate, and	
7		Reasonable and Warrants Preliminary Approval.....	18
8	6.	The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,	
9		and Reasonable and Merits Preliminary Approval.	19
10	7.	The Proposed Payment to the Administrator Is Fair and Reasonable.....	20
11	8.	The Proposed Class Notice Complies with Rule 3.766(d) and (e)	20
12	a)	The Notice Procedure Satisfies Due Process	20
13	b)	The Notice is Accurate and Informative	21
14	9.	The PAGA Allocation is Reasonable.....	21
15	VI.	THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING	22
16	VII.	CONCLUSION.....	22

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	13
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008)	22
<i>Bell v. Farmers Ins. Exchange</i> , 115 Cal. App. 4th 715 (2004)	18
<i>Bowles v. Superior Court</i> , 44 Cal. 2d 574 (1955)	9
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012)	10, 17
<i>Cartt v. Sup. Ct.</i> , 50 Cal. App. 3d 960 (1975)	20
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	19
<i>Classen v. Weller</i> , 145 Cal. App. 3d 27 (1983)	11
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal. App. 3d 605 (1987)	9
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996)	8, 13, 19, 20
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014)	15
<i>Fireside Bank v. Superior Court</i> , 40 Cal. 4th 1069 (2007)	10
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	10
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	8
<i>Hebbard v. Colgrove</i> , 28 Cal. App. 3d 1017 (1972)	8
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010)	7, 9
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	13
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016)	19
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	7, 12
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980)	12
<i>Mallick v. Superior Court</i> , 89 Cal. App. 3d 434 (1979)	13, 20
<i>McGhee v. Bank of America</i> , 60 Cal. App. 3d 442 (1976)	11
<i>Miller v. Woods</i> , 148 Cal. App. 3d 862 (1983)	8
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010)	13
<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal. 5th 955, 980 (2019)	8

1	<i>Reyes v. Los Angeles County Bd. of Supervisors</i> , 196 Cal. App. 3d 1263 (1979).....	9
2	<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	7, 9
3	<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007).....	11
4	<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976).....	12
5	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	14

FEDERAL DECISIONAL AUTHORITY

8	<i>Air Line Stewards & Stewardesses Ass’n, Local 550 v. American Airlines, Inc.</i> ,	
9	455 F.2d 101 (7th Cir. 1972)	14
10	<i>Alaniz v. California Processors, Inc.</i> , 73 F.R.D. 269 (N.D. Cal. 1976)	8
11	<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497 (9th Cir. 1992).....	11
12	<i>In re Drexel Burnham Lambert Group, Inc.</i> , 960 F.2d 285 (2d Cir. 1992),	
13	cert. dismissed, 506 U.S. 1088, 122 L. Ed. 497, 113 S. Ct 1070 (1993).....	8
14	<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015).....	17
15	<i>O’Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016).....	22
16	<i>Officers for Justice v. Civil Serv. Comm’n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982)	13
17	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985).....	21
18	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000).....	17
19	<i>Schwartz v. Harp</i> , 108 F.R.D. 279 (C.D. Cal. 1985).....	11
20	<i>Shaw v. Toshiba America Information Systems, Inc.</i> , 91 F.Supp.2d 942, 972 (E.D. Tex. 2000)	19
21	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	18
22	<i>Viceral v. Mistras Group</i> , 2016 WL 5907869 (N.D. Cal. 2016)	22
23	<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	22

STATUTES

26	Code of Civil Procedure § 382.....	7, 8, 22
27	Labor Code § 2699	15

RULES

Rules of Court, rule 3.766	20
Rules of Court, Rule 3.769	8, 12, 21

TREATISES

Newberg on Class Actions (3d ed. 1991) § 11.27	8
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OTHER AUTHORITIES

<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006	17
Manual for Complex Litigation, 2d (1993) § 30.45	8

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff respectfully requests that
3 this Court preliminarily approve the proposed class action settlement set forth in the JOINT
4 STIPULATION OF CLASS ACTION SETTLEMENT (“Settlement” or “Agreement”) with Defendant
5 INTERTRADE INDUSTRIES, LTD.(“Defendant”).

6 Defendant manufactures plastics and foam products. Defendant services the aerospace,
7 automotive, consumer products, electronics, food service, retail displays, medical, and packaging
8 industries in the State of California. Plaintiff was employed by Defendant and alleged various wage and
9 hour violations, which Defendant denies. After informal discovery, the exchange of documents, and an
10 arm’s-length mediation session with an experienced mediator, Hon. Carl J. West (Ret.), Plaintiff and
11 Defendant (collectively referred to herein as the “Parties”) reached a proposed class action settlement
12 with a gross settlement amount (“GSA”) of **\$450,000.00** in compromise of disputed claims asserted on
13 behalf of the below-defined Class consisting of approximately **193** members. Plaintiff believes that this
14 settlement is a fair, adequate, and reasonable compromise of the disputed claims for alleged unpaid wage
15 and hour violations and penalties asserted in this case.

16 Plaintiff now submits this Motion for Preliminary Approval of Class Action Settlement, along
17 with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto).
18 For the Court’s convenience, below is a summary of the key provisions of the Settlement.

19 **II. THE MAJOR TERMS OF SETTLEMENT**

20 As modified following the directions of the Court, the provisions of the proposed Settlement
21 include the following:

- 22 • Defendant agrees not to oppose certification of a Class for purposes of Settlement only
23 (Settlement, ¶ 19);
- 24 • **Settlement Amount:** Defendant will pay a maximum of **\$450,000.00**, referred to as the
25 Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross**
26 payment per Class Member of approximately **\$2,331.61** (Settlement, ¶ 26(c));
- 27 • **Class Size:** approximately **193** individuals as of the date of mediation. (Leviant Decl., ¶ 18.)
- 28 • **PAGA Group Size:** approximately **133** individuals as of the date of mediation (Leviant

Decl., ¶ 18);

- Escalator Clause: The number of Class Members is approximately one hundred ninety-three (193) as of June 29, 2021, and the number of workweeks worked in the Class Period for those Class Members was approximately fourteen thousand eight hundred thirty-three (14,833.00) as of that date. If it is later determined that, on the date of preliminary approval, the number of workweeks in the Class Period is more than 10% greater than the estimated number of workweeks on June 29, 2021, the Gross Settlement Amount shall be increased by one percent for each percent over the 10% threshold that the actual number of workweeks exceeds the estimated number of workweeks (if the number of workweeks increases by 11%, the Gross Settlement will increase 1%) (the “Escalator Clause”). (Settlement, ¶ 26(d).)
- Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 26(e));
- Certification: Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Leviant, at Paragraphs 34-40;
- No Claim Form: No claim form is required (Settlement, ¶ 26(f));
- Class Release: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) as defined by the First Amended Complaint (Settlement, ¶ 37);
- PAGA Release: The Class Members will release the PAGA Claims set forth in this Action, that were identified in the Complaint and Plaintiff’s LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 11, 14, 15 and 37(c)(3));
- Release Effective Date: The Release is not active until Defendant tenders all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 37(b));
- Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be available for distribution to Class Members who do not opt

1 out, with each Class Member receiving a share based on the number of workweeks each
2 Class Member worked for a Defendant within the Class Period. The Net Settlement
3 Amount is estimated to be at least **\$224,500**, resulting in an average **net** payment per Class
4 Member of at least **\$1,163.21**, before any tax withholdings. (Settlement, ¶ 26(g));

- 5 • Tax Allocation: The amounts distributed to Class Members will be characterized as 20%
6 alleged unpaid wages, 80% as alleged unpaid penalties and unpaid interest, and PAGA
7 Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 26(k));
- 8 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes
9 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
10 constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));
- 11 • Settlement Administrator: The notice portion of the Settlement will be administered by a
12 third-party Administrator, Phoenix Settlement Administrators, and the Parties estimated that
13 the costs of administration should not reasonably exceed \$15,000.00. Phoenix Settlement
14 Administrators' low bid for settlement administration services in the amount of **\$8,000.00**
15 was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 26(p));
- 16 • Class Data for Administration: The Settlement Administrator will receive the Class List
17 within 15 calendar days of Preliminary Approval, use the NCOA database to update the
18 Class List, and then use skip tracing on returned Notices (Settlement, ¶ 32(a));
- 19 • Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶
20 32(b)). The Notice describes how to dispute workweeks, submit and objection in writing,
21 in person, or through an attorney, or request exclusion (Settlement, ¶ 26(s)).
- 22 • Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 26(t));
- 23 • Objections: Objections can be submitted in person, through an attorney, or in writing to the
24 Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 26(x));
- 25 • Exclusion Requests: The procedure for exclusion requests, mailing a request to the
26 Settlement Administrator, is the same as the procedure for submitting a writing objection
27 (Settlement, ¶¶ 26(w) and 26(x));
- 28 • PAGA Allocation: From the GSA, **\$60,000** will be allocated to settle claims brought

pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*

(“PAGA”), and seventy-five percent (75%), or **\$45,000**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 9.)

- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration.
- Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to **\$7,500.00** for Plaintiff, to be paid from the GSA (Settlement, ¶ 26(n));
- Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$150,000.00**), and actual costs, in an amount not to exceed **\$15,000**, to be paid out of the GSA (Settlement, ¶ 26(m)).
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California State Controller’s Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment (Settlement, ¶¶ 34-35);
- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 30);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 58).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On July 17, 2020, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Minimum and Regular Rate [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];

1 and, (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (7) Unfair
2 Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. On November 20, 2020 Plaintiff filed his
3 First Amended Complaint adding the eight case of action for civil penalties under PAGA [Cal. Lab.
4 Code § 2699, et seq.]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that
5 worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the
6 period beginning four years before the filing of the initial complaint and ending when Notice to the Class
7 is sent. (Leviant Decl., ¶ 4.)

8 Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim
9 for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et
10 seq.] (“PAGA”). On November 16, 2020, Plaintiff filed a First Amended Complaint adding a cause of
11 action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. (Leviant Decl., ¶ 5.)

12 **B. Pre-Mediation Data Production and Analysis**

13 The Parties have conducted informal discovery and investigation of the facts and law. Such
14 discovery and investigation have included, inter alia, the exchange of informal data and discoverable
15 information in preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed
16 payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period,
17 including but not limited to the numbers of former and current members of each purported subclass
18 within the Class, average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also
19 provided documents reflecting their wage and hour policies and practices during the Settlement Period
20 and information regarding the total number of current and former employees in the Class. (*Id.*)

21 After reviewing documents regarding Defendant’s wage and hour policies and practices and
22 other information obtained during the informal exchange of discovery, Class Counsel were able to
23 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
24 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
25 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
26 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

27 **C. Settlement**

28 On June 29, 2021, the Parties mediated before a mediator, Hon. Carl J. West (Ret.), who is a

highly experienced and well-regarded mediator for wage and hour class action litigation. (Leviant Decl., ¶ 8.) At the mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of the claims and defenses. (*Id.*) The Parties have not been able to reach a settlement at the mediation. However, following the settlement negotiations held by the Parties after the mediation, the Parties have reached an agreement regarding the substantive terms of a class-wide settlement, pending the Parties' agreement on a long-form class settlement agreement. (*Id.*) The Parties then signed a long form settlement agreement (the Agreement). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class.

Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

IV. CLASS DEFINITION

The Class is defined as follows:

All individuals employed by Defendant in California and classified as "non-exempt" at any time during the Class Period (the "Class Period" is July 17, 2016 through the date upon which the Court grants preliminary approval of this Settlement, or January 1, 2022, whichever is earlier). "Settlement Class Members" are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.)

(Leviant Decl., ¶ 34 and Exhibit 1.)

The PAGA Employee is defined as follows:

1 All Class Members that worked at any time during the PAGA Period (the “PAGA
2 Period” is July 17, 2019 through the date upon which the Court grants preliminary
3 approval of this Settlement, or March 1, 2022, whichever is earlier.) All PAGA
Employees are “aggrieved employees” as defined pursuant to PAGA. PAGA
Employees cannot opt out of the settlement of the PAGA claim.

4 (Settlement, ¶¶ 10-11.)

5 **V. DISCUSSION**

6 **A. The Court Should Conditionally Certify the Class Because It Meets All the**
7 **Requirements for Certification for Settlement Purposes Under CCP § 382**

8 Under Code of Civil Procedure § 382,¹ class certification is warranted so long as there is a
9 numerous and ascertainable class with a well-defined community of interest among its members and that
10 a “class action proceeding is superior to other means for a fair and efficient adjudication of the
11 litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any
12 doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to
13 later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this
14 Settlement only, Defendant has agreed not to oppose conditional certification of the proposed class
15 action. (Settlement ¶ 26.)

16 “The certification question is ‘essentially a procedural one that does not ask whether an action is
17 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
18 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the
19 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal.
20 App. 4th 1286, 1298 (2010). In ruling on certification, a trial court’s task is to determine “whether ... the
21 issues which may be jointly tried, when compared with those requiring separate adjudication, are so
22 numerous or substantial that the maintenance of a class action would be advantageous to the judicial
23 process and to the litigants.” *Id.* Thus, “[t]he relevant comparison lies between the costs and benefits of
24 adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous
25 separate actions” *See, e.g., id.*

26
27 ¹ Code Civ. Proc. § 382, which is the statutory basis for the maintenance of class actions under
28 California law, states in relevant part, “[W]hen the question is one of a common or general interest, of
many persons, or when the parties are numerous, and it is impracticable to bring them all before the
court, one or more may sue or defend for the benefit of all.”

1 “[I]t is also well established that trial courts should use different standards to determine the
2 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
3 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.
4 App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As
5 the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the
6 non-representative class members,” that concern is “protected by the trial court’s fairness review of the
7 settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

8 Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel*
9 *Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed.
10 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the
11 “district court issued an order certifying the class and approving the settlement agreement.” *Id.* at 289;
12 see also *Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) (“the use of the
13 tentative settlement class procedure was appropriate in this case”), *aff’d*, 572 F.2d 657 (9th Cir.), cert.
14 denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action
15 litigation and an approved procedure which ought to be followed in this case. See Newberg on Class
16 Actions (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; Manual for Complex Litigation, 2d (1993) § 30.45.

17 In view of these standards, and as shown below, the Class should be certified for purposes of
18 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

19 **1. The Members of the Class Are Both Objectively Ascertainable and**
20 **Sufficiently Numerous.**

21 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
22 the class, and (3) the means of identifying class members. See *Miller v. Woods*, 148 Cal. App. 3d 862,
23 873 (1983). In this case, Plaintiff contends that all three considerations strongly favor class certification.

24 A class is ascertainable when “it is defined ‘in terms of objective characteristics and common
25 transactional facts’ that make ‘the ultimate identification of class members possible when that
26 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). No set
27 number of class members is required to maintain a class action. *Hebbard v. Colgrove*, 28 Cal. App. 3d
28 1017, 1030 (1972). In fact, the California Supreme Court has upheld a class of as few as ten members.

1 *Bowles v. Superior Court*, 44 Cal. 2d 574 (1955).

2 The class definition is sufficiently specific to enable the Parties, Class Members, and the Court to
3 determine makeup of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987)
4 (proposed class defined as all persons nationwide subscribing to telephone service since January 1, 1981,
5 who were charged for one or more unanswered long distance calls, deemed “plainly” ascertainable).

6 The question of whether class members are easily identifiable turns on whether a plaintiff can
7 establish “the existence of an ascertainable class,” not whether the plaintiff can “identify the individual
8 members of such class as prerequisite to the class suit.” *Daar*, 67 Cal.2d at 706; *see also, Reyes v. San*
9 *Diego County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1275 (1987).

10 In this case, there are approximately 193 Class Members, all of whom may be identified by
11 reference to Defendant’s records. In addition, to facilitate the administration of the Settlement, Defendant
12 has agreed to share the information from records and has already demonstrated that it can do so when
13 providing class-wide informal discovery to Plaintiff to facilitate settlement discussions. Accordingly, the
14 Class is not only ascertainable, but also sufficiently numerous. (Leviant Decl., ¶ 35.)

15 **2. There Are Common Questions That Predominate Over Any Questions That**
16 **May Be Unique to Individual Class Members.**

17 The community of interest requirement embodies three factors: (1) predominant questions of law
18 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
19 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806; *Richmond*, 29
20 Cal. 3d at 473-75. In this case, Plaintiff’s claims satisfy all three factors.

21 A question of law or fact is common to the members of a class if it may be resolved through
22 common proof. *See, Jaimez*, 181 Cal.App.4th at 1305. As for predominance, it “is a comparative
23 concept, and ‘the necessity for class members to individually establish eligibility and damages does not
24 mean individual fact questions predominate.’” *Sav-on*, 34 Cal. 4th at 334, quoting *Reyes v. Los Angeles*
25 *County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1278 (1979). Thus, “[i]ndividual issues do not render
26 class certification inappropriate so long as such issues may effectively be managed.” *Id.* This is
27 especially so where the key difference between class members solely concerns their damages. *See id.*

28 In this case, common questions include, but are not limited to: i. Whether or not Defendant paid

proper wages to the Class; ii. Whether or not Defendant provided meal periods to the Class; iii. Whether or not Defendant provided rest periods to the Class; iv. Whether or not Defendant paid compensation timely upon separation of employment to former Class Members; v. Whether or not Defendant paid compensation timely throughout Class Members' employment; vi. Whether or not Defendant provided accurate itemized wage statements to the Class; vii. Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203; viii. Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208; and ix. Whether or not Plaintiff and the Class are entitled to penalties pursuant to PAGA (Leviant Decl., ¶¶ 37-38.)

In the Action, Plaintiff's claims present sufficient common issues of law and fact that predominate over individual issues and warrant class certification. From their review of the documentation provided, Class Counsel determined that for purposes of these claims, Defendant's policies and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by means of the Settlement than to require each Class Member to litigate his or her individual claims. Therefore, common questions predominate over any questions that may be unique to individual Class Members, and class-wide settlement is superior to any other method of resolution.

3. Plaintiff's Claims Are Typical of Those of the Class.

Typicality "requires a showing that the class representative has claims or defenses typical of the class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), citing *Fireside Bank v. Super. Ct.*, 40 Cal. 4th 1069, 1089 (2007), and *Sav-On*, 34 Cal. 4th at 326, approved by *Jaimez*, 181 Cal. App. 4th at 1298 and *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012).

To satisfy the typicality requirement, California law does not require that Plaintiff has claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of

1 conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007). The typicality requirement for
2 a class representative refers to the nature of the claim or defense of the representative, and not to the
3 specific facts from which it arose or the relief sought. *Id.*; *Hanon v. Dataproducts Corp.*, 976 F.2d 497,
4 508 (9th Cir. 1992).

5 The purpose of this requirement is to ensure that the representative plaintiff has interests that are
6 reasonably co-extensive with those of absent class members. *See id.* “The test of typicality ‘is whether
7 other members have the same or similar injury, whether the action is based on conduct which is not
8 unique to the named plaintiffs, and whether other class members have been injured by the same course of
9 conduct.’” *Id.*, quoting *Schwartz v. Harp* 108 F.R.D. 279, 282 (C.D. Cal. 1985). Notably, “it has never
10 been the law in California that the class representative must have *identical* interest with the class
11 members.” *Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983). In light of these standards, Plaintiff is
12 typical of class members.

13 Here, like other Class Members, Defendant employed Plaintiff in a non-exempt position during
14 the Class Period, and Plaintiff was subject to the same policies alleged to have impacted the entire class.
15 (Leviant Decl., ¶ 36.) Plaintiff and other Class Members share the same claims stemming from
16 Defendant’s alleged violations of the Labor Code and relevant wage order. In addition, Defendant’s
17 main defense, namely that its policies and practices fully comply with California law, apply equally to
18 the claims of all Class Members. Thus, Plaintiff is typical of the Class.

19 4. Plaintiff and Plaintiff’s Counsel Will Adequately Represent the Class.

20 The adequacy requirement is met where the plaintiff is represented by counsel qualified to
21 conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to class members’
22 interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451(1976). In other words, where the plaintiff
23 has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest
24 that might hinder the plaintiff’s ability to represent the class. *Id.*

25 In the Action, Plaintiff has no conflicts of interest with other Class Members and has agreed to
26 place Class interests above Plaintiff’s own. (Fuentes Decl., ¶¶ 5-20; Leviant Decl., ¶ 39.) Moreover,
27 Plaintiff’s counsel are experienced in wage and hour class action litigation and have no conflicts of
28 interest with absent Class Members. (Leviant Decl., ¶¶ 21-26, 39.) As such, this Court should appoint

Plaintiff as Class Representative for the Class and appoint Plaintiff's Counsel as Class Counsel.

5. Proceeding as a Class Action is Superior to Individual Actions

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23 Cal. 4th at 434 (relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress the alleged wrongdoing). Furthermore, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results, which may be avoided by class certification.

B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendants' Potential Liability Exposure and the Risks of Continued Litigation

California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the Class as proposed, and schedule a final fairness and final approval hearing.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

To evaluate a settlement, the trial court must receive "basic information about the nature and

1 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
2 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
3 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
4 theoretical amount that the class could recover:

5 Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all
6 cases to contain evidence in the form of an explicit statement of the maximum amount
7 the plaintiff class could recover if it prevailed on all its claims—a number which
8 appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims,
require any such explicit statement of value; it requires a record which allows “an
understanding of the amount that is in controversy and the realistic range of outcomes
of the litigation.”

9 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

10 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
11 **Between Experienced Counsel with the Assistance of a Highly Qualified**
12 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

13 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
14 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
15 experienced in similar litigation, and the percentage of objectors is small.² *Dunk*, 48 Cal.App.4th at 1802;
16 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
17 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
18 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.,*
19 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
20 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
21 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

22 Relevant factors in making this determination, include, but are not limited to:

23 [T]he complexity and likely duration of further litigation, the risk of maintaining class
24 action status through trial, the amount offered in settlement, the extent of discovery
25 completed and the state of the proceedings, the experience and views of counsel, the
26 presence of a governmental participant, and the reaction of the class members to the
proposed settlement.

27 ² Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement
approval process.

1 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors
2 considered to each case and give due regard to “what is otherwise a private consensual agreement
3 between the parties.” *Id.*

4 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
5 counsel with the assistance of highly regarded mediator. (Leviant Decl., ¶¶ 8-10.) With respect to the
6 claims at issue in this case, Plaintiff obtained data from Defendant and then carefully reviewed that
7 information. Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail
8 about their work experiences and Defendant’s practices.

9 Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated
10 risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff’s
11 counsel conducted were sufficient to provide them with enough information to intelligently evaluate the
12 estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed
13 below and are also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer,*
14 *Inc.*, 91 Cal. App. 4th 224, 245 (2001).

15 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
16 **of Class Members’ Claims Based on Defendant’s Estimated Liability**
17 **Exposure Given the Risks Continued Litigation Would Entail.**

18 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
19 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a
20 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
21 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
22 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for
23 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
24 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
25 side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*
26 *Ass’n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

27 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
28 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that

1 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
2 *US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC*
3 2014 WL 205039 (S.D. Cal. 2014); (ii) the risk that Defendant's meal and rest period policies might not
4 ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28
5 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to
6 ultimate viability of proposition); (iii) the risk that uncertainties pertaining to the ultimate legality of
7 Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor
8 Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be
9 construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk
10 that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see Labor*
11 *Code § 2699(e)(1)*; (vi) the risk that class treatment could be deemed improper as to one or more claims,
12 except for settlement purposes; and, (vii) the risk that lengthy appellate litigation could ensue. (Leviant
13 Decl., ¶ 16.) These risks are non-exhaustive.

14 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
15 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
16 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
17 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
18 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
19 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
20 approximately 193 members of the Class, the average **gross** recovery is at least **\$2,331.61** per class
21 member, and the estimated average **net** recovery for each Class Member is approximately **\$1,163.21**.
22 (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have
23 achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for
24 Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter
25 amount of time during the class period. (*Id.*)

26 After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement
27 is fair, adequate, and reasonable. (Leviant Decl., ¶ 18.) The Gross Settlement Amount of **\$450,000.00** is
28 about 65% of the **\$696,926.85** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the

litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*) The maximum calculated reasonable exposure is **\$2,905,841.80**, including PAGA penalties. (*Id.*) A reasonably estimated exposure for unpaid wages due to invalid alternative workweek schedule was calculated, with the assistance of an expert, to be approximately **\$671,486.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$377,710.88**, assuming certification probability of 75% and merits success at 75%. A reasonably estimated exposure for unpaid wages due to rounding was calculated, with the assistance of an expert, to be approximately **\$17,305.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$9,734.06**, assuming certification probability of 75% and merits success at 75%. The reasonably estimated exposure for rest break violations over the class period was calculated at **\$264,465.00**, but with low chances of certification and proof of liability (20% and 25% respectively) for a risk-adjusted exposure of **\$13,223.25** (based on missed breaks at least once per pay period for 100% of the class). The reasonably estimated exposure for meal break violations over the class period was calculated at **\$322,500.80**, with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **\$64,500.16**. Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$26,835.00** and **\$67,423.50**, respectively, on maximum exposures of **\$268,350.00** and **\$674,235.00**, respectively. Performing risk-adjusted valuations for all claims yields a total value in the range of **\$559,426.85**, excluding PAGA.³ (*Id.*) PAGA penalties were calculated as having a maximum realistic exposure of **\$687,500.00**, but a risk adjusted value of **\$137,500.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees. The

³ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

1 concurrently filed Declaration of H. Scott Leviant sets forth claim valuation in additional detail. (*See*,
2 Leviant Decl., ¶ 18.)

3 This result here is fully supportable as reasonable. First, it is important to recognize the
4 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶
5 19.) Second, rest break and meal period claims have been challenging to certify for many years, even
6 after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than
7 conventional wisdom holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California*
8 *sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at
9 [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
10 [california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); *see also*, *Findings of the Study of California Class Action Litigation, 2000-2006*,
11 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page
12 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a
13 settlement *or* as part of a contested certification motion).

14 Here, the estimated certification probabilities are *above* the average rate at which cases were
15 certified in California over the study years, based upon data available through the California Courts
16 websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are
17 ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly 15.4% of the maximum
18 theoretical recovery (estimated to be approximately \$2,905,841, including PAGA), which falls within the
19 expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate
20 the result by examining only the premium wages at issue (approximately \$1,275,757, with no risk
21 reduction), excluding penalties and interest; the settlement is well over 35.2% of the premium wages
22 (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.⁴
23 This Settlement achieves the goals of the litigation.

24
25 ⁴ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
26 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
27 amount than the maximum civil penalty amount specified by this part...”)), and, second, courts evaluate
28 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
Rodriguez v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); *see also* *Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a
defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within
the range of possible approval).

1 **4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate,**
2 **and Reasonable.**

3 The proposed method of allocating the Settlement Fund to Class Members also is fair and
4 reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members
5 based on time worked by the Class Member during the Class Period, in relation to the total amount of
6 time worked by all participating Class Members collectively during the class period. This proposed
7 method is fair and reasonable because each Class Member's actual potential damages vary based on the
8 number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of
9 pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when
10 a higher number of incidents occur). A Class Member who worked a greater number of weeks for
11 Defendant will receive a larger payment under the Settlement than a Class Member who worked for a
12 shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

13 **5. The Proposed Enhancement Awards to Plaintiff Is Fair, Adequate, and**
14 **Reasonable and Warrants Preliminary Approval.**

15 The proposed enhancement payments to Plaintiff is intended to recognize the substantial
16 initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to
17 compensate named plaintiffs for the services they provide and the risks they incur during class action
18 litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*,
19 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in
20 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving
21 a \$50,000 enhancement award). Plaintiff contributed time to the prosecution of this matter, including
22 assistance prior to the mediation with information and substantial time conferring with counsel over the
23 course of this litigation and before it was filed. (Fuentes Decl., ¶¶ 5-20; Leviant Decl., ¶ 32.) The
24 enhancement also recognizes the considerable risks Plaintiff undertook on behalf of the Class to be
25 personally liable for all costs incurred regardless of the success of the litigation or class certification, as
26 well as the personal risk of facing intrusive discovery and potential disclosure to future employers that
27 Plaintiff sued a former employer, making future employment prospects uncertain.
28

1 **6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,**
2 **and Reasonable and Merits Preliminary Approval.**

3 The California Supreme Court removed any lingering doubt about the use of the percentage of
4 the fund method to award attorney’s fees in California Courts:

5 We join the overwhelming majority of federal and state courts in holding that when
6 class action litigation establishes a monetary fund for the benefit of the class members,
7 and the trial court in its equitable powers awards class counsel a fee out of that fund, the
8 court may determine the amount of a reasonable fee by choosing an appropriate
9 percentage of the fund created. The recognized advantages of the percentage method—
10 including relative ease of calculation, alignment of incentives between counsel and the
11 class, a better approximation of market conditions in a contingency case, and the
12 encouragement it provides counsel to seek an early settlement and avoid unnecessarily
13 prolonging the litigation (See pt. I, *ante*; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97
14 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p.
15 516)—convince us the percentage method is a valuable tool that should not be denied
16 our trial courts.

17 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁵ Thus, this Court may and, as strongly
18 encouraged by the California Supreme Court, *should* award attorney’s fees to Plaintiff’s counsel based
19 upon the percentage of the fund methodology.

20 Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the
21 lodestar method is used, the outcome is roughly the same: “Empirical studies show that, regardless
22 whether the percentage method or the lodestar method is used, fee awards in class actions average
23 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008), quoting
24 *Shaw v. Toshiba America Information Systems, Inc.*, 91 F.Supp.2d 942, 972 (E.D. Tex. 2000). This is
25 also consistent with Plaintiff’s counsels’ experience in these types of cases. Here, Plaintiff’s attorneys
26 intend to request attorneys’ fees of up to \$150,000.00 (one-third of the GSA), and costs capped at
27 \$15,000 (which includes payment for mediation, filing fees, legal research fees, and other standard
28 expenses). (Leviant Decl., ¶ 31.) Given the efforts and risks involved in this case, as well as the results
29 achieved, these amounts are within the range of reasonableness and warrant *preliminary approval*.

30 ⁵ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
31 doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
32 inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
33 to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

2 In deciding whether to approve a proposed settlement, a trial court must determine if the
3 proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In
4 exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate,
5 and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Phoenix Settlement
6 Administrators, which has been selected due to its competitive bid, estimates that administration can be
7 performed for **\$8,000.00**. In counsel’s experience, based on similar wage-and-hour actions, an estimated
8 cost of **\$8,000.00** is a fair and reasonable amount for administration fees and should be preliminarily
9 approved. (Leviant Decl., ¶ 33.)

10 **8. The Proposed Class Notice Complies with Rule 3.766(d) and (e)**

11 Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of
12 the notice, the court must consider the interests of the class, the type of relief requested, the stake of the
13 individual class members, the cost of notifying class members, the resources of the parties, the possible
14 prejudice to class members who do not receive notice, and the *res judicata* effect on class members.
15 Rules of Court, Rule 3.766(e).

16 a) *The Notice Procedure Satisfies Due Process*

17 Plaintiff requests that the Court approve the proposed plan for giving notice to the Class and
18 administering the Settlement. The notice process is set forth in the Settlement. The standard for
19 determining the adequacy of notice is whether the notice has “a reasonable chance of reaching a
20 substantial percentage of the class members.” *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975).
21 California law vests the Court with broad discretion in fashioning an appropriate notice program. *Cartt*,
22 50 Cal. App. 3d at 973-74. There is no statutory or due process requirement that all class members
23 receive actual notice, but in this matter, the Class Members will receive direct mailed notice. Direct mail
24 notice to Class Members’ last known address is the best possible notice under the circumstances.
25 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

26 As the Court of Appeal has explained, “[t]he notice given should have a reasonable chance of
27 reaching a substantial percentage of the Class Members” *Cartt*, 50 Cal. App. 3d at 974. For class
28 claims “for money damages or similar relief at law, notice sent by first class mail to the last known

1 address of each member of the plaintiff class is sufficient.” *Phillips Petroleum Co. v. Shutts*, 472 U.S.
2 797, 811 (1985). Here, the proposed procedure includes safeguards, including, but not limited to,
3 searches for address changes and the re-mailing of returned notices after skip traces. As such, the
4 proposed procedure provides a reasonable chance that Class members will receive notice.

5 *b) The Notice is Accurate and Informative*

6 The proposed Notice of Class Action Settlement should be approved for dissemination to the
7 Class Members. It will be disseminated through direct mail to the last known address for each Class
8 Member. It informs the Class Members of the terms of the settlement and their right to be excluded from
9 the Settlement. If there are Class Members who wish to object to this proposed class action settlement,
10 they will have the opportunity to file their objections and be heard at the Final Approval Hearing.

11 Rule 3.769(f) of the Rules of Court provides as follows:

12 If the court has certified the action as a class action, notice of the final approval hearing
13 must be given to the class members in the manner specified by the court. The notice
14 must contain an explanation of the proposed settlement and procedures for class
members to follow in filing written objections to it and in arranging to appear at the
settlement hearing and state any objections to the proposed settlement.

15 Rules of Court, rule 3.769(f).

16 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It
17 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative
18 and coherent manner, in compliance with the Manual for Complex Litigation (“MANUAL”), (2d Ed.
19 1993), which states that “the notice should be accurate, objective, and understandable to Class Members .
20 . . .” MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability
21 by the Defendant and recognizes that this Court has not ruled on the merits. It also states that the final
22 settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of
23 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

24 Upon the Court’s approval, the Notice of Class Action Settlement will be mailed by the
25 Administrator to each Class Member, in Spanish as well.

26 **9. The PAGA Allocation is Reasonable**

27 The PAGA allocation is reasonable because the settlement of the underlying wage and hour
28 claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies*,

1 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members
2 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
3 members as employees, but may have a deterrent effect upon the defendant employer and other
4 employers, an objective of PAGA.”); *see also Viceria v. Mistras Group*, 2016 WL 5907869 *9 (N.D.
5 Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be
6 substantially reduced below its standalone settlement value without sacrificing its statutory purposes
7 because the non PAGA settlement is relatively substantial.”)

8 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
9 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
10 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) (“Under California law, courts have
11 held that employers are not subject to heightened penalties for subsequent violations until and unless a
12 court or commissioner notified the employer that it is in violation of the Labor Code.”).

13 Finally, the PAGA allocation is fair. The LWDA is receiving **\$45,000**. The Class is receiving,
14 net, an estimated \$224,500 for the releases for eight theories of recovery (including the \$15,000 as the
15 aggrieved employees’ share of the PAGA Allocation). The proportion is tipped slightly in favor of the
16 Class Members, but not markedly so. An allocation to the LWDA equal to 26.7% of the Net Settlement
17 Amount is not unfair and satisfies the policies underlying California’s wage and hour laws.

18 **VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING**

19 The last step in the settlement approval process is the fairness hearing, where the Court makes a
20 final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this
21 case be scheduled for about 150 days after issuance of the Court’s Order granting preliminary approval
22 of the Settlement. Under the Settlement, the Defendant will have 15 days to provide the mailing data to
23 the Settlement Administrator, which will then have 14 days to mail out class notice. Class Members
24 have 60 days after mailing of the notice to submit exclusions or objections (with a 14-day extension
25 available for late-returned and re-mailed notices). Therefore, Plaintiff proposes a final approval hearing
26 scheduled for the first available hearing date that is about 150 days after preliminary approval is granted.

27 **VII. CONCLUSION**

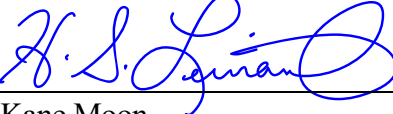
28 For all the foregoing reasons, because the Class meets the requirements for certification, because

1 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
2 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
3 this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of
4 Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

5 Respectfully submitted,

6 Dated: October 19, 2021

MOON & YANG, APC

7
8 By: 
Kane Moon
H. Scott Leviant
Lilit Tunyan

10 Attorneys for Plaintiff Manuel Godoy

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Kenneth J. Rose
Robert H. Rose
THE ROSE GROUP, APLC
9747 Businesspark Ave., Suite 213
San Diego, CA 92131
krose@rosegroup.us
rrose@rosegroup.us

Counsel for Defendant Intertrade Industries, LTD

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the above-named document(s) has (have) been electronically served on counsel of record by an approved electronic service provider. The transmission of these documents was reported complete and a copy of the service confirmation will be maintained, along with the original document(s) and proof of service in our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **October 20, 2021** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
H. Scott Leviant (SBN 200834)
scott.leviant@moonyanglaw.com
Lilit Tunyan (SBN 329351)
lilit.tunyan@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Manuel Godoy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MANUEL GODOY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
California corporation; and DOES 1 through 10,
inclusive,
Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

CLASS ACTION

**DECLARATION OF MICHAEL E. MOORE
ON BEHALF OF ADMINISTRATOR WITH
RESPECT TO QUALIFICATIONS OF
CLASS ADMINISTRATION**

Date: December 3, 2021
Time: 10:00 a.m.
Courtroom: Dept. CX105
Judge: Hon. Randall J. Sherman

Action Filed: July 17, 2020
Trial Date: Not Set

1 I, Michael E. Moore, hereby declare:

2 1. I am the President and Managing Partner at Phoenix Settlement Administrators
3 (“PSA”). I have personal knowledge of the facts stated herein and, if called upon to testify, I
4 could and would testify competently to such facts.

5 2. I personally have over nine years of experience in claims management and
6 administration of class and collective action matters. To date PSA has administered over 1,200
7 cases and an additional 900 Pre and Post Certification Privacy Notices and Survey Mailings.

8 3. PSA has extensive experience administering class action matters. PSA has
9 administered complex wage and hour, labor and employment, consumer/ product liability,
10 Telephone Consumer Protection Act, Fair Labor Standards Act, Fair and Accurate Credit
11 Transactions Act, Employment Retirement Income Security Act and Private Attorneys General
12 Act class action matters, through final approval and distribution. PSA has developed a system of
13 quality assurance measures, to ensure the highest quality service is provided in our cases and to
14 class members.

15 4. PSA’s Claims Management Group has extensive experiences in all aspects of
16 Notification and Identification of Class Members, Claims Processing, Formulation and
17 Calculation Methodologies, Award Distribution and Taxation, Accounting and Reconciliation.

18 5. PSA is committed to Class Member security. We have developed Phoenix Server
19 Security Protocols(“PSSP”). PSSP allows PSA’s Proprietary Database to store Class Member
20 private information in a double password protected section that only Case Managers and
21 Programmers can access. Redundant to this measure, this section times out every minute if data
22 is being downloaded outside the Database, unless a daily specific passcode is entered. All Class
23 Data is digitally backed up daily and tracked for changed to a CM Identifier.

24 6. PSA has extensive experience in and are experts at all aspects of complex class
25 action matters including; (i) preparing, printing, mailing and tracking privacy notices; (ii)
26 operation of a 24/7/365 multi-lingual call center; (iii) establishing settlement websites; (iv)
27 claims management; (v) USPS processes and systems, third party tracing, including the use of
28 reverse telephone directory services; (v) database management, programming and security

1 protocols; which included Class Member Privacy and National Change of Address Security of
2 personal information and Social Security Numbers. PSA has a proprietary Database that allows
3 us to run NCOA and Skip Tracing Searches behind our secure servers and network secure IP;
4 (vii) calculating and issuing settlement payments; (viii) tax management, filings, and account
5 reconciliation; and (ix) final approval. At no time is there access to this information outside of
6 our proprietary servers.

7 7. PSA has been appointed as a Claims Administrator in both State and Federal
8 Courts in over 800 Class Action Settlements.

9 8. PSA demonstrates industry leading value on every case. We offer the highest
10 level of customer care and service regarding our cost or value; on every case we work on. In this
11 case specifically, we were able to give back more money to the class, because we have lower
12 hourly rates and preform all production in house. A true and correct copy of PSA's Curriculum
13 Vitae is attached hereto as Exhibit A.

14 9. PSA has agreed to administer the Class Action in this matter for the capped
15 amount of \$8,000.00. This is based on hourly rates with a cap for the type of class action
16 administration the parties have contemplated. This amount was calculated based on hourly rates
17 for various tasks, at anticipated the anticipated time spent on those tasks, and per-unit costs for
18 postage and other expenses, and then discounted for PSA's value pricing. We have automated
19 this process to be able to pass on the savings to our clients. Deviation of this automation,
20 whereas manual, folding, stuffing, sealing and adding postage, would be a significant price
21 increase. Attached as Exhibit "B" is PSA's bid for the matter, with detailed descriptions of the
22 various Automated tasks and related fee/cost amounts.

23 10. Phoenix Class Action Administrators has Occurrence, Error and Omissions
24 Insurance, which covers our cases, for the benefit of protection in the event, Phoenix, is
25 responsible for a Data Breach or Settlement Fund Misappropriations.

26 11. Phoenix Class Action Administrators is an S Corporation owned by its Employees
27 and has no professional affiliation with any of the parties involved in this matter.
28

1 12. Phoenix has extensive Data Security Protocols set in place for the transfer of data, as
2 well as the secure storage of class data. Phoenix has recently been accepted, after vetting of,
3 Littler Mendelson's Security and Data Storage Protocols.

4
5 I declare under the penalty of perjury and under the laws of the State of California that
6 the forgoing is true and correct. This document was executed on October 19, 2021, in the County
7 of Orange.

8 
Michael E. Moore

Exhibit A



www.phoenixclassaction.com 



Expert Core Services

Initial Planning and Consultative Service on Class Action Cases and Noticing Plans.

State/Nationwide Noticing Expertise: Privacy, Media, Publication, Internet & Email Campaigns.

Attorney General(s) CAFA Notification

Claims Programming, Administration, Processing and Reporting.

24/7/365 Multi-Lingual Call Center Support and Claims Processing

Secure Data Management Environment, Individual Firewalls, Encrypted Data and Storage

Settlement Fund Calculations, Solutions, Award Distribution, Award Reconciliation

Tax Filings: State, Federal, EDD, ETT, FUTA, PAGA Payments

Partial PSA Client List, Defense and Plaintiff

Fisher & Phillips
Gordon & Rees
Paul Plevin Sullivan & Connaughton
Call & Jensen
Seyfarth Shaw
McKenna Long & Aldridge
Greenberg Traurig
Manning & Kass
Littler Mendelson
Perkins Coie
Orrick Herrington & Sutcliffe
Ogletree Deakins Nash Smoak & Stewart
Perkins Coie
Ulwelling Siddiqui
Winston & Strawn
Sheppard Mullins
Lewis Brisbois Bisgaard & Smith
Morgan Lewis & Bockius
Paul Hastings
Snell & Wilmer
Sidley Austin
Higgs Fletcher & Mack
Jackson Lewis
Norton Rose Fulbright

The Arns Law Firm
The Nourmand Law Firm
Mahoney Law Group
Law Office of Thomas Rutledge
Lawyers for Justice PC
Remedy Law Group
Rastegar Law Group
Diversity Law Group
Righetti & Glugoski
Cohelan, Khoury & Singer
Moon & Yang, APC
Moss & Moss
The Spivak Law Firm
Law Offices of Kenneth Yoon
Paul Haines Law Group
Kearney Littlefield, LLP
Markham Law Firm
Chandler Law Firm
David Yeremian & Associates
Aegis Law Firm
Lauby, Mankin & Lauby, APC
Jones Law Firm
Short Legal, APC
Levine Law Group, APC

Exhibit B



CLASS ACTION ADMINISTRATION SOLUTIONS

September 28, 2021

CASE ASSUMPTIONS

M	
R	1
R	
	1
d	\$9,468.86

Not-to-Exceed Total \$8,000.00
For 200 Class Members

Pricing Good for Scope of Estimate Only

Includes Uncashed Checks Escheating to the State of CA

Case: Godoy v. Intertrade Industries, Opt-Out Administration

Phoenix Contact: Michael E. Moore

Contact Number: 949.331.0131

Email: mike@phoenixclassaction.com

Requesting Attorney: Lilit Tunyan

Firm: Moon & Yang, APC

Contact Number: (213) 232-3128

Email: lilit.tunyan@moonyanglaw.com

[illegible]

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Preparation of Monthly Financial Statements	\$1,000.00	1	\$1,000.00
Preparation of Monthly Departmental Budgets and Reports	\$1,000.00	1	\$1,000.00
Monthly Financial Review	\$1,000.00	1	\$1,000.00
Quarterly Financial Review and Departmental Budgets	\$2,000.00	2	\$2,000.00
Quarterly Financial Review	\$2,000.00	1	\$2,000.00
Total		6	\$720.00

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Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

[illegible]

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PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
1. Skip tracing & remailing notice packets	\$94.40	4		\$377.60
2. Skip tracing & remailing notice packets	\$4.00	1		\$4.00
3. Remailing notice packets	\$4.00	4		\$16.00
4. Skip tracing & remailing notice packets	\$4.00	4		\$16.00
5. Skip tracing & remailing notice packets	\$94.40	1		\$94.40
Total				\$373.60

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
1. Database programming / processing opt-outs, deficiencies or disputes	\$1,250.00	1		\$1,250.00
2. Database programming / processing opt-outs, deficiencies or disputes	\$1,250.00	1		\$1,250.00
3. Database programming / processing opt-outs, deficiencies or disputes	\$1,250.00	1		\$1,250.00
4. Database programming / processing opt-outs, deficiencies or disputes	\$1,250.00	1		\$1,250.00
5. Database programming / processing opt-outs, deficiencies or disputes	\$1,250.00	4		\$5,000.00
Total				\$1,250.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
1. Calculation & disbursement programming/ create & manage QSF/ mail checks	\$1,761.80	1		\$1,761.80
2. Calculation & disbursement programming/ create & manage QSF/ mail checks	\$1,761.80	1		\$1,761.80
3. Calculation & disbursement programming/ create & manage QSF/ mail checks	\$1,761.80	1		\$1,761.80
4. Calculation & disbursement programming/ create & manage QSF/ mail checks	\$1,761.80	1		\$1,761.80
5. Calculation & disbursement programming/ create & manage QSF/ mail checks	\$1,761.80	4		\$7,047.20
6. Calculation & disbursement programming/ create & manage QSF/ mail checks	\$1,761.80	1		\$1,761.80
7. Calculation & disbursement programming/ create & manage QSF/ mail checks	\$1,761.80	1		\$1,761.80
Total				\$1,761.80

1. Calculation & disbursement programming/ create & manage QSF/ mail checks





TERMS AND CONDITIONS

The Dendroica ruficapilla (D. r.) is a small, brownish bird with a reddish-brown head and neck. It is found in the eastern United States and Canada. The D. r. is a member of the Dendroica genus, which includes many other species of songbirds. The D. r. is a common bird in its range, and it is often seen in small flocks. It is a very adaptable bird, and it can live in a variety of habitats, including forests, fields, and urban areas. The D. r. is a very hardy bird, and it is able to survive in a wide range of climates. It is a very popular bird among birdwatchers, and it is often one of the first birds that people see in the spring.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party
4 to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **DECLARATION OF MICHAEL E.
6 MOORE ON BEHALF OF ADMINISTRATOR WITH RESPECT TO QUALIFICATIONS OF CLASS
ADMINISTRATION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy
thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

7 Kenneth J. Rose
8 Robert H. Rose
9 THE ROSE GROUP, APLC
10 9747 Businesspark Ave., Suite 213
11 San Diego, CA 92131
12 kroserose@rosegroupp.us
13 rrose@rosegroupp.us
14 Attorneys for Defendant Intertrade Industries, LTD

15 *Counsel for Defendant*

16 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in
17 the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s
18 practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes
19 are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage
20 thereon fully prepaid at Los Angeles, California.

21 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail
22 delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this
23 action.

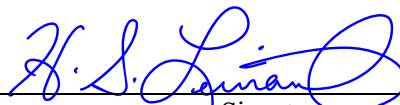
24 ☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court’s Order directing Electronic Service, the
25 above-named document(s) has (have) been electronically served on counsel of record by an approved
26 electronic service provider. The transmission of these documents was reported complete and a copy of
27 the service confirmation will be maintained, along with the original document(s) and proof of service in
28 our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the
offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and
processing correspondence for overnight delivery. Under that practice, overnight packages are
enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are
picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct. Executed this **October 20, 2021**, at Los Angeles, California.

26 H. Scott Leviant
27 Type or Print Name

26 
27 Signature

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
H. Scott Leviant (SBN 200834)
scott.leviant@moonyanglaw.com
Lilit Tunyan (SBN 329351)
lilit.tunyan@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Manuel Godoy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MANUEL GODOY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
California corporation; and DOES 1 through 10,
inclusive,
Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

[Assigned to Hon. Randall J. Sherman, Dept.
CX105]

CLASS ACTION

**DECLARATION OF H. SCOTT LEVIANT
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: December 3, 2021
Time: 10:00 a.m.
Courtroom: Dept. CX105
Judge: Hon. Randall J. Sherman

Action Filed: July 17, 2020
Trial Date: Not Set

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
BACKGROUND.....	1
SUMMARY OF THE SETTLEMENT TERMS.....	3
THE SETTLEMENT IS FAIR, JUST AND REASONABLE	7
THE EXPERIENCE OF CLASS COUNSEL	19
REASONABLENESS OF THE REQUESTED FEE AWARD.....	32
THE CONTRIBUTION OF PLAINTIFF AND THE REASONABLENESS OF THE REQUESTED INCENTIVE AWARDS	34
THE THIRD-PARTY ADMINISTRATOR.....	34
CLASS CERTIFICATION.....	35
EXHIBITS	36
PAGA SETTLEMENT NOTIFICATION TO DIR.....	37

DECLARATION OF H. SCOTT LEVIANT

I, H. Scott Leviant, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States Supreme Court, the Eighth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Eastern, Northern and Southern Districts of California. I have never been subject to discipline by the State Bar of California. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am employed as a Senior Counsel at the law firm of Moon & Yang, APC. My business address is 1055 W. 7th Street, Suite 1880, Los Angeles, California 90017 and my business telephone number is (213) 232-3128. I am counsel for Plaintiff and proposed counsel for the Settlement Class.

3. This Declaration is submitted in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

BACKGROUND

4. On July 17, 2020, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Minimum and Regular Rate [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; and, (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. On November 20, 2020 Plaintiff filed his First Amended Complaint adding the eight case of action for civil penalties under PAGA [Cal. Lab. Code § 2699, et seq.]. (The "Action.") In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the

1 period beginning four years before the filing of the initial complaint and ending when Notice to the Class
2 is sent.

3 5. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing
4 a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code §
5 2699, et seq.] (“PAGA”). On November 16, 2020, Plaintiff filed a First Amended Complaint adding a
6 cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

7 6. The Parties have conducted informal discovery and investigation of the facts and law.
8 Such discovery and investigation have included, inter alia, the exchange of informal data and
9 discoverable information in preparation for the mediation session. The Parties have analyzed payroll and
10 other data pertaining to Plaintiff and the Settlement Class during the relevant Settlement Period,
11 including but not limited to the numbers of former and current members of each purported subclass
12 within the Settlement Class, average workweeks, and average rate of hourly pay. In addition, Defendant
13 also provided documents reflecting their wage and hour policies and practices during the Settlement
14 Period and information regarding the total number of current and former employees in the Settlement
15 Class.

16 7. After reviewing documents regarding Defendant’s wage and hour policies and practices
17 and other information obtained during the informal exchange of discovery, Class Counsel were able to
18 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
19 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
20 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
21 claims and defenses asserted in the litigation.

22 8. On June 29, 2021, the Parties mediated before a mediator, Hon. Carl J. West (Ret.), who
23 is a highly experienced and well-regarded mediator for wage and hour class action litigation. At the
24 mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as well
25 as the merits of the claims and defenses. The Parties have not been able to reach a settlement at the
26 mediation. However, following the settlement negotiations held by the Parties after the mediation, the
27 Parties have reached an agreement regarding the substantive terms of a class-wide settlement, pending
28 the Parties’ agreement on a long-form class settlement agreement. The Parties then signed a long form

1 settlement agreement (the Agreement).

2 9. Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish
3 liability for the claims asserted in the Action, both generally and in response to Defendant's defenses
4 thereto. Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a
5 Settlement that confers substantial relief upon the Class.

6 10. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
7 set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the
8 Class. Solely for the purpose of settling this case, the parties agree that the requirements for establishing
9 class action certification with respect to this class have been met and are met. If this Settlement is not
10 approved by the Court for any reason, Defendant reserves its right to contest class certification. This
11 Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through
12 the entry of the Judgment and the release of all Released Claims for all Class Members, including all
13 within the class definition who have not elected to exclude themselves from the Settlement Class.

14
15 SUMMARY OF THE SETTLEMENT TERMS

16 11. Key provisions of the proposed settlement include the following:

- 17 (a) Defendant agrees not to oppose certification of a Class for purposes of Settlement
18 only (Settlement, ¶ 19);
- 19 (b) Settlement Amount: Defendant will pay a maximum of \$450,000.00, referred to
20 as the Gross Settlement Amount (or GSA herein), resulting in an estimated
21 average gross payment per Class Member of approximately \$2,331.61
22 (Settlement, ¶ 26(c));
- 23 (c) Class Size: approximately 193 individuals as of the date of mediation. (Leviant
24 Decl., ¶ 18.)
- 25 (d) PAGA Group Size: approximately 133 individuals as of the date of mediation;
- 26 (e) Escalator Clause: The number of Class Members is approximately one hundred
27 ninety-three (193) as of June 29, 2021, and the number of workweeks worked in
28 the Class Period for those Class Members was approximately fourteen thousand

eight hundred thirty-three (14,833.00) as of that date. If it is later determined that, on the date of preliminary approval, the number of workweeks in the Class Period is more than 10% greater than the estimated number of workweeks on June 29, 2021, the Gross Settlement Amount shall be increased by one percent for each percent over the 10% threshold that the actual number of workweeks exceeds the estimated number of workweeks (if the number of workweeks increases by 11%, the Gross Settlement will increase 1%) (the “Escalator Clause”). (Settlement, ¶ 26(d));

- (f) Kullar/Munoz Analysis: Plaintiff addresses the claims analysis in the Motion, at Part V.B.3, and in more detail below, at Paragraph 18;
- (g) No Reversion: The Settlement is a non-reversionary settlement (Settlement, ¶ 26(e));
- (h) Certification: Plaintiff addresses certification requisites in the Motion, at Part V.A., and below, at Paragraphs 34-40;
- (i) No Claim Form: No claim form is required (Settlement, ¶ 26(f));
- (j) Class Release: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) as defined by the First Amended Complaint (Settlement, ¶ 37);
- (k) PAGA Release: The Class Members will release the PAGA Claims set forth in this Action, that were identified in the Complaint and Plaintiff’s LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 11, 14, 15 and 37(c)(3));
- (l) Release Effective Date: The Release is not active until Defendant tenders all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 37(b));
- (m) Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be available for distribution to

1 Class Members who do not opt out, with each Class Member receiving a share
2 based on the number of workweeks each Class Member worked for a Defendant
3 within the Class Period. The Net Settlement Amount is estimated to be at least
4 \$224,500, resulting in an average net payment per Class Member of at least
5 \$1,163.21, before any tax withholdings. (Settlement, ¶ 26(g));

6 (n) Tax Allocation: The amounts distributed to Class Members will be characterized
7 as 20% alleged unpaid wages, 80% as alleged unpaid penalties and unpaid
8 interest, and PAGA Settlement Payments will be allocated as 100% penalties.
9 (Settlement, ¶ 26(k));

10 (o) Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of
11 payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class
12 Members that constitute wages will be paid separate and apart from the GSM
13 (Settlement, ¶ 26(h));

14 (p) Settlement Administrator: The notice portion of the Settlement will be
15 administered by a third-party Administrator, Phoenix Settlement Administrators,
16 and the Parties estimated that the costs of administration should not reasonably
17 exceed \$15,000.00. Phoenix Settlement Administrators' low bid for settlement
18 administration services in the amount of \$8,000.00 was selected as the lowest bid
19 from a competitive bidding process. (Settlement, ¶ 26(p));

20 (q) Class Data for Administration: The Settlement Administrator will receive the
21 Class List within 15 calendar days of Preliminary Approval, use the NCOA
22 database to update the Class List, and then use skip tracing on returned Notices
23 (Settlement, ¶ 32(a));

24 (r) Notice: The Notice will issue within 14 days of receipt of the Class List
25 (Settlement, ¶ 32(b)). The Notice describes how to dispute workweeks, submit
26 and objection in writing, in person, or through an attorney, or request exclusion
27 (Settlement, ¶ 26(s)).

28 (s) Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 26(t));

- (t) Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 26(x));
- (u) Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a writing objection (Settlement, ¶¶ 26(w) and 26(x));
- (v) PAGA Allocation: From the GSA, \$60,000 will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 et seq. (“PAGA”), and seventy-five percent (75%), or \$45,000, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 9.)
- (w) Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration.
- (x) Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to \$7,500.00 for Plaintiff, to be paid from the GSA (Settlement, ¶ 26(n));
- (y) Fees and Costs: Defendants will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (\$150,000.00), and actual costs, in an amount not to exceed \$15,000, to be paid out of the GSA (Settlement, ¶ 26(m)).
- (z) Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- (aa) Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California State Controller’s Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment (Settlement, ¶¶ 34-35);
- (bb) Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 30);
- (cc) Confidentiality Provisions: The Settlement permits Class Counsel to discuss the

Settlement with Class Members (Settlement ¶ 58).

12. A true and correct copy of the JOINT STIPULATION OF CLASS ACTION AND PAGA ACTION SETTLEMENT is attached hereto as Exhibit “1.”

THE SETTLEMENT IS FAIR, JUST AND REASONABLE

13. Plaintiff and counsel have diligently investigated the claims of the Class Members. Plaintiff and Class Counsel concluded, after taking into account the disputed factual and legal issues involved in this Action, the substantial risks attending further prosecution, including risks related to the outcome of certification and possible summary judgment efforts, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the putative Class and are fair and reasonable. Plaintiff’s counsel brought to bear a great deal of experience with class actions in negotiating the settlement of this case.

14. One fundamental purpose of the class action device is to promote efficiency. Resolution at this time will forestall the need for additional expensive and time-consuming litigation that could very well result in an outcome less satisfactory than that proposed under this settlement. But, before any other consideration, we have agreed to this settlement because it is objectively reasonable. The potential for resolution benefits the class members, since they do not have to wait additional years for a similar recovery. The efficiency of this litigation benefits the Court, the parties and their counsel. A class-wide resolution is the most realistic method for addressing the claims raised in this matter.

15. We have engaged in the necessary investigation in this case that made it possible for us to exercise informed judgment in those aspects of the settlement process in which we were involved. The exchange of time and wage data, wage and hour policy documents, and data about the composition of the Class, were sufficient to permit us counsel to adequately evaluate the settlement. We had more than enough information upon which to evaluate a fair and reasonable settlement amount.

16. We believe that the case was viable through to a trial. However, while Plaintiff asserts a belief that this is a viable case for trial, we realize that there are always significant risks associated with certification and trials, and those risks cannot be eliminated in this case. Continued litigation of this

lawsuit presented Plaintiff and Defendant with substantial legal risks and costs that were (and continue to be) difficult to assess. The risks in this matter include:

- the risk that Plaintiff would be unable to establish liability for allegedly unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014);
- the risk that Defendant's meal and rest period policies might not ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition);
- the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19;
- the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19;
- the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see Labor Code § 2699(e)(1)*;
- the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes;
- the risk that lengthy appellate litigation could ensue.

These risks are non-exhaustive. While we remain confident that we possess credible strategies for responding to the legal and factual risks facing them, those risks cannot be disregarded. We carefully considered the risks created by all of these uncontrollable factors when evaluating the reasonableness of this proposed settlement. This Settlement provides a benefit to the Class Members that is very reasonable in light of these particular risks.

17. The Settlement is the product of arm's-length negotiations between the Parties occurring throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery for

the Class Members. The settlement amount is, of course, a compromise figure. By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. For the approximately 193 members of the Class, the average gross recovery is at least \$2,331.61 per class member, and the estimated average net recovery for each Class Member is approximately \$1,163.21. Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period.

18. The Gross Settlement Amount of **\$450,000.00** is about 65% of the **\$696,926.85** estimate of risk-adjusted recovery (excluding interest) at this stage in the litigation. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. While Plaintiff would certainly have preferred to recover more (and Defendant would have preferred to pay less), this outcome is in line with a carefully constructed estimate of the current fair value of the case. On that basis, it would be unwise to pass up this settlement opportunity. My maximum calculated reasonable exposure, after removing implausible or extreme estimated recoveries, is **\$2,905,841.80**, *including* PAGA penalties. A reasonably estimated exposure for unpaid wages due to invalid alternative workweek schedule was calculated, with the assistance of an expert, to be approximately **\$671,486.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$377,710.88**, assuming certification probability of 75% and merits success at 75%. A reasonably estimated exposure for unpaid wages due to rounding was calculated, with the assistance of an expert, to be approximately **\$17,305.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$9,734.06**, assuming certification probability of 75% and merits success at 75%. The reasonably estimated exposure for rest break violations over the class period was calculated at **\$264,465.00**, but with low chances of certification and proof of liability (20% and 25% respectively) for

a risk-adjusted exposure of **\$13,223.25** (based on missed breaks at least once per pay period for 100% of the class). The reasonably estimated exposure for meal break violations over the class period was calculated at **\$322,500.80**, with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **\$64,500.16**. Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$26,835.00** and **\$67,423.50**, respectively, on maximum exposures of **\$268,350.00** and **\$674,235.00**, respectively. Performing risk-adjusted valuations for all claims yields a total value in the range of **\$559,426.85**, excluding PAGA.¹ (*Id.*) PAGA penalties were calculated as having a maximum realistic exposure of **\$687,500.00**, but a risk adjusted value of **\$137,500.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees. As required under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) and *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010), the maximum plausible and realistic recoveries versus the current risk-adjusted value of the claims are discussed in additional detail below:

(a) Key Class Data Elements at Time of Mediation:

- 1) Class Members: approximately 193
- 2) Work Weeks: approximately 14,833 (extrapolated from mediation date)
- 3) PAGA Employees: approximately 133, based on payroll data
- 4) Pay Periods: approximately 7,722
- 5) Gross Settlement Amount: \$450,000

(b) KULLAR/MUNOZ ANALYSIS: Unpaid Wages Due to Invalid Alternative Workweek Schedule

- 1) Plaintiff's claims for unpaid wages due to invalid alternative workweek schedule is based on the argument that alternative workweek schedule was not validly extended to the facility where

¹ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

Plaintiff and most of the Class Members worked, and it was procedurally and substantively defective and not valid.

2) Defendant contends its alternative workweek schedule is lawful and valid.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$671,486.00
Estimated certification probability	75%
Estimated chance of prevailing on merits	75%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$377,710.88

(c) **KULLAR/MUNOZ ANALYSIS: Unpaid Wages Due to Rounding**

1) Plaintiff's claims for unpaid wages due to rounding is based on the argument that rounding adversely impacted a high percentage of employees.

2) Defendant contends that rounding is lawful if it is neutral as formulated, and even if more employees were adversely impacted, that does not mean that the rounding is not applied in a neutral manner.

3) Rounding law is highly uncertain at the moment, presenting risk for Plaintiff's theory.

4) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$17,305.00
Estimated certification probability	75%
Estimated chance of prevailing on merits	75%
Max recovery × certification risk × chance or success on merits = Present Settlement Value ²	\$9,734.06

² The risk adjustment reflects a combination of risks. Since certification is an uncertain even, as is success on the merits, both risks combine at this stage of the proceedings. For example, if certification is viewed as an event with a 50% chance of success, and prevailing at trial is viewed as a second event with

1
2 (d) **KULLAR/MUNOZ ANALYSIS: Meal Periods**

- 3 1) Plaintiff alleged that Defendant failed to provide meal periods to Class
4 Members in compliance with California law, due to breaks that were
5 completely missed, or taken late, or interrupted for various reasons.
6 Employees are entitled to meal periods of at least 30 minutes before
7 exceeding five hours of work and to second meal periods of not less than
8 30 minutes before exceeding 10 hours of work. For each meal period
9 missed or taken late an employer must pay the employee an additional one
10 hour of compensation. Labor Code § 226.7. This additional hour of
11 compensation is referred to as “premium pay.” To comply with these laws,
12 every employer must keep, for each employee, accurate time records
13 showing when the employee begins and ends each work period and takes
14 his or her meal periods. *See* Wage Orders, at § (7)(A)(3).
- 15 2) Defendant maintains that the obligation is simply to “provide” meal
16 periods, not to “ensure” that they are taken. *Brinker v. Superior Court*, 53
17 Cal. App. 4th 1004, 1034-41 (2012) (rejecting “ensure” standard).
18 Furthermore, Defendant contends that any failure to take meal periods, or
19 to take late meal periods, was a result of employee choice, not of any policy
20 or practice of Defendant. Finally, Defendant asserts that Plaintiff’s meal
21 period claims would not be amenable to class treatment, since individual
22 inquires would need to be made with respect to each specific shift that each
23 employee missed a meal or rest period, to determine why that specific
24 employee missed that specific meal or rest period on that specific shift.

25
26
27 a 50% chance of success, the current risk is $0.5 \times 0.5 = 0.25$, or a 25% chance of both events resulting in
28 a favorable outcome. Since *Kullar* and *Munoz* do not specify a specific method must be used to evaluate
the settlement as compared to the reasonable maximum recovery, the approach used here is similar to an
expected value analysis of risk events or a present value calculation for future monetary value.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$322,500.80
Estimated certification probability	50%
Estimated chance of prevailing on merits	40%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$64,500.16

(e) **KULLAR/MUNOZ ANALYSIS: Rest Breaks**

- 1) Plaintiff alleged that Defendant failed to make uninterrupted rest breaks available to Class Members at all times in compliance with California law. This includes breaks that were completely missed, or taken late, or interrupted for whatever reasons. Employees are entitled to a rest period of at least 10 minutes every four hours worked, or major fraction thereof. For each rest period missed or taken late an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as “premium pay.”
- 2) Defendant maintains that the obligation is simply to “authorize and permit” rest periods, not to “ensure” that they are taken. *Brinker v. Superior Court*, 53 Cal. App. 4th 1004, 1034-41 (2012) (rejecting “ensure” standard). Furthermore, Defendant contends that any failure to take rest breaks was a result of employee choice, not of any policy or practice of Defendant. Finally, Defendant asserts that Plaintiff’s rest breaks claims would not be amenable to class treatment, since individual inquires would need to be made with respect to each specific shift that each employee missed a rest period, to determine why that specific employee missed that specific rest break on that specific shift.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$264,465.00
Estimated certification probability	20%
Estimated chance of prevailing on merits	25%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$13,223.25

(f) **KULLAR/MUNOZ ANALYSIS: Late Pay Penalties Under Labor Code § 203**

- 1) Labor Code § 203 provides that if an employer fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. Because class members stopped working for Defendant but again were not paid their full compensation for the reasons discussed above, class members did not receive all wages due upon termination of employment.
- 2) Defendant argues that a good-faith belief in the legality of its employment practices precludes a finding that any withholding of wages was "willful." *See* Cal. Code Regs. § 13520 [good-faith dispute exists to a claim for waiting time penalties "when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist."].) Defendant further contends that Plaintiff's meal and rest period claims cannot support a claim for waiting time penalties under Labor Code § 203 after the California Supreme Court's decision in *Kirby v. Immoos Fire Protection, Inc.* 53 Cal. 4th 1244 (2012), which held that meal and rest period claims are not actions for the "nonpayment of wages." *See also* *Ling v. P.F. Chang's*

China Bistro, Inc., 245 Cal. App. 4th 1242, 1261 (2016). Defendant further maintains that because of viable defenses in both law and fact that waiting-time penalties could not be awarded and, in any case, such penalties were subject to a three-year limitations period under Labor Code § 203(b) and an arbitration agreement that would bar class treatment.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$674,235.00
Estimated certification probability	50%
Estimated chance of prevailing on merits	20%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$67,423.50

(g) **KULLAR/MUNOZ ANALYSIS: Wage Statement Violations**

- 1) Plaintiff also alleged a cause of action under Labor Code § 226(a). That section states that an employer must provide an accurate itemized wage statement twice a month or each time wages are paid, whichever is the more frequent. Failure to do so entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). *See* Labor Code § 226(e).
- 2) Defendant contends that Labor Code § 226(e) penalties are not automatic. Rather, the employee must show (1) that he or she “suffered injury” from the employer’s failure to provide compliant wage statements, *see Elliot v. Spherion Pacific Work, LLC*, 572 F.Supp.2d 1169, 1181 (2008) (applying California law) (holding employee was not entitled to penalties because no injury was shown), and (2) Defendant’s noncompliance was “knowing and

intentional.” Defendant contends that class members suffered no injury from any failure to issue compliant wage statements and, furthermore, that any noncompliance was not knowing and intentional. Further, because the damages for this cause of action are penalties, the statute of limitations only runs from one year prior to the filing of the original complaint. *See* Code Civ. Proc. § 340. Moreover, Defendant maintains that Plaintiff’s derivative claim for wage statement ‘penalties would fail for the same reasons that Plaintiff’s underlying claims would fail. The parties discussed these issues, and in light of these and other considerations Class Counsel factored in a reduction of liability and damages for this cause of action.

3) *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018) significantly limits the extent to which Plaintiff can assert derivative wage statement claims.

4) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$268,350.00
Estimated certification probability	50%
Estimated chance of prevailing on merits	20%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$26,835.00

(h) QUASI- KULLAR/MUNOZ ANALYSIS: PAGA

1) The Labor Code Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows plaintiffs to obtain civil penalties on behalf of herself and other class members for Defendant’s violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one

1 (\$100) for each aggrieved employee per pay period for the initial violation
2 and two hundred dollars (\$200) for each aggrieved employee per pay
3 period for each subsequent violation. Pursuant to Labor Code § 2699(i),
4 seventy-five (75) percent of the penalties recovered must be allocated to the
5 Labor and Workforce Development Agency (LWDA), with the remaining
6 twenty-five (25) percent allocated to the affected employees. The
7 limitations period is one year prior to the filing of the complaint.

8 2) The provisions of the Labor Code potentially triggering PAGA penalties in
9 this case include but are not limited to Labor Code §§ 203, 226(a), 226.7,
10 and 510. Defendant asserted that if PAGA penalties were mandatory, an
11 employer's PAGA liability would be huge because of the possibility of
12 collecting multiple civil penalties for a single violation, and thus such
13 penalties would almost always dwarf the damages available under the
14 causes of action proper. However, PAGA penalties are not mandatory but
15 permissive. Labor Code § 2699(e)(2) states that "a court may award a
16 lesser amount than the maximum civil penalty amount specified by this
17 part if, based on the facts and circumstances of the particular case, to do
18 otherwise would result in an award that is unjust, arbitrary and oppressive,
19 or confiscatory." *See also Thurman v. Bayshore Transit Management, Inc.*,
20 203 Cal. App. 4th 1112, 1135 (2012) [affirming reduction of PAGA
21 penalties].) Defendant here maintains that they have a strong argument that
22 it would be unjust to award maximum PAGA penalties.

23 3) Furthermore, PAGA penalties are also completely derivative of each and
24 every other claim. Finally, under *Amaral v. Cintas Corp.*, 163 Cal. App.
25 4th 1157(2008), it can be argued that penalties under PAGA could, at best,
26 be awarded only at the rates obtainable for initial violations under the
27 applicable statutes, because Defendant had never been notified of the
28 alleged violations. *Id.*, at 1208, 1209.

4) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$687,500.00
Discount reduction factor for risk of Court reduction and uncertainty of proof for all aggrieved employees	90%
Max recovery × risk reduction = Present Settlement Value	\$137,500.00

With the assistance of Class Counsel’s retained damages expert, Class Counsel estimated Defendant’s maximum total exposure on the PAGA claim at approximately **\$1,375,000.00** (without stacking). This number presupposes underlying claims are proven at a plausible rate and that the Court awards the full base penalties for each. Class Counsel then applied discounts in light of the countervailing arguments with regard to the other causes of action, and the Court’s power to award “a lesser amount than the maximum civil liability.” Accordingly, due to the speculative nature of a valuation for this claim, a discount of **90%** was applied to account for the difficulty of prevailing on this claim.

- (i) **Kullar Summary:** Indulging the most optimistic estimates and improbably favorable outcomes, the maximum reasonable recovery is estimated to be approximately **\$2,905,841.80**, including PAGA. The settlement amount is about **20.6%** of that amount. The calculated current settlement value is **\$696,926.85** (calculated by adding the risk-adjusted amounts in the charts above together), and the settlement is **65%** of the current risk-adjusted settlement value. The bottom line is that the settlement is about **15.4%** of the *maximum* plausible recovery for the 193 Class Members, and it is a reasonable settlement, given that the full amount is very unlikely to be recovered.

19. This result here is fully supportable as reasonable. Many risks are eliminated through settlement. And, with respect to those risks, certification rates in California are **lower** than conventional

wisdom holds. *See, e.g.,* H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; *see also, Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion). Here, the estimated certification probabilities are *above* the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. Since the recovery is roughly 15.4% of the maximum theoretical recovery (estimated to be approximately \$2,905,841, *including* PAGA), it meets the expected outcome under that metric. It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$1,275,757, *with no risk reduction*), excluding penalties and interest.³ This Settlement achieves the goals of the litigation.

20. To the best of my knowledge, there are no other like claims asserted or filed by Class Members. To the best of my knowledge, no Class Member has refrained from bringing an action with claims similar to those raised in the Action, whether in reliance on the Action or otherwise, and who thus might be prejudiced by dismissal of the Action.

THE EXPERIENCE OF CLASS COUNSEL

21. Moon & Yang, APC, has been engaged in the practice of employment and labor law for almost a decade and presently focuses exclusively on plaintiffs' employment law. The firm and its lawyers have handled many hundreds of wage-related class actions between them. The firm and its

³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

1 lawyers have successfully settled more than 100 class action matters during that time span. The firm
2 and its lawyers have also tried both bench and jury trials (representing both plaintiffs and defendants)
3 relating to employment matters. Moon & Yang, APC, is routinely appointed lead or co-lead class
4 counsel (or counsel for representative plaintiffs in FLSA representative actions) in federal and state
5 courts in California and elsewhere, by way of motion for class certification or motion for settlement
6 approval. I personally participated in the litigation of more than 200 class actions since 1999, and more
7 than 85 percent of those cases were wage and hour matters.

8 22. Mr. Kane Moon received a B.A. in History in 1998 from UCLA. He received his J.D.
9 from Loyola Marymount Law School in 2006. He became an Active Member of the State Bar of
10 California in June 2007 and has been an Active Member in good standing continuously since then. He
11 is a current member of the California Employment Lawyers Association (CELA).

12 23. Mr. Moon has been involved as lead or co-lead class counsel in numerous wage and
13 hour class action cases, negotiating wage-and-hour class action settlements worth over \$12.5 million in
14 gross recovery to class members in 2018 and more than that in 2019. The following is a sampling of
15 recent class actions in which he has been appointed as lead or co-lead class counsel:

- 16 (a) *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 20, 2018) No.
17 CV 17-6433 JVS (JCGx), 2018 WL 6616659 (In approving his \$650 hourly
18 rate, the Court found: “Class Counsel's declarations show that the attorneys are
19 experienced and successful litigators. Other courts have approved the attorneys'
20 current rates for the Moon & Yang, APC attorneys.” (*Id.* at *10.));
- 21 (b) *Sison v. Cha Hollywood Medical Center, L.P.*, No. BC644129;
- 22 (c) *Jones v. Fitness Alliance, LLC*, No. PSC1404079;
- 23 (d) *Martinez v. Bail Hotline Bail Bonds, Inc.*, No. BC700131;
- 24 (e) *Solano v. Bhart & Harish International, LLC*, No. BC659761;
- 25 (f) *Rivera v. Complete Landscape Care, Inc.*, No. BC663463;
- 26 (g) *Jones v. Citiguard, Inc.*, No. BC664890;
- 27 (h) *Slaughter v. ACA Security Stems, LP*, No BC699137;
- 28 (i) *De Leon v. Nasa Services, Inc.*, No. BC682425;

(j) *Lagos v. Thyssenkrupp Elevator Corporation*, No. BC62972 (\$750,000 obtained for 65 class members).

24. Aside from myself and supervising Partner Kane Moon, attorneys who worked on this matter include Lilit Tunyan, Ani Martirosian, and Lilit Ter-Astvatsatryan.

(a) Lilit Ter-Astvatsatryan

- 1) Lilit Ter-Astvatsatryan is an associate at Moon & Yang, APC. Ms. Ter-Astvatsatryan's practice focuses on labor and employment class action lawsuits involving various violations of California and federal labor laws. Prior to her employment by Moon & Yang, I worked with Ms. Ter-Astvatsatryan at Setareh Law Group, where we worked together on over 80 class actions.
- 2) Ms. Ter-Astvatsatryan received her Juris Doctorate from the University of California, Hastings College of the Law in 2017, where she served as a Symposium Editor for the Hastings Race and Poverty Law Journal and a Teaching Assistant to the Legal Research & Writing and Legal Analysis programs. In law school, Ms. Ter-Astvatsatryan served as a Judicial Extern to the Honorable Patrick J. Walsh of the United States District Court, Central District of California.
- 3) Ms. Ter-Astvatsatryan received her undergraduate degree in 2014 from the University of California, Los Angeles with a Bachelor of Arts degree in Anthropology and a minor in English Literature.
- 4) Ms. Ter-Astvatsatryan's billing rate for the duration of this matter was \$350 per hour.

(b) Lilit Tunyan⁴

- 1) Lilit Tunyan is an associate at Moon & Yang, APC. Ms. Tunyan's practice focuses on labor and employment class action lawsuits involving various

⁴ This is not a typographical error. Our firm does employ two attorneys named "Lilit."

violations of California and federal labor laws.

2) Ms. Tunyan received her Juris Doctorate from the University of Minnesota Law School.

3) Ms. Tunyan previously worked as an attorney in Armenia for many years before seeking and obtaining admission to the California State Bar.

4) Ms. Tunyan's billing rate for the duration of this matter was \$350 per hour.

(c) Ani Martirosian

1) Ani Martirosian is an associate at Moon & Yang, APC. Ms. Martirosian's practice has recently focused on labor and employment class action lawsuits involving various violations of California and federal labor laws. Prior to her employment by Moon & Yang, Ms. Martirosian was a patent litigator.

2) Ms. Martirosian received her law degree from the Santa Clara University School of Law.

3) Ms. Martirosian's billing rate is \$300 per hour.

25. I received my undergraduate degree from Occidental College. Graduating cum laude, I majored in economics and received a "minor" emphasis in mathematics. Along with my study of economics and mathematics, I also had an emphasis in physics. This combination of scientific and economic education has been of assistance during my litigation of complex civil actions. I received my Juris Doctor degree from the University of Southern California Law Center.

26. My experience relevant to class action litigation includes the following:

(a) I have been involved in the litigation of class actions since 1997, working as a law clerk on a number of class action matters. Since 1999, I have participated as an attorney in the litigation of hundreds of class actions, in California Superior Courts and in federal courts in California, Illinois, and Louisiana. I emphasized litigation of wage and hour class actions beginning in 2005, but I have focused on complex litigation of different types at all times since 1999.

(b) Dating back to 1999, some of the earliest cases in which I contributed to my then-firm's efforts as co-lead/liaison counsel include:

- i. *In re Paradise Memorial Park Litigation*, Los Angeles Superior Court Lead Case No. BC130375; and,
- ii. *In re Lincoln Memorial Park Litigation*, Los Angeles Superior Court Lead Case No. BC133643.

(c) I have litigated contested class certification motions multiple times, prevailing on many. Examples include the following:

- 1) In 2018, I certified wage and hour claims against Home Depot, in the matter of *Utne v. Home Depot*, in the United States District Court, Northern District of California. The contested certification resulted in a certified class of roughly 140,000 individuals.
- 2) In 2019, I certified a Fair Credit Reporting Act claim related to employment background checks against Wal-Mart Stores, Inc., in the matter of *Pitre v. Wal-Mart Stores, Inc.*, in the United States District Court, Central District of California. The contested certification resulted in a certified class of over 5,000,000 individuals.
- 3) In 2018, I fully briefed a contested class certification motion in the matter of *Harelson v. U.S. Aviation*, in the United States District Court, Northern District of California. After certification was fully briefed, the matter successfully settled.
- 4) In 2013, I certified an investment fraud suit, in the matter of *Larsen v. Coldwell Banker*, in the United States District Court, Central District of California.
- 5) In 2012, I fully briefed a contested class certification motion, in the wage and hour matter of *Gillings v. Time Warner*, in the United States District Court, Central District of California. In that matter, summary judgment was granted against my clients and the certification motion

1 was deemed moot. I appealed to the Ninth Circuit and obtained a
2 reversal of the District Court's decision. Upon remand, the matter
3 settled.

4 6) In approximately 2011, I fully briefed a contested class certification
5 motion, in the wage and hour matter of *Gomez v. Lincare, Inc.*, in the
6 Superior Court of California, County of Orange. Certification was
7 denied. The result was appealed, and a partial reversal was obtained.

8 7) In approximately 2008, I fully briefed a contested class certification
9 motion, in the wage and hour matter of *Ghazaryan v. Diva Limousine,*
10 *LTD.*, Superior Court of California, County of Los Angeles.
11 Certification was denied. I appealed, handling all briefing, and, in
12 *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal.App.4th 1524 (2009), pet.
13 for rev. denied, I obtained a decision directing the trial court to certify
14 the class. *Ghazaryan* is now widely cited, including by the California
15 Supreme Court, as a comprehensive source for the standards applied to
16 certification motions in California.

17 8) In approximately 2006, I fully briefed a contested class certification
18 motion, in the wage and hour matter of *Laliberte v. Pacific Mercantile*
19 *Bank*, Superior Court of California, County of Orange. Certification
20 was denied. I appealed, handling all briefing. The published opinion of
21 *Laliberte v. Pacific Mercantile Bank*, 147 Cal.App.4th 1 (2007), rev.
22 denied, pet. for cert. den. resulted, and I petitioned for a Writ of
23 Certiorari related to certification due process issues.

24 9) In approximately 2008, I assisted with briefing of a contested class
25 certification motion, in the wage and hour matter, against the
26 Automobile Club of Southern California (AAA). A class was certified
27 and the matter tried.
28

1 (d) I have prosecuted appeals in more than 20 class action matters alone, arguing
2 before the United States Court of Appeals for the Ninth Circuit Court and
3 several of California's Courts of Appeal. I have taken several appeals through
4 to Petitions for Writs of Certiorari to the United States Supreme Court. In
5 connection with the appeals I have handled, I have participated in appeals
6 resulting in decisions concerning or relating to class actions or wage and hour
7 issues. Among others, those include:

- 8 i. *Donohue v. AMN Services, Inc.*, (February 25, 2021) (amicus
9 counsel);
- 10 ii. *Beltran v. Dewey Services, Inc.*, Appellate Case No. B302699
11 (appeal on issue of whether PAGA claims can be compelled to
12 arbitration, dismissed by Defendant prior to hearing);
- 13 iii. *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169
14 (9th Cir. Jan. 29, 2019), pet. for rehearing and pet. for *en banc*
15 rehearing den.;
- 16 iv. *Troester v. Starbucks Corporation*, 5 Cal. 5th 829 (2018), *as*
17 *modified on denial of reh'g* (Aug. 29, 2018);
- 18 v. *Gillings v. Time Warner Cable LLC*, 583 Fed.Appx. 712 (9th Cir.
19 2014);
- 20 vi. *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal. App. 4th 1524
21 (2009), pet. for rev. denied;
- 22 vii. *Laliberte v. Pacific Mercantile Bank*, 147 Cal. App. 4th 1 (2007),
23 rev. denied, pet. for cert. denied;
- 24 viii. *Alvarez v. May Dept. Stores Co.*, 143 Cal. App. 4th 1223 (2006),
25 rev. denied, pet. for cert. denied;
- 26 ix. *Johnson v. Glaxosmithkline, Inc.*, 166 Cal. App. 4th 1497 (2008),
27 rev. denied;
28

- x. *Howard, et al. v. America Online, Inc.*, 208 F.3d 741 (9th Cir. 2000), pet. for cert. denied;
- xi. *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489 (2011) (amicus counsel);
- xii. *D. R. Horton, Inc. and Michael Cuda*, Case 12–CA–25764, 357 NLRB No. 184 (January 3, 2012) (amicus counsel). This NLRB matter is of particular note, as it is at the center of a dispute regarding the interplay between the Federal Arbitration Act (FAA) and two labor relations laws, the National Labor Relations Act (NLRA) and Norris-LaGuardia Act. Cases highlighting that issue have been accepted by the United States Supreme Court.

(e) I was the lead appellate author in a matter before the California Supreme Court that generated substantial interest in the field of wage and hour litigation. That matter, *Troester v. Starbucks Corporation*, resolved a significant issue of whether, under California law, a *de minimis* defense exists to the employer’s obligation to pay all wages for all compensable time worked by an employee.

(f) In addition to my work on complex litigation matters and class actions, I have authored published articles and columns on issues related to class actions and other litigation issues, including:

- i. H. Scott Leviant, *Unintended Consequences*, 6 U.C. Davis Bus. L.J. 18 (2006), at <http://blj.ucdavis.edu/article.asp?id=636> (May 1, 2006);
- ii. H. Scott Leviant and Lilit Ter-Astvatsatryan, *Where Troester Stops Not Even Troester Knows*, DAILY JOURNAL (Los Angeles), July 2, 2019;
- iii. H. Scott Leviant and Lilit Ter-Astvatsatryan, *Unaccounted Time: Reading the Tea Leaves of Troester*, DAILY JOURNAL (Los Angeles), September 12, 2018;

- iv. Dennis F. Moss and H. Scott Leviant, *Class Actions: One step forward after two steps back*, DAILY JOURNAL (Los Angeles), January 11, 2012;
- v. H. Scott Leviant, *Arbitration: A Look Back, a Look Ahead*, DAILY JOURNAL (Los Angeles), December 28, 2010;
- vi. H. Scott Leviant, *Witnesses Cannot Hide*, Daily Journal (Los Angeles), April 21, 2010;
- vii. H. Scott Leviant, *Divide and Conquer: The New Paradigm of Class Action Defense?*, FORUM, January/February 2009
- viii. H. Scott Leviant, *Class Action Appellate Report*, FORUM, 2009-2010 (Ongoing series);
- ix. H. Scott Leviant & Linh Hua, *Legislature Using Purse Strings to Bind Judiciary*, Daily Journal (San Francisco), March 15, 2010;
- x. H. Scott Leviant, *Wrongfully Recused?*, DAILY JOURNAL (Los Angeles), December 2, 2009;
- xi. H. Scott Leviant, *Cutting Class*, DAILY JOURNAL (Los Angeles), April 15, 2008;
- xii. H. Scott Leviant, *Leveling The Playing Field*, DAILY JOURNAL (Los Angeles), May 4, 2007;
- xiii. H. Scott Leviant, *A Bad Meal Deal: 'Brinker' Gets the Incentive Question Wrong*, DAILY JOURNAL (Los Angeles), August 6, 2008;
- xiv. H. Scott Leviant & Jason E. Barsanti, *Maximize Recovery in Unpaid Wage Cases*, FORUM, January/February 2008;
- xv. H. Scott Leviant, et al., *Electronic Evidence: No Longer an Optional Element in a Comprehensive Litigation Plan*, ADVOCATE, April 2006;

xvi. H. Scott Leviant, *Improving Rule 12(b)(6) survival odds: Some considerations for effective RICO pleading*, CIVIL RICO REPORT, Volume 15, Number 22, April 26, 2000 (LRP Publications).

- (g) In addition to publications in industry newspapers, periodicals and journals, I am the Supervising Editor, primary author and founder of the legal blog The Complex Litigator (<http://www.thecomplexlitigator.com>). The Complex Litigator reports and comments on news and topics relevant to class action and complex litigation practice, with a primary emphasis on wage and hour litigation issues. Through my blog, I have also, on occasion, published podcasts of round table discussions with preeminent members of the wage and hour practice bar on both the plaintiff and defense sides. My blog has been cited to the California Supreme Court in at least one Petition for Review. The Complex Litigator has been in existence since 2008, having outlasted many other legal blogs, and it has a unique readership that numbers in the tens of thousands.
- (h) I have also lectured on issues related to class actions and complex litigation, including the following educational seminars:
- i. *Strategies for Settlement of Individual and Wage & Hour Class Actions*, Bridgeport's Eighth Annual Wage & Hour Litigation Conference (December 16, 2011)
 - ii. *The Year in Review – Staying Abreast of Current Cases*, Consumer Attorneys of San Diego Class Action Symposium (October 14, 2011)
 - iii. *Concepcion v. AT&T and Derivative Wage & Hour Claims*, Bridgeport's Mid Year Wage & Hour Litigation Conference (June 3, 2011)
 - iv. *Advanced Principles: UCL Remedies and Defenses*, 20th Annual Golden State Antitrust and Unfair Competition Law Institute (October 21, 2010)

- v. *Refining Your Wage and Hour Practice*, 2010 CELA Annual Conference (October 2, 2010)
- vi. *Word v. WordPerfect Software, Tips, Tools and Tricks: Legal Technology for Plaintiffs Employment Lawyers* (September 30, 2010)
- vii. *California's 17200 -- Its Use and Abuse*, Federalist Society (May 19, 2010)
- viii. *20 Tips for Successful Navigation of e-Discovery Requirements*, Los Angeles County Bar Association's Thirtieth Annual Labor and Employment Law Symposium (March 31, 2010)
- ix. *Social Networking for Lawyers: A Roadmap to Success*, Los Angeles County Bar Association's 2nd Annual two-day 2009 Small Firm and Solo Practitioners Conference: MISSION POSSIBLE (June 25, 2009)
- x. *A Seminar Overview of the Current State of Employment Law*, The Westchester/LAX/Marina Del Rey Chamber of Commerce (February 23, 2006)

- (i) I served three consecutive years as an elected member of the Board of Governors of the Consumer Attorneys of California. In that capacity, I worked to preserve the right of California's consumers and employees to bring proposed class actions. For example, I provided assistance to CAOC in its successful effort to defeat AB 298, which would have substantially impaired the ability of plaintiffs to prosecute class actions in California. More recently, on behalf of CAOC, I co-authored several requests for publication of unpublished class action decisions, including one such request in *Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286 (2010), and authored amicus briefs for CAOC in the Eighth Circuit matter entitled *Avritt v. Reliastar Life. Ins. Co.*, Case No. 09-2843, the California Supreme Court matter entitled *Californians for Disability Rights v.*

1 *Mervyn's, LLC*, 39 Cal. 4th 223 (2006), and the California Court of Appeal
2 matter entitled *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489
3 (2011).

4 27. My current contingent billing rate is consistent with my practice area, legal market and
5 accepted hourly rates:

- 6 (a) In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
7 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
8 reported by Sheppard Mullin Richter & Hampton, a leading firm in the defense of
9 wage-and-hour class actions that I have frequently opposed when litigating wage-
10 and-hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year
11 - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th
12 Year - \$435, 8th Year - \$455.
- 13 (b) In 2009 I was retained as appellate counsel in the appeal of a denial of class
14 certification. For the specialized work on that appeal, I charged an hourly rate of
15 \$650.00 per hour, a rate the hiring co-counsel accepted.
- 16 (c) In the wage and hour class action *Savaglio, et al, v. WalMart*, Alameda County
17 Superior Court No. C-835687-7, Order Granting Class Counsel's Motion for
18 Attorneys' Fees, filed September 10, 2010, the Court approved hourly rates from
19 \$435 per hour for four years of experience to \$875 per hour for 51 years of
20 experience.
- 21 (d) The 2017-2018 Adjusted Laffey Matrix states that an attorney with 11 to 19 years
22 experience can reasonably charge \$864 per hour.
23 <http://www.laffeymatrix.com/see.html>.⁵ However, that rate is derived from the
24 Washington, D.C. area and requires a costs of living correction for Los Angeles.
25 Using federal statistics for average attorney salaries, attorney pay is 4.4% lower in
26 Los Angeles, compared to Washington, D.C., indicating a 4.4% downward

27
28 ⁵Last viewed January 25, 2018.

adjustment to the Laffey Matrix is appropriate.

<https://www.bls.gov/oes/current/oes231011.htm>.⁶ However, using federal employee pay tables, federal employee wages are 2.0% higher in Los Angeles, compared to Washington, D.C., indicating a 2.0% upward adjustment to the Laffey Matrix is appropriate. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule/>.⁷ And, using Schedule 9 of 5 U.S.C. § 5332, there is a 3% differential. Thus, something in the range of a 4.4% locality reduction to a 3.0% locality increase appears appropriate here. Applying an adjustment factor of 3.0%, the locality corrected Adjusted Laffey Matrix hourly rate for attorneys with 11 to 19 years of experience is \$889.92. The complete Adjusted Laffey Matrix, both before and after locality adjustment of 3.0% is set forth below.

- (e) The full 2017-2018 Adjusted Laffey Matrix provides for the following hourly rates for paralegal/law clerks and attorneys falling into various ranges of years of experience:

Year	Adj. Factor**	Paralegal Clerk	1-3	4-7	8-10	11-19	20 +
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864

Applying the 3.0% locality adjustment to those rates, the Los Angeles rates for the Adjusted Laffey Matrix are as follows:

Year	Adj. Factor**	Paralegal Clerk	1-3	4-7	8-10	11-19	20 +
6/01/17- 5/31/18	1.0463	\$201.88	\$369.77	\$453.20	\$655.08	\$738.51	\$889.92

- (f) I have been selected to Super Lawyers from 2012-2022, achieving that professional recognition for eleven years in a row. I was selected for the Rising Stars edition of

⁶Last viewed March 3, 2017.

⁷ Last viewed March 3, 2017.

1 Super Lawyers in 2009.

2 (g) Based upon my practice area, geographic market, experience, including all of the
3 above information, reputation, and generally accepted hourly rates, my current,
4 regular hourly billing rate is now \$795.00, which is approximately 7% above the
5 11-19-year adjusted rate of \$738.51 (i.e., the rate considered appropriate for
6 attorneys with as little as 11 years of experience) and well below the presumptively
7 appropriate hourly rate of \$889.92 for attorneys with 20 or more years of
8 experience.

9
10 REASONABLENESS OF THE REQUESTED FEE AWARD

11 28. When this case was taken on a contingent fee basis, with the firm agreeing to assume
12 responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation,
13 Moon & Yang, APC, paid filing fees, copy charges, Westlaw fees, and mailing, telephone and express
14 mail charges. There was never a guarantee that Moon & Yang, APC, would recoup those expenditures.
15 The firm took on this case, which necessarily required the firm to forego other opportunities, given finite
16 resources to devote to cases.

17 29. Because of the uncertainty of the outcome in this and other wage and hour litigation
18 undertaken by Moon & Yang, APC, we took this case with the expectation that a risk enhancement,
19 either in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be
20 available if we prevailed. This expectation stems from the fact that many cases we undertake as putative
21 class actions do not resolve successfully.

22 30. Class Counsel's experience in employment class actions was integral in evaluating the
23 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
24 Practice in the narrow fields of wage and hour litigation requires skill and knowledge concerning the
25 rapidly evolving substantive law (state and federal), as well as the procedural law of class action
26 litigation.

27 31. In the past 5 years, Moon & Yang, APC, has settled many dozens of wage & hour class
28 actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it

has been the experience at Moon & Yang, APC, that attorney fee awards of one-third of a common settlement fund are the rule, rather than the exception. Here, Class Counsel agrees that they will seek no more than one third of the settlement amount in fees. This is consistent with common practice, consistent with Ninth Circuit practice, consistent with California law approving the percentage of the fund method to award fees from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not inappropriate in light of the many hours expended by attorneys and paralegals performing work for Plaintiff before and after the filing of this matter. That work includes:

- (a) Numerous interviews with our client, Plaintiff, and review of documents provided by Plaintiff;
- (b) Legal research and investigation regarding the Defendant's practices at numerous points in the litigation;
- (c) Preparation of multiple drafts of the original class action complaint and finalization and filing of the original class action complaint;
- (d) Review of an amended complaint that added Plaintiff's PAGA claim, and finalization of that complaint;
- (e) Extensive "meet and confer" efforts with Defendant's counsel to obtain relevant documents and information through informal discovery;
- (f) Contacting witnesses;
- (g) Analysis of the audit results and preparation of a damages model with the aid of a statistics expert;
- (h) Research and preparation of the mediation brief;
- (i) Attendance at mediation;
- (j) Drafting, negotiating, and reviewing multiple drafts of the Settlement and attachments; and
- (k) Preparation of the initial motion for preliminary approval and multiple revisions thereafter.

32. I anticipate that Class Counsel will spend an additional 50 hours on this matter, appearing at the hearing of preliminary approval, answering class member calls, working with the administrator to

1 finalize documents in mailing format, conferring with counsel over any notice issues, drafting the final
2 approval motion and motion for fees and costs, appearing at the final approval hearing, and resolving any
3 post-approval issues that may arise, and appearing at a final accounting hearing. Class Counsel has also
4 incurred costs in this matter that will be detailed at the time final approval is sought. Class Counsel has
5 agreed to a cap on recoverable costs of \$15,000, and if total incurred costs exceed the cap, Class Counsel
6 will request no more than the agreed-upon cap.

7
8 THE CONTRIBUTION OF PLAINTIFF AND THE REASONABLENESS OF THE REQUESTED
9 INCENTIVE AWARDS

10 33. Here, Plaintiff seeks an Enhancement Payment of up to **\$7,500.00**. This amount is very
11 reasonable given the risks undertaken by Plaintiff for involvement in the Action. Taking the risk of filing
12 a lawsuit against an employer deserves recognition, especially in light of the settlement achieved by
13 Plaintiff. Additionally, Plaintiff was actively involved in the litigation and settlement negotiations of this
14 Action, expending considerable effort in advancing the interests of the Class. Plaintiff provided
15 information to counsel before the filing of this matter; assisted with the settlement process (which
16 included conferring with counsel during the preparation of Plaintiff's mediation brief); and, regularly
17 conferred with counsel regarding the case whenever questions arose. I estimate that Plaintiff contributed
18 dozens of hours of time to the prosecution of this matter. Plaintiff's Declaration also confirms that
19 Plaintiff was an active participant in the filing and settlement of this case.

20
21 THE THIRD-PARTY ADMINISTRATOR

22 34. The parties have agreed that administration will be handled by a third-party administrator.
23 In counsel's experience as class counsel in similar wage-and-hour actions with a similar number of
24 employees, Phoenix Settlement Administrators is fully capable of administering the settlement at a
25 competitive and reasonable cost and should be approved by the Court to administer the settlement notice
26 process. Phoenix was selected because it submitted a low bid in the amount of **\$8,000.00** for
27 administration services. Phoenix has also provided a declaration confirming its experience and its
28 implementation of measures designed to protect Class Member data and Class Settlement funds.

CLASS CERTIFICATION

35. The class is ascertainable by objective criteria. The Class Members are: All individuals employed by Defendant in California and classified as “non-exempt” at any time during the Class Period (the “Class Period” is July 17, 2016 through the date upon which the Court grants preliminary approval of this Settlement, or January 1, 2022, whichever is earlier.) “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.)

36. The class is sufficiently numerous. Based upon Defendant’s records, there are approximately 193 Class Members. Plaintiff’s counsel believes that the data is reliable.

37. Plaintiff is typical of the Class. Plaintiff was an employee of Defendant. Plaintiff worked during the class period. Plaintiff’s claims are typical of the claims of the Class proposed in this settlement. Like other class members, Plaintiff experienced work under policies and procedures impacting wage and hour compliance. No unique defenses applicable to Plaintiff have been identified that do not also exist as to other Class Members.

38. Common *issues* exist. Here, Class Members have shared a common interest in determining whether Defendant violated wage and hour requirements under state and related federal law, including the following issues: i. Whether or not Defendant paid proper wages to the Class; ii. Whether or not Defendant provided meal periods to the Class; iii. Whether or not Defendant provided rest periods to the Class; iv. Whether or not Defendant paid compensation timely upon separation of employment to former Class Members; v. Whether or not Defendant paid compensation timely throughout Class Members’ employment; vi. Whether or not Defendant provided accurate itemized wage statements to the Class; vii. Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203; viii. Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208; and ix. Whether or not Plaintiff and the Class are entitled to penalties pursuant to PAGA.

39. From our review of the documentation provided, we determined that for purposes of these claims, Defendant’s policies and practices are either identical, or sufficiently similar, to raise the

1 same questions of liability, and applied to all Class Members. Because Class Members would have to
2 prove the same issues of law and fact to prevail, and because their potential legal remedies are identical,
3 it would be preferable to resolve all Class Members' claims by means of the Settlement than to require
4 each Class Member to litigate his or her individual claims. Therefore, common questions predominate
5 over any questions that may be unique to individual Class Members, and class-wide settlement is
6 superior to any other method of resolution.

7 40. My Declaration, in Paragraphs above, summarizes the firm's experience that establishes
8 its adequacy to represent the Class. Plaintiff's counsel has no known conflicts of interest with absent
9 Class Members. Plaintiff has demonstrated, through participation in this action, a willingness to serve
10 as a representative for the Class. Plaintiff has no known conflicts of interest with absent Class
11 Members and has agreed to place the class's interests above Plaintiff's own. Plaintiff's actions also
12 demonstrate adequacy.

13 41. By consolidating all of these potential individual actions into one proceeding, this
14 Court's use of the class action device enables it to manage this litigation in a manner that serves the
15 economics of time, effort and expense for the litigants and the judicial system. Absent class treatment,
16 similarly-situated employees with small but potentially meritorious claims for damages would, as a
17 practical matter, have no means of redress because of the time, effort and expense required to prosecute
18 individual actions. Moreover, in the context of settlement, superiority concerns are almost non-
19 existent, since case management is controlled and a methodology for trial need not be identified.
20

21 EXHIBITS

22 42. As noted above, a true and correct copy of the JOINT STIPULATION OF CLASS
23 ACTION SETTLEMENT is attached hereto as **Exhibit "1."** The Settlement includes Exhibit A (the
24 "Notice").

25 43. Attached hereto as **Exhibit "2"** is a true and correct copy of the submission of the
26 settlement to the Department of Industrial Relations, through its online submission portal.
27
28

PAGA SETTLEMENT NOTIFICATION TO DIR

44. Counsel for Plaintiff provided notice of the requested approval of the PAGA settlement through the online submission portal.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 19th day of October 2021, at Los Angeles, California.



H. Scott Leviant, "Declarant"

Exhibit “1”

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Attorneys for Defendant INTERTRADE INDUSTRIES, LTD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MANUEL GODOY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

[Assigned to Hon. Randall J. Sherman, Dept.
CX105]

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

Complaint filed: July 17, 2020
Trial date: Not yet set

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff MANUEL GODOY, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendant INTERTRADE INDUSTRIES, LTD (“INTERTRADE INDUSTRIES” or “Defendant”). Plaintiff and Defendant are collectively referred to herein as “the Parties.”

THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

1. For purposes of this Settlement, “Complaint” refers to the operative complaint, which is the First Amended Complaint.
2. For purposes of this Settlement, this matter, entitled *Godoy v. Intertrade Industries LTD*, Case No. 30-2020-01151921-CU-OE-CXC, is referred to herein as the “Action.”
3. For purposes of this Settlement, the “Class Period” is July 17, 2016 through the date upon which the Court grants preliminary approval of this Settlement, or January 1, 2022, whichever is earlier.
4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt employees of Defendant who worked in California during the Class Period. “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. Defendant’s best estimate is that the Class included approximately **193** individuals on June 29, 2021.
5. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.
6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class Member worked at Defendant’s locations in California during the Class Period.
7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on which Settlement Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as

1 expressly described herein.

2 8. For purposes of the Settlement, “Defendant’s Counsel” means THE ROSE GROUP,
3 APLC.

4 9. For purposes of this Settlement, “PAGA Allocation” means the amount that the Parties
5 have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys
6 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that the PAGA
7 Allocation will be \$60,000 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent
8 (75%), or \$45,000, of the PAGA Allocation will be paid to the LWDA (“PAGA Penalty Payment”), and
9 Twenty Five Percent (25%), or \$15,000, of the PAGA Allocation will be included in the Net Settlement
10 Amount for PAGA Employees (“PAGA Settlement Payment”).

11 10. For purposes of this Settlement, “PAGA Period” means the period between July 17, 2019
12 through the date upon which the Court grants preliminary approval of this Settlement, or March 1, 2022,
13 whichever is earlier.

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

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

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

21 14. For purposes of this Settlement, “Released PAGA Claims” means all claims asserted
22 through California Labor Code §§ 2698, *et seq.*, that were identified by the PAGA Representative in the
23 Notice to the LWDA and are alleged in the Complaint. Plaintiff’s Notice to the LWDA is attached hereto
24 as **Exhibit “B”**.

25 15. For purposes of this Settlement, “Released PAGA Claims Period” means the period
26 between July 17, 2019 through the date upon which the Court grants preliminary approval of this
27 Settlement, or March 1, 2022, whichever is earlier.

28 16. For purposes of this Settlement, “Settlement Payments” means all of the payments to

Settlement Class Members (the “Settlement Class Payments”) and all of the payments to the PAGA Employees (the “PAGA Settlement Payment”).

STIPULATED BACKGROUND

17. On July 17, 2020, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Minimum and Regular Rate [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; and, (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. On November 20, 2020 Plaintiff filed his First Amended Complaint adding the eight case of action for civil penalties under PAGA [Cal. Lab. Code § 2699, *et seq.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent.

18. The parties agree that Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”) by submission of the notice to the LWDA and Defendant on August 12, 2020.

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

- (a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.
- (b) There are common questions of law and fact including, but not limited to, the following:
 - 1) Whether or not Defendant paid proper wages to the Class;
 - 2) Whether or not Defendant provided meal periods to the Class;
 - 3) Whether or not Defendant provided rest periods to the Class;

- 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;
- 5) Whether or not Defendant paid compensation timely throughout Class Members' employment;
- 6) Whether or not Defendant provided accurate itemized statements to the Class;
- 7) Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203;
- 8) Whether or not Defendant maintained requisite records;
- 9) Whether or not Defendant paid proper meal period pay or rest period pay to the Class; and,
- 10) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.

- (c) Plaintiff's claims are typical of the claims of the Class Members.
- (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
- (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
- (f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

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

1 action should this Settlement not become effective.

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

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

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

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

25 25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
26 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
27 Court.
28

PRIMARY TERMS OF SETTLEMENT

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

- (a) It is agreed by and among the Settlement Class, PAGA Employees, and Defendant that this case and any claims, damages, or causes of action arising out of the disputes which are the subject of this case, be settled and compromised as between the Settlement Class, PAGA Employees, and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.
- (b) Effective Date: The terms of settlement embodied in this Settlement shall become effective when all of the following events have occurred: (i) this Joint Stipulation of Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been given to the Class, providing them with an opportunity to dispute information contained in the Notice, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Class and approving this Settlement; and (v) the later of the following events: (a) seven (7) calendar days have passed since final approval is granted if there are no objections to the settlement or intervenors in the action; (b) eighty-one (81) days following notice of entry of the Court's final order approving the Settlement if there are any objections by any Class Member or any intervenors, but no Notice of Appeal filed within 65 days of entry of the final approval order and judgment; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed,, then twenty-eight (28) days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

- (c) Gross Settlement Amount: Defendant's maximum total payment under the Settlement, including all attorney's fees and costs, the Service Payment to the named Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement, is Four Hundred Fifty Thousand Dollars and Zero Cents (**\$450,000.00**) ("Gross Settlement Amount"), subject to the Escalator Clause and except that, to the extent that any portions of the Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions.
- (d) Escalator Clause: Defendant represents that the number of Class Members was approximately one hundred ninety-three (193) as of June 29, 2021, and the number of workweeks worked in the Class Period for those Class Members was approximately fourteen thousand eight hundred thirty-three (14,833.00) as of that date. If it is later determined that, on the date of preliminary approval, the number of workweeks in the Class Period is more than 10% greater than the estimated number of workweeks on June 29, 2021, the Gross Settlement Amount shall be increased by one percent for each percent over the 10% threshold that the actual number of workweeks exceeds the estimated number of workweeks (if the number of workweeks increases by 11%, the Gross Settlement will increase 1%), (the "Escalator Clause").
- (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.
- (f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.
- (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$450,000.00) the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed 33 and 1/3% of the Gross Settlement Amount, or \$150,000.00); (2) reasonable litigation costs (not

to exceed \$15,000.00); (3) the Service Payment (not to exceed \$7,500.00 to the named Plaintiff); (4) the PAGA Penalty Payment in the amount of \$45,000.00 (which is 75% of the PAGA Allocation); and (5) costs of settlement administration (estimated not to exceed \$15,000). Settlement Payments to the Class Members and PAGA Employees will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

(h) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any **employer** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Except for any employer payroll taxes, it is understood and agreed that Defendant's maximum total liability under this Settlement shall not exceed the Gross Settlement Amount. The Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator

(i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member (i.e., those Class Members who do not opt out of the Class Settlement, as defined above) will be paid a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totalling \$15,000, as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows:
$$\frac{\text{[Workweeks worked by a Settlement Class Member]}}{\text{[Sum of all Covered Workweeks worked by all Settlement Class Members]}} \times \text{[Net Settlement Amount - all PAGA Settlement Payments]} =$$

individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $[\text{PAGA Pay Periods worked by a PAGA Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}] \times [\text{PAGA Settlement Payment to Employees, i.e. \$15,000}] = \text{individual PAGA Employee's portion of the PAGA Settlement Payment}$. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 20% to wages and 80% to penalties and interest. The PAGA Settlement Payment shares to PAGA Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment.

1 The employer's share of payroll taxes and other required withholdings will be paid
2 as set forth above, including but not limited to the Defendant's FICA and FUTA
3 contributions, based on the payment of claims to the Class Members. IRS Forms
4 1099 will be issued to each Class Member reflecting the payments for penalties and
5 interest. Class Members are responsible to pay appropriate taxes due on the
6 Settlement Payments they receive. To the extent required by law, IRS Forms 1099
7 and W-2 will be issued to each Class Member with respect to such payments.

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

23 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
24 object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3%
25 of the Gross Settlement Amount (\$150,000.00) and reimbursement of litigation
26 costs and expenses not to exceed \$15,000.00. Approved attorney's fees and
27 litigation costs shall be paid at the same time Settlement Payments issue to the
28 Settlement Class.

(n) Service Payment: Subject to Court approval, and in exchange for a general release, Defendant will not object to Class Counsel's application for an additional payment of up to \$7,500.00 to Plaintiff for service as a Class Representative ("Service Payment"). It is understood that the Service Payment is in addition to the individual Settlement Payment to which a Class Representative is entitled to along with the other Class Members. In exchange, Plaintiff has agreed to release all claims, whether known or unknown, under federal law or state law against the Releasees, to the extent permitted by law, through the Class Period ("Plaintiff's Released Claims"). Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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.

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

(o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.

(p) Settlement Administrator: The Settlement Administrator will be Phoenix Class Action Administration Solutions. Settlement Administration Costs are estimated

not to exceed \$8,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement.

(q) Funding of Settlement Account: Defendant will fund the settlement account within seven (7) calendar days of the Effective Date of the Settlement provided that the Settlement Administrator has provided the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of this Settlement.

(r) Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within twenty-eight (28) calendar days of the Effective Date of the Settlement, provided that the Settlement Administrator has provided the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of this Settlement.

(s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the proposed class action Settlement ("Notice"). For each Class Member, there will be pre-printed information on the mailed Notice, based on Defendant's records, stating the Class Member's Covered Workweeks during the Class Period and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment that will be distributed irrespective of any exclusion request. The pre-printed information based on Defendant's records shall be presumed to be correct. A Class Member may dispute the pre-printed information on the Notice as to his or her Covered Workweeks during the Class Period. Class Members must submit any dispute regarding the information on the Notice as to his or her Covered Workweeks within the Response Deadline. Unless a disputing Class Member submits documentary evidence in support of his or her dispute, the records of the Defendant will be determinative.

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

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

1 Class Members submitting a Request for Exclusion will nevertheless receive their
2 pro-rata share of the PAGA Settlement Payment. If the Court approves the
3 compromise of the PAGA Claim, all Class Members are bound by the Court's
4 resolution of the PAGA Claim. Plaintiff shall serve a notice of settlement on the
5 California Labor and Workforce Development Agency at or before the time
6 Plaintiff files the motion for preliminary approval.

7 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
8 Defendant's records used to calculate Covered Workweeks, and the Parties'
9 counsel cannot resolve the dispute informally, the matter will be referred to the
10 Settlement Administrator. The Settlement Administrator will review Defendant's
11 records and any information or documents submitted by the Class Member and
12 issue a non-appealable decision regarding the dispute. The Class Member must
13 submit information or documents supporting his or her position to the Settlement
14 Administrator prior to the expiration of the Response Deadline. Information or
15 documents submitted after the expiration of the Response Deadline will not be
16 considered by the Settlement Administrator, unless otherwise agreed to by the
17 Parties.

18 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
19 Member may request to be excluded from the Class by mailing a "Request for
20 Exclusion" from the Settlement within the Response Deadline, including any clear
21 statement of an intention to be excluded, such as in the following example:

22 "I WISH TO BE EXCLUDED FROM THE CLASS ACTION
23 SETTLEMENT IN THE GODOY *V. INTERTRADE*
INDUSTRIES LTD."

24 In order to confirm the identity of the Class Member requesting exclusion, any
25 Request for Exclusion must include the name, address, telephone number, last four
26 digits of the Class Member's Social Security Number, and the signature of the
27 Class Member requesting exclusion. Any such request must be made in
28 accordance with the terms of the Notice, and the Notice will advise Class Members

1 of these requirements. Any Class Member who timely requests exclusion in
2 compliance with these requirements (i) shall not have any rights under this
3 Settlement other than a right to receive a pro-rata share of the portion of the PAGA
4 payment allocated to the Class Members if the Class Member is also PAGA
5 Employee; (ii) shall not be entitled to receive any Settlement Payments under this
6 Settlement other than as stated in (i) in this paragraph; and (iii) shall not be bound
7 by this Settlement or the Court's Order and Final Judgment other than as it applies
8 to the PAGA Claim.

9 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
10 Member may object to the Settlement. To object, the Class Member may (1)
11 appear in person (including through an audio or video call appearance as allowed
12 by the Court) at the Final Approval Hearing to explain any objection, (2) have an
13 attorney object for the Class Member, or (3) submit a simple written brief or
14 statement of objection to the Settlement Administrator. If any Class Member
15 chooses to submit a written objection, the written objection should contain
16 sufficient information to confirm the identity of the objector and the basis of the
17 objection, including (1) the full name of the Settlement Class Member; (2) the
18 signature of the Settlement Class Member; (3) the grounds for the objection; and
19 (4) be postmarked within the Response Deadline to permit adequate time for
20 processing and review by the Parties of the written statement or objection. Class
21 Counsel shall ensure that any written objections are transmitted to the Court for the
22 Court's review (either by Class Counsel or as an attachment to declaration from the
23 Settlement Administrator). Regardless of the form, an objection alone will not
24 satisfy the requirement that a Settlement Class Member must either make a timely
25 complaint in intervention before final judgment or by file a motion to set aside and
26 vacate the class judgment under Code of Civil Procedure § 663 to have standing to
27 appeal entry of judgment approving this Settlement, as is required under the
28 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal.

5th 260 (2018). A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court.

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

THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES

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

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

29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in

1 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
2 performance of its duties shall be referred to the Court, if necessary, which will have continuing
3 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
4 contemplated by this Settlement have been fully carried out.

5 30. The Settlement Administrator will post the final judgment approving the Settlement on a
6 website maintained by the Settlement Administrator for a period of not less than 90 calendar days after the
7 final judgment is entered. The address of that website will be included in the Notice.

8 **ATTORNEY'S FEES AND COSTS**

9 31. In consideration for resolving this matter and in exchange for the release of all claims by
10 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to
11 Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount
12 (\$150,000.00 of \$450,000.00) and litigation costs not to exceed \$15,000.00. The amounts set forth above
13 will cover all work performed and all fees and costs incurred to date, and all work to be performed and all
14 fees and costs to be incurred in connection with the approval by the Court of this Settlement and
15 administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve
16 a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s)
17 and the maximum amount set forth above shall be added to the Net Settlement Amount. As with the
18 Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be
19 paid to Class Counsel within 28 calendar days of the Effective Date of the Settlement, provided that the
20 Settlement Administrator has provided the Parties with an accounting of the amounts to be paid by
21 Defendant pursuant to the terms of this Settlement. Class Counsel shall disclose to the Court any fee
22 sharing agreements in existence.

23 **THE NOTICE PROCESS**

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

- (a) Within 15 calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) social security number; and (4) dates of employment at Defendant's location in California. This database shall be based on Defendant's payroll and other business records and shall be provided in a format acceptable to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential and secure and use it only for the purposes described herein, and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement. However, Plaintiff's Counsel shall be entitled to review anonymized data showing the workweeks worked by each Class Member, with Class Member identity concealed through use of an employee number or number assigned by the Settlement Administrator.
- (b) Within 14 calendar days after the Class database is provided to the Settlement Administrator, the Settlement Administrator will mail the Notices to the Class Members by First Class United States mail.
- (c) Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned

mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the Class Member's social security number or other information. In any instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline as described above. A letter prepared by the Settlement Administrator will be included in the re-mailed Notice in that instance, stating the extended Response Deadline if different than the original Response Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final Judgment.

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

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

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

34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member within that time, and the Class Member's relevant claims will remain released by the Settlement.

1 Settlement Payment checks which have expired will not be reissued.

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

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

10 **RELEASE BY THE CLASS**

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

15 (a) **Identity of Released Parties.** The released parties are Defendant, and each of
16 its/their former and present direct and/or indirect owners, dba's, affiliates, parents,
17 subsidiaries, brother and sister corporations, divisions, related companies,
18 successors and predecessors, and current and former employees, attorneys, officers,
19 directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries,
20 subrogees, executors, partners, privies, agents, servants, insurers, representatives,
21 administrators, employee benefit plans, and assigns of said entities (collectively
22 "Releasees").

23 (b) **Date Release Becomes Effective.** The Released Claims will be released upon the
24 later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's
25 obligation to provide to the Settlement Administrator a sum in the amount required
26 to satisfy all required payments and distributions pursuant to this Settlement and
27 the Order and Judgment of final approval. Class Members will not release the
28 Released Claims or Released PAGA Claims until both the Effective Date of the

1 Settlement has occurred, **and** Defendant has paid all amounts owing under the
2 Settlement.

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

8 1) any and all claims stated in the Complaint, or that could have been stated
9 based on the facts alleged in the Complaint, implicitly or explicitly,
10 including but not limited to state wage and hour claims (including all
11 claims under the California Labor Code and Industrial Welfare
12 Commission Wage Orders) for unpaid wages, minimum wage, overtime,
13 meal periods, rest periods, wage statement violations, interest, penalties,
14 and attorneys' fees, waiting time penalties, withholding from wages and the
15 related provisions of the Labor Code including but not limited to Labor
16 Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 246, 510, 512, 516,
17 512.5, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2810.5,
18 derivative claims under California Business & Professions Code §§ 17200
19 et seq., and all claims under the governing Wage Order ("Released
20 Claims");

21 2) as to any Class Member who cashes their Settlement Payment, the signing
22 and negotiation of that check shall serve as the Class Member's consent to
23 join the action for purposes of releasing claims arising under the Fair Labor
24 Standards Act that are related to the claims stated in the Complaint,
25 implicitly or explicitly; and,

26 3) in addition, as to *all* Class Members employed during the Released PAGA
27 Claims Period, whether requesting exclusion from the Settlement or not,
28 claims arising under the Private Attorneys General Act of 2004, Labor

Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA (**Exhibit B**) and the Complaint in this matter (i.e., the Released PAGA Claims).

EMPLOYMENT BY DEFENDANT

38. Employment of Plaintiff by Defendant is not consideration for, or a condition of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

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

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

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

40. In conjunction with the hearing of a motion for final approval by the Court of the

Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

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

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

NULLIFICATION AND TERMINATION

41. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than

1 adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for
2 any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or
3 rendered void; or (e) the Settlement does not become final for any other reason.

4 42. If 10% or more of the Class Members opt out of this Settlement, then Defendant in its sole
5 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
6 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
7 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's
8 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than five (5)
9 days prior to the date of the Final Approval Hearing. If this option is exercised by Defendant, Defendant
10 shall be solely responsible for the costs incurred by the Settlement Administrator for the settlement
11 administration.

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

17 **PARTIES' AUTHORITY**

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

20 **MUTUAL FULL COOPERATION**

21 45. The Parties agree to fully cooperate with each other to accomplish the terms of this
22 Settlement including, but not limited to, execution of such documents and taking such other action as
23 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
24 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
25 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
26 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
27 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
28 Court's preliminary and final approval of this Settlement.

NO PRIOR ASSIGNMENTS

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

NO ADMISSION OF LIABILITY

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

ENFORCEMENT ACTIONS

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

NOTICES

49. 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 registered or certified mail, return receipt requested, addressed as follows:

Class Counsel:

Kane Moon
H. Scott Leviant
Lilit Tunyan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com

Counsel for Defendant:

Kenneth J. Rose
Robert H. Rose
THE ROSE GROUP, APLC
9747 Businesspark Ave., Suite 213
San Diego, CA 92131
Telephone: (619) 822-1088
Facsimile: (708) 575-1495
rose@rosegroup.us

scott.leviant@moonyanglaw.com
lilit.tunyan@moonyanglaw.com

krose@rosegroup.us

CONSTRUCTION

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

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

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

INTEGRATION CLAUSE

53. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

WAIVER OF APPEALS

54. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees.

BINDING ON ASSIGNS

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

CLASS COUNSEL SIGNATORIES

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

COUNTERPARTS

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

CONFIDENTIALITY & PUBLIC COMMENT

58. The Class Representative and Class Counsel agree they will not make any disparaging comments about Defendant relating to this Settlement of this class action or disclose the negotiations of the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record other than to Class Members, who may receive information about the Settlement that is not in the public record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. To the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a statement that "the case was resolved and it was resolved confidentially". Any communication about the Settlement to Class Members prior to the Court-approved mailing will be limited to (1) a statement that a settlement has been reached, (2) a statement of any of the details that would necessarily be included in any Court-approved Notice if a Class Member requests details about the proposed Settlement, and (3) a warning that the terms of the proposed Settlement have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse, (2) accountants or lawyers as necessary for tax purposes, or (3) Class Members. At all times, the Class Representative is prohibited from communicating

about the terms or the fact of the settlement on any form of social media ("Social Media Bar"). Class Counsel will take all steps necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against any public disclosure of the Settlement. Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

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

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

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: October 12, 2021

By:

DocuSigned by:

8B3F6CA59B824AC

MANUEL GODOY

Plaintiff's Counsel:

Dated: October 12, 2021

MOON & YANG, APC

By:


Kane Moon
H. Scott Lerman
Lilit Tunyan

Attorneys for Plaintiff

Defendant:

Dated: October 18, 2021

INTERTRADE INDUSTRIES LTD

By:

Jim Goode

Print Name


Signature

CEO

Title

Defendant's Counsel:

Dated: October 14 , 2021

THE ROSE GROUP, APLC

By: _____

Kenneth J. Rose
Robert J. Rose

Attorneys for Defendant INTERTRADE
INDUSTRIES, LTD

EXHIBIT A

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Godoy v. Intertrade Industries LTD
Orange County Superior Court Case No. 30-2020-01151921-CU-OE-CXC

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF INTERTRADE INDUSTRIES, LTD (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN JULY 17, 2016 AND <<CLASS END DATE>> (THE “CLASS PERIOD”), THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Godoy v. Intertrade Industries LTD*, Orange Superior Court Case No. 30-2020-01151921-CU-OE-CXC (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Randall J. Sherman on <<FA DATE>>, at <<FA TIME>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written request to be excluded (“Opt-Out Request”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Opt-Out Requests must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit an Opt-Out Request if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked in California during the Class Period. The “Class Period” is July 17, 2016 through <<CLASS END DATE>>.

According to Defendant’s records, you are a member of the settlement class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$15,000 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of July 17, 2019 through <<PAGA END DATE>>

What is this case about?

In the Action, Plaintiff Manuel Godoy (“Plaintiff”) alleges on behalf of himself and the Class that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages at termination; (6) failed to furnish accurate itemized wage statements; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiff seeks unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
H. Scott Leviant
Lilit Tunyan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
scott.leviant@moonyanglaw.com
lilit.tunyan@moonyanglaw.com

Defendant’s Counsel

Kenneth J. Rose
Robert H. Rose
THE ROSE GROUP, APLC
9747 Businesspark Ave., Suite 213
San Diego, CA 92131
Telephone: (619) 822-1088
Facsimile: (708) 575-1495
rose@rosegroupp.us
krose@rosegroupp.us

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$450,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Enhancement to Plaintiff (\$7,500 to be requested); (c) the Court-approved attorneys’ fees and costs to Class Counsel (“Class Counsel’s Fees and Expenses”) (\$150,000.00 in fees and up to \$15,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “PAGA Penalty Payment”) (\$45,000 of a total of \$60,000 allocated to the PAGA settlement); and (e) payment to the Settlement Administrator for settlement administration services (“Administrative Expenses”) (estimated to be no more than \$15,000).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$15,000 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their “Individual Settlement Payment”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the “Settlement Class Payments”) and each PAGA Employee (the “PAGA Settlement Payments”).

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$15,000 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$15,000 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

Your estimated Individual Settlement Payment is <<**Estimated Settlement Payment**>> and the number of work weeks you worked during the Class Period based on your hire and/or termination dates is <<**Work Weeks**>>. You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<**RESPONSE DEADLINE**>> (the “Response Deadline”) at:

Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863

You must produce documentary evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all work week disputes, and its decisions will be final and non-appealable. **REMINDER:** If you believe your estimated Settlement Payment is incorrect because your work weeks (the number of weeks you worked within the Class Period) are wrong, your deadline to dispute this is <<**RESPONSE DEADLINE**>>.

For tax reporting purposes, the payments to Class Members will be allocated 20% as wages and 80% as penalties and interest. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

Within 28 calendar days after the “Effective Date,” the Administrator will distribute the Individual Settlement Payments to all Settlement Class Members and PAGA Employees. The “Effective Date” is the later of the following events: (a) seven (7) calendar days have passed since final approval is granted if there are no objections to the settlement or intervenors in the action; (b) eighty-one (81) days following notice of entry of the Court’s final order approving the Settlement if there are any objections by any Class Member or any intervenors, but no

Notice of Appeal filed within 65 days of entry of the final approval order and judgment; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed,, then twenty-eight (28) days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

Payments to Settlement Class Members and PAGA Employees will issue only AFTER the payment by Defendant of the Gross Settlement Amount. **PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.**

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel's Fees and Expenses, the Class Representative Enhancement, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys' fees up to \$150,000.00 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Enhancement made to Plaintiff, not to exceed \$7,500, for his efforts in bringing the Action on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$8,000.00. The PAGA Penalty Payment in the amount of \$45,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$60,000 PAGA Allocation.

What claims are being released by the proposed Settlement?

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

(a) Identity of Released Parties. The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively "Releasees").

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

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

1) any and all claims stated in the Complaint, or that could have been stated based on the facts alleged in the Complaint, implicitly or explicitly, including but not limited to state wage and hour claims (including all claims under the California Labor Code and Industrial Welfare Commission Wage Orders) for unpaid wages, minimum wage, overtime, meal periods, rest periods, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but not limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 246, 510, 512, 512.5, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2810.5, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order ("Released Claims");

- 2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member's consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Complaint, implicitly or explicitly; and,
- 3) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA (Settlement Exhibit B) and the Complaint in this matter (i.e., the Released PAGA Claims).

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly file an Opt-Out Request. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can't object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections should be sent to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Godoy v. Intertrade Industries LTD*, Case No. 30-2020-01151921-CU-OE-CXC); and (5) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

Because of healthcare guidance and Orders of the Orange Superior Court related to COVID-19, the Final Approval Hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-

01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman).

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must submit a written request to be excluded from the Class Settlement to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your written request to be excluded from the Class Settlement must be signed and include your full name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement), along with any clear statement that you wish to be excluded, such as in the following example:

“I hereby request to be excluded from the Class Action Settlement in *Godoy v. Intertrade Industries LTD.*”

Your written request to be excluded from the Class Settlement must then be signed and postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a written request to be excluded from the Class Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Class Settlement by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement, except for any payment you may be receive from the PAGA portion of this Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the Administrative Expenses, and the PAGA Allocation on <<FINAL APPROVAL HEARING DATE & TIME>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. Because of healthcare guidance and Orders of the Orange County Superior Court related to COVID-19, the hearing may be a telephonic hearing only. As described above, if you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman). The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<[website](#)>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action Settlement attached to the Declaration of H. Scott Leviant in Support of Plaintiff’s Motion for Preliminary Approval. The Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Orange County Superior Court. Because of the Orange County Superior Court’s COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://ocjustice.occourts.org/civilwebShoppingNS/Search.do#searchAnchor>. You may need the case number to access and view case documents (30-2020-01151921-CU-OE-CXC) NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

EXHIBIT B

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

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

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

July 15, 2020

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL

Intertrade Industries, Ltd.
14600 Hoover Street
Westminster, CA 92683

Notice of Labor Code Violations and PAGA Penalties

Re: ***Manuel Godoy v. Intertrade Industries Ltd.***

To Whom It May Concern:

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

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

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

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 2 of 8

Factual Background Regarding Plaintiff's Employment with Defendant

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

Plaintiff worked for Defendant as a machine technician from approximately May 2018 to February 2020, primarily in Orange County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 4 days per week, and in excess of 10 hours each workday.

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

Failure to Pay for All Hours Worked, Including Overtime

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

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

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

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Further, Plaintiff and the Aggrieved Employees were not paid all overtime compensation at the correct rate of pay for work performed in excess of 8 hours per

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 3 of 8

workday. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

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

Failure to Provide Meal Periods

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

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

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

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

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 4 of 8

Failure to Authorize and Permit Rest Periods

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

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

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

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

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 5 of 8

showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

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

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

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

Failure to Timely Pay All Wages at Termination

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

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

LWDA
Notice of Labor Code Violations and PAGA
 July 15, 2020
 Page 6 of 8

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

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

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

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

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

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

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 7 of 8

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

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

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

Action for Civil Penalties Under PAGA

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

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination; and
6. Labor Code § 226 by failing to provide accurate itemized wage statements.
7. Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f)(2).

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

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

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 8 of 8

Sincerely,

MOON & YANG, APC

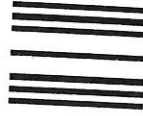
A handwritten signature in blue ink, appearing to read 'Kane Moon', is written over the text 'MOON & YANG, APC'.

Kane Moon
Attorney at Law

7019 2970 0001 5132 1833

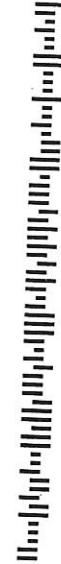
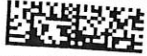
US Postal Service® CERTIFIED MAIL® RECEIPT	
Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®	
OFFICIAL USE	
Certified Mail Fee \$	Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$	
☐ Return Receipt (electronic) \$	
☐ Certified Mail Restricted Delivery \$	
☐ Adult Signature Required \$	
☐ Adult Signature Restricted Delivery \$	
Postage \$	
Total Postage and Fees \$	
Sent To <u>INTERTRADE INDUSTRIES, LTD.</u>	
Street and Apt. No., or PO Box No. <u>14600 Hoover Street</u>	
City, State, ZIP+4® <u>Westminster, CA 92683</u>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

 **MOON & YANG, APC**
ATTORNEYS AT LAW
1055 W. SEVENTH STREET, SUITE 1880, LOS ANGELES, CA 90017



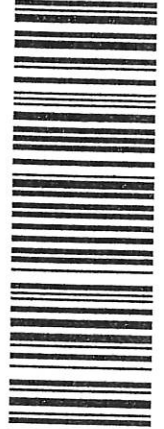
\$7.200
US POSTAGE
FIRST-CLASS
FROM 90017
07/17/2020
stamps
endicia

062S0010480272



Intertrade Industries, Ltd.
14600 Hoover Street
Westminster CA 92683-5346

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



7019 2970 0001 5132 1833

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

INTERTRADE INDUSTRIES, LTD.
14600 Hoover Street
Westminster, CA 92693



9590 9402 5711 9346 4880 24

2. Article Number (Transfer from service label)

7019 2970 0001 5132 1833

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Exhibit “2”



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *



Your Zip/Postal Code *

Court and Hearing Information

Court *

Orange County Superior C

Court Case Number *

30-2020-01151921-CU-

Hearing Date (if any)

12/03/2021

Hearing Time

10:00 a.m.

Hearing Location

751 W. Santa Ana Bouleva

Number of aggrieved employees *

133

Gross settlement amount *

450000

Gross penalty amount *

60000

Penalties to LWDA *

45000

Date of proposed settlement *

10/18/2021

Proposed Settlement and Other Documents

Proposed Settlement *

Choose File Godoy v. Inte...agreement.pdf

Other Attachment (if any)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Previous Page

Submit

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [H. Scott Leviant](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, October 19, 2021 2:28:19 PM

10/19/2021 02:28:02 PM

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

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party
4 to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **DECLARATION OF H. SCOTT**
6 **LEVIANT IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS**
7 **ACTION SETTLEMENT** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy
8 thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

9 Kenneth J. Rose
10 Robert H. Rose
11 THE ROSE GROUP, APLC
12 9747 Businesspark Ave., Suite 213
13 San Diego, CA 92131
14 kroserose@rosegroupp.us
15 rrose@rosegroupp.us

16 *Counsel for Defendant Intertrade Industries, LTD*

17 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in
18 the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's
19 practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes
20 are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage
21 thereon fully prepaid at Los Angeles, California.

22 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail
23 delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this
24 action.

25 ☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the
26 above-named document(s) has (have) been electronically served on counsel of record by an approved
27 electronic service provider. The transmission of these documents was reported complete and a copy of
28 the service confirmation will be maintained, along with the original document(s) and proof of service in
our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the
offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and
processing correspondence for overnight delivery. Under that practice, overnight packages are
enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are
picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that
the foregoing is true and correct. Executed this **October 20, 2021** at Los Angeles, California.

26 H. Scott Leviant
27 Type or Print Name

26 
27 Signature

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
H. Scott Leviant (SBN 200834)
scott.leviant@moonyanglaw.com
Lilit Tunyan (SBN 329351)
lilit.tunyan@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Manuel Godoy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MANUEL GODOY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
California corporation; and DOES 1 through 10,
inclusive,
Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

CLASS ACTION

**DECLARATION OF PLAINTIFF MANUEL
GODOY IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: December 3, 2021
Time: 10:00 a.m.
Courtroom: Dept. CX105
Judge: Hon. Randall J. Sherman

Action Filed: July 17, 2020
Trial Date: Not Set

DECLARATION OF MANUEL GODOY

I, MANUEL GODOY, declare as follows:

1. I am a named Plaintiff in this case. I am a former employee of the named defendant, INTERTRADE INDUSTRIES, LTD. ("Defendant"). As such, I have personal knowledge of, or am informed and believe, the following facts herein stated. If called as a witness. I could and would testify competently to the following:

JOB DUTIES AND EXPERIENCES

2. I worked for Defendant during the Settlement Class Period in California as a machine technician from approximately May 2018 to February 2020. I was paid on an hourly basis and classified as non-exempt from overtime. Throughout my employment, I typically worked 4 days per workweek, and typically in excess of 10 hours in a workday.

3. Because of Defendant's policies, I missed several meal and rest breaks or took late meal and rest breaks per week because of the volume of work I was assigned to complete under deadlines.

DUTIES OF A CLASS REPRESENTATIVE

4. This lawsuit is not an individual lawsuit. It is a proposed class action. I understand that, if approved as a class representative in this matter, I have an obligation to do my best to look out for the interests of other class members, the current and former employees of INTERTRADE INDUSTRIES, LTD. who I am seeking to represent. I understand that my obligations to the class exist even when the class is certified solely as part of a class action settlement. It is my understanding that, as one part of this duty to the class, I cannot agree to a settlement to benefit myself to the exclusion of the rest of the class members. I have never asked my attorneys to simply settle this matter at any cost. Rather, I have asked them to obtain the best settlement they could within reason, and I believe that they have attempted to do so.

5. This case was filed over a year ago. I have never asked to be relieved from my role as a proposed class representative. To the contrary, I have made myself available whenever my attorneys wanted to discuss aspects of my employment at INTERTRADE INDUSTRIES, LTD., and I remain committed to seeing this matter through to the end.

1 6. I have conferred with my attorneys about the settlement proposed in this case. I am not an
2 accountant, but I understand the factors and risks that need to be considered when evaluating a
3 settlement.

4 7. Summing it all up in the simplest terms, I am asking to be stand-in for other
5 employees of INTERTRADE INDUSTRIES, LTD. Because of that, I cannot quit on the Class, and I
6 cannot put myself and my interests before the Class. I accept these duties and request that I be approved
7 as the class representative for purposes of this amended Settlement.

8 COMMUNITY OF INTEREST: TYPICALITY AND ADEQUACY

9 8. I was an hourly non-exempt employee of Defendant and was subject to the same pay
10 structure and rules as all the other hourly non-exempt employees of Defendant.

11 9. I am not aware of anything special about me that would raise unique defenses to my
12 claims, as opposed to the claims of the class. I am also not suing for anything unique to me. Rather, my
13 claims are based upon the same facts that relate to the rest of the Class.

14 10. I do not believe that I have any conflicts with Class Members included in this proposed
15 Settlement. I do not have any intention to take any action that would place me in a position that is hostile
16 to other Class Members.

17 SERVICE AS A CLASS REPRESENTATIVE

18 11. I believe if not for my stepping forward and taking on the duties of protecting the
19 interests all aggrieved former and current employees of Defendants, it is likely that the interests of the
20 Class would neither have been prosecuted, nor benefited. To my knowledge, other than the litigation
21 encompassed by this proposed Settlement, there is no other litigation, on a Class or individual basis,
22 concerning the claims in this lawsuit. Nor has Defendant pointed to any.

23 12. I have assumed some long-lasting risk in prosecuting this case. Because it is so easy to
24 search for information online these days, I will face an increased risk that future employers will
25 discover information about this lawsuit online and have a negative reaction to learning that I sued an
26 employer. This may make it harder for me to obtain future employment or change jobs for a better
27 opportunity.

28 13. I have devoted a substantial amount of my time, both before this lawsuit was filed and

1 also during its litigation, to ensure a fair result for the employee Class. This involved ongoing
2 communication and participation with my Counsel during the course of this case.

3 14. My participation began with bringing certain issues that are involved in this matter to
4 my Counsel's attention and explaining the factual background that was used to prosecute the claims in
5 this case.

6 15. For example, I reviewed documents which I already had, I provided relevant documents
7 to my Counsel, and I explained those documents and related facts to my Counsel to assist them in their
8 review during multiple meetings with my attorneys. I also assisted in identifying potential witnesses,
9 including other employees, who might likewise have been of assistance.

10 16. My efforts continued after the suit was filed. For example, I continued to identify
11 employees and other witnesses to counsel, along with other information as to how they could be of
12 potential use in this matter. I also discussed strategy with my Counsel.

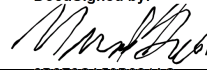
13 17. After the mediation, a long-form settlement agreement was negotiated, and I reviewed it
14 with my Counsel to ensure that its terms are likewise fair and adequate.

15 18. In sum, in addition to assuming the risks that go along with being a class representative
16 and named plaintiff in litigation, I believe I have also provided well over 35 hours of my time during
17 the course of this litigation to ensure a good outcome for the best interests of the Class.

18 19. I do not believe that I have any conflicts with Class Members included in this proposed
19 Settlement.

20 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
21 true and correct.

22 Executed this _____ day of October 2021 at Los Angeles, California.

23 DocuSigned by:
24 

25 MANUEL GODOY, "Declarant"
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **DECLARATION OF PLAINTIFF MANUEL GODOY IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Kenneth J. Rose
Robert H. Rose
THE ROSE GROUP, APLC
9747 Businesspark Ave., Suite 213
San Diego, CA 92131
krose@rosegroup.us
rrose@rosegroup.us
Attorneys for Defendant Intertrade Industries, LTD

Counsel for Defendant

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the above-named document(s) has (have) been electronically served on counsel of record by an approved electronic service provider. The transmission of these documents was reported complete and a copy of the service confirmation will be maintained, along with the original document(s) and proof of service in our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **October 20, 2021**, at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
H. Scott Leviant (SBN 200834)
scott.leviant@moonyanglaw.com
Lilit Tunyan (SBN 329351)
lilit.tunyan@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Manuel Godoy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MANUEL GODOY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
California corporation; and DOES 1 through 10,
inclusive,
Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: December 3, 2021
Time: 10:00 a.m.
Courtroom: Dept. CX105
Judge: Hon. Randall J. Sherman

Action Filed: July 17, 2020
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 Plaintiff MANUEL GODOY (“Plaintiff”) and Defendant INTERTRADE INDUSTRIES, LTD.
3 (“Defendant”) have reached terms of settlement for a putative class action.

4 Plaintiff has filed a motion for preliminary approval of a class action settlement of the claims
5 asserted against Defendant in this action, memorialized in the JOINT STIPULATION OF CLASS
6 ACTION SETTLEMENT (*see* Declaration of H. Scott Leviant In Support of Plaintiff’s Motion for
7 Preliminary Approval of Class Action Settlement [“Leviant Decl.”], at Exh. 1). The JOINT
8 STIPULATION OF CLASS ACTION SETTLEMENT is referred to herein as the “Agreement” or
9 “Settlement.”

10 After reviewing the Agreement, the Notice process, and other related documents, and having
11 heard the argument of Counsel for respective parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

12 1. The Court preliminarily finds that the terms of the proposed class action Settlement are
13 fair, reasonable, and adequate, pursuant to California Code of Civil Procedure § 382. In granting
14 preliminary approval of the class action settlement the Court has considered the factors identified in
15 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), as approved in *Wershba v. Apple Computer,*
16 *Inc.*, 91 Cal. App. 4th 224 (2001) and *In re Microsoft IV Cases*, 135 Cal. App. 4th 706 (2006).

17 2. The Court finds that the Settlement has been reached as a result of intensive, serious and
18 non-collusive arms-length negotiations. The Court further finds that the parties have conducted
19 thorough investigation and research, and the attorneys for the parties are able to reasonably evaluate
20 their respective positions. The Court also finds that settlement at this time will avoid additional
21 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
22 of the action. The Court finds that the risks of further prosecution are substantial.

23 3. The parties’ Settlement is granted preliminary approval as it meets the criteria for
24 preliminary settlement approval. The Settlement falls within the range of reasonableness and appears
25 to be presumptively valid, subject only to any objections that may be raised at the final fairness hearing.
26 The Settlement Class meets the requirements for conditional certification for settlement purposes only
27 under Code of Civil Procedure § 382. The Court finds that it is appropriate to notify the members of
28 the proposed settlement Class of the terms of the proposed settlement.

1 4. The parties' proposed notice plan is constitutionally sound because individual notices
2 will be mailed to all Class Members whose identities are known to the parties, and such notice is the
3 best notice practicable. The parties' proposed Class Notice, attached to the Settlement as Exhibit A, is
4 sufficient to inform Class Members of the terms of the Settlement, their rights under the settlement,
5 their rights to object to the Settlement, their right to receive a payment under the settlement or elect not
6 to participate in the settlement, and the processes for doing so, and the date and location of the final
7 approval hearing and are therefore approved.

8 5. The following persons are certified as Class Members solely for the purpose of entering
9 a settlement in this matter:

10 All individuals employed by Defendants in California and classified as "non-
11 exempt" at any time during the Class Period (the "Class Period" is July 17, 2016
12 through the date upon which the Court grants preliminary approval of this Settlement,
or January 1, 2022, whichever is earlier). (Settlement, ¶¶ 3-4.)

13 6. Plaintiff MANUEL GODOY is appointed as the Class Representative. The Court finds
14 Plaintiff's counsel are adequate, as they are experienced in wage and hour class action litigation and
15 have no conflicts of interest with absent Settlement Class Members, and that they adequately
16 represented the interests of absent class members in the Litigation. Kane Moon, H. Scott Leviant, and
17 Lilit Tunyan of Moon & Yang, APC, are appointed Class Counsel.

18 7. The Court appoints Phoenix Settlement Administrators to act as the Settlement
19 Administrator, pursuant to the terms set forth in the Agreement.

20 8. Defendant is directed to provide the Settlement Administrator the names and most
21 recent known mailing addresses of Class Members and any other information required in accordance
22 with the Agreement (the "Class List"), no later than 15 calendar days after entry of this Order, which
23 deadline is estimated to be **December 18, 2021**. (Settlement, ¶ 32(a).)

24 9. The Settlement Administrator is directed to mail the approved Class Notice by first-
25 class mail to the Class Members in accordance with the Agreement, no later than 14 calendar days after
26 receipt of the Class List, which deadline, due to the holiday, is estimated to be **January 3, 2021**.
27 (Settlement, ¶ 32(b).)
28

1 10. Class Members will be bound by the Agreement unless they submit a timely and valid
2 written request to be excluded from the Settlement, postmarked no later than 60 days following mailing
3 of the Notice, or as possibly extended up to 14 additional days by operation of Paragraph 7 of the
4 Settlement for certain re-mailed Notices.

5 11. Any request for exclusion shall be submitted to the Settlement Administrator rather than
6 filed with the Court. Class members are not required to send copies of their Exclusion request to
7 counsel. The Settlement Administrator shall file, or provide to Counsel for filing, a declaration
8 authenticating a copy of every Exclusion request received by the Administrator.

9 12. A final approval hearing will be held on _____, 2022, at
10 _____, in Department CX105, to determine whether the settlement should be granted final
11 approval as fair, reasonable, and adequate as to the Class Members. At that time, the Court will hear all
12 evidence and arguments necessary to evaluate the Settlement. Class Members and their counsel may
13 support or oppose the Settlement, if they so desire, in accordance with the procedures set forth in the
14 Class Notice and this Order. The final approval hearing may be conducted telephonically, based upon
15 prevailing conditions related to the COVID-19 pandemic at that time.

16 13. Plaintiff shall file a Motion for Final Approval, including any request for an award of
17 fees, costs, and an Enhancement Award to Plaintiff, no later than 16 court days / _____ calendar
18 days prior to the final approval hearing. In conjunction with the filing of the final approval motion, a
19 declaration from the Settlement Administrator on the outcome of the notice process shall be filed with
20 the Court. At that time, the Parties shall also file responses to any written objections received by the
21 Settlement Administrator by the Response Deadline.

22 14. As set forth in the Notice, any Class Member may appear at the final approval hearing
23 in person (which “in person” appearance may be telephonic, as noted above) or by his or her own
24 attorney and show cause why the Court should not approve the settlement, or object to the motion for
25 awards of the Class Representative Enhancement Payment and Attorney’s Fees and Costs. For any
26 written comments or objections to be considered at the hearing, the Class Member must submit a
27 written objection in accordance with the deadlines set forth in the Class Notice, or as otherwise
28 permitted by the Court.

1 15. Any written objection shall be submitted to the Settlement Administrator rather than
2 filed with the Court. Class Members are not required to send copies of written objections to counsel.
3 The Settlement Administrator shall file, or provide to Counsel for filing, a declaration authenticating a
4 copy of every written Objection received by the Administrator.

5 16. The Court reserves the right to continue the date of the final approval hearing without
6 further notice to Class Members.

7 17. Class Counsel shall give notice to any objecting party of any continuance of the hearing
8 of the motion for final approval.

9 18. The Court retains jurisdiction to consider all further applications arising out of or in
10 connection with the settlement.

11
12 **IT IS SO ORDERED.**

13
14 Dated: _____

Hon. Randall J. Sherman
ORANGE COUNTY SUPERIOR COURT JUDGE

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party
4 to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **[PROPOSED] ORDER GRANTING**
6 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action
by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the
attached service list:

7 Kenneth J. Rose
8 Robert H. Rose
9 THE ROSE GROUP, APLC
10 9747 Businesspark Ave., Suite 213
11 San Diego, CA 92131
12 krose@rosegroup.us
13 rrose@rosegroup.us
14 Attorneys for Defendant Intertrade Industries, LTD

15 *Counsel for Defendant*

16 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in
17 the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s
18 practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes
19 are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage
20 thereon fully prepaid at Los Angeles, California.

21 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail
22 delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this
23 action.

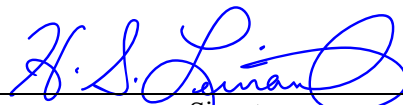
24 ☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court’s Order directing Electronic Service, the
25 above-named document(s) has (have) been electronically served on counsel of record by an approved
26 electronic service provider. The transmission of these documents was reported complete and a copy of
27 the service confirmation will be maintained, along with the original document(s) and proof of service in
28 our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the
offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and
processing correspondence for overnight delivery. Under that practice, overnight packages are
enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are
picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct. Executed this **October 20, 2021**, at Los Angeles, California.

26 H. Scott Leviant
27 Type or Print Name

26 
27 Signature

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
H. Scott Leviant (SBN 200834)
scott.leviant@moonyanglaw.com
Lilit Tunyan (SBN 329351)
lilit.tunyan@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Manuel Godoy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MANUEL GODOY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
California corporation; and DOES 1 through 10,
inclusive,
Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

[Assigned to Hon. Randall J. Sherman, Dept.
CX105]

CLASS ACTION

**FIRST SUPPLEMENTAL DECLARATION
OF H. SCOTT LEVIANT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: January 21, 2022
Time: 10:00 a.m.
Courtroom: Dept. CX105
Judge: Hon. Randall J. Sherman

Action Filed: July 17, 2020
Trial Date: Not Set

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
SETTLEMENT PROVISIONS CORRECTED IN THE FIRST ADDENDUM THERETO	1
EXHIBITS	3
PAGA SETTLEMENT NOTIFICATION TO DIR.....	4

1 FIRST SUPPLEMENTAL DECLARATION OF H. SCOTT LEVIANT

2
3 I, H. Scott Leviant, declare as follows:

4 1. I am admitted, in good standing, to practice as an attorney in the State of California, the
5 United States Supreme Court, the Eighth Circuit Court of Appeals, the Ninth Circuit Court of Appeals,
6 and the United States District Courts for the Central, Eastern, Northern and Southern Districts of
7 California. I have never been subject to discipline by the State Bar of California. I am a fully qualified,
8 adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the
9 matters set forth herein. All of the matters set forth herein are within my personal knowledge, except
10 those matters that are stated to be upon information and belief. As to such matters, I believe them to be
11 true.

12 2. I am employed as a Senior Counsel at the law firm of Moon & Yang, APC. My business
13 address is 1055 W. 7th Street, Suite 1880, Los Angeles, California 90017 and my business telephone
14 number is (213) 232-3128. I am counsel for Plaintiff and proposed counsel for the Settlement Class.

15 3. This First Supplemental Declaration is submitted in support of Plaintiff's Motion for
16 Preliminary Approval of Class Action Settlement.

17
18 SETTLEMENT PROVISIONS CORRECTED IN THE FIRST ADDENDUM THERETO

19 4. Upon review of Plaintiff's Motion for Preliminary Approval, the Court directed the
20 parties to make changes to the settlement agreement, update the Notice accordingly, and make other
21 changes or provide other information. The required changes or directions for additional information are
22 as follows:

- 23 (a) The Parties were directed to provide the estimated high and low payments to
24 class members, or, if not available yet, ensure that those figures are provided with
25 the motion for final approval;
- 26 (b) The Parties were directed to either increase the amount of the settlement
27 payments allocated to wages from 20% to 33 1/3%, or explain why the increase is
28 not required;

- 1 (c) The Parties were directed to modify the Settlement to provide that, if disputes
2 about workweeks arise, the Administrator and the parties will attempt to resolve
3 any such dispute, but *the court* ultimately will decide any unresolved dispute;
4 (d) The class notice must include an exclusion form that class members can complete
5 and submit, and the option to use the form should be referenced in the class
6 notice;
7 (e) Confirmation of service on the LWDA of the original motion and any
8 supplemental papers should be provided;
9 (f) Plaintiff was directed to provide notice of the Court’s ruling to the LWDA and
10 defendant; and,
11 (g) Submit final and red-lined versions of changed documents.

12 5. Following guidance from the Court, the Parties have prepared a **FIRST AMENDMENT**
13 **TO JOINT STIPULATION OF CLASS ACTION SETTLEMENT** (“First Amendment”; together
14 with the original JOINT STIPULATION OF CLASS ACTION SETTLEMENT, the combination is the
15 “Settlement” or “Agreement”) and a conforming revised Notice that address the following:

- 16 (a) High and low payments to class members are not yet available from the
17 Administrator, but those figures will be calculated and provided to the Court at
18 the time of final approval;
19 (b) The Parties increased the amount of the settlement payments allocated to wages
20 from 20% to 33 1/3% (First Amended, ¶ 26(k)). The Notice was revised to
21 reflect the change (Revised Notice, redline, Exhibit 6).
22 (c) The Parties modified the Settlement to provide that, if disputes about workweeks
23 arise, the Administrator and the parties will attempt to resolve any such dispute,
24 but *the court* ultimately will decide any unresolved dispute (First Amended, ¶
25 26(v)). The Notice was revised to reflect the change (Revised Notice, redline,
26 Exhibit 6).
27 (d) The class notice includes an exclusion form that class members can complete and
28 submit, and the option to use the form is referenced in the class notice (First

Amended, ¶ 26(w); Exclusion Form attached as Exhibit C thereto; Revised Notice, redline, Exhibit 6).);

- (e) Confirmation of service on the LWDA of the original motion and any supplemental papers is provided below (Exhibit 8);
- (f) Plaintiff provided notice of the Court’s ruling to all Parties and the LWDA (Exhibit 9); and,
- (g) Final and red-lined versions of changed documents are attached hereto (the Notice is the only “changed” document, since the First Amendment is new).

EXHIBITS

6. A true and correct copy of the **FIRST AMENDMENT TO JOINT STIPULATION OF CLASS ACTION SETTLEMENT** is attached hereto as Exhibit “3.” The revised Notice and the Request for Exclusion Form are attached thereto as Exhibits A and C, respectively.

7. A true and correct copy of the JOINT STIPULATION OF CLASS ACTION SETTLEMENT is attached hereto as Exhibit “4.” The JOINT STIPULATION OF CLASS ACTION SETTLEMENT and the **FIRST AMENDMENT TO JOINT STIPULATION OF CLASS ACTION SETTLEMENT** which modifies certain of its terms now comprise the “Settlement.”

8. A true and correct copy of the “clean” revised Notice is attached hereto as Exhibit “5.”

9. A true and correct copy of a *redlined* version of the revised Notice is attached hereto as Exhibit “6.”

10. Attached hereto as Exhibit “7” is a true and correct copy of the original submission confirmation of the JOINT STIPULATION OF CLASS ACTION SETTLEMENT to the Department of Industrial Relations, through its online submission portal. This submission was previously provided to the Court as Exhibit 2 to the Declaration of H. Scott Leviant.

11. Attached as Exhibit “8” is a true and correct copy of the submission confirmation of the **FIRST AMENDMENT TO JOINT STIPULATION OF CLASS ACTION SETTLEMENT** and the motion for preliminary approval documents (including this Supplemental Declaration with all exhibits other than the confirmation of the upload itself). All preliminary approval documents were combined into

1 a single PDF for submission via the LWDA's submission form, which only allows for submission of the
2 Settlement and a second PDF.

3 12. Attached as Exhibit "9" is a true and correct copy of the submission confirmation of the
4 Court's tentative ruling to the LWDA.

5
6 PAGA SETTLEMENT NOTIFICATION TO DIR

7 13. Prior to the initial filing of the Motion for Preliminary Approval, I uploaded the JOINT
8 STIPULATION OF CLASS ACTION SETTLEMENT to the LWDA, and the date of the hearing of the
9 preliminary approval motion was provided in the form accompanying that upload. A copy of that form
10 and the confirmation is attached hereto as Exhibit 7.

11 14. Prior to the filing of the supplemental materials in support of the Motion for Preliminary
12 Approval, I uploaded the **FIRST AMENDMENT TO JOINT STIPULATION OF CLASS ACTION**
13 **SETTLEMENT** to the LWDA, along with the continued hearing date in the form accompanying the
14 upload. A copy of that form and the confirmation is attached hereto as Exhibit 8.

15 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
16 true and correct. Executed this 16th day of December 2021, at Los Angeles, California.

17
18 
19 H. Scott Leviant, "Declarant"

Exhibit “3”

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
H. Scott Leviant (SBN 200834)
scott.leviant@moonyanglaw.com
Lilit Tunyan (SBN 329351)
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Facsimile: (708) 575-1495

Attorneys for Defendant INTERTRADE INDUSTRIES, LTD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

MANUEL GODOY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

[Assigned to Hon. Randall J. Sherman, Dept.
CX105]

**FIRST AMENDMENT TO JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint filed: July 17, 2020
Trial date: Not yet set

FIRST AMENDMENT TO JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This First Amendment to the Joint Stipulation of Class Action Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff MANUEL GODOY, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendant INTERTRADE INDUSTRIES, LTD (“INTERTRADE INDUSTRIES” or “Defendant”). Plaintiff and Defendant are collectively referred to herein as “the Parties.”

THE PARTIES STIPULATE AND AGREE to modify the Joint Stipulation of Class Action Settlement as follows:

REVISED PROVISIONS

Paragraph 26(k) is replaced with the following provision that adjusts the allocations of Settlement Class Payments between wages, penalties, and interest:

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 33.33% to wages and 66.67% to penalties and interest. The PAGA Settlement Payment shares to PAGA Employees (totaling \$15,000) will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment. The employer's share of payroll taxes and other required withholdings will be paid as set forth above, including but not limited to the Defendant's FICA and FUTA contributions, based on the payment of claims to the Class Members. IRS Forms 1099 will be issued to each Class Member reflecting the payments for penalties and interest. Class Members are responsible to pay appropriate taxes due on the Settlement Payments they receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each Class Member with respect to such payments.

Paragraph 26(v) is replaced with the following provision that specifies the steps that will be undertaken to resolve workweek disputes:

(v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of Defendant's records used to calculate Covered Workweeks, the Parties' counsel and the Settlement Administrator will review Defendant's records and any information or documents submitted by the Class

1 Member in an attempt to resolve the dispute informally. If the dispute cannot be resolved informally by
2 the Parties' counsel and the Settlement Administrator, the dispute, and all documents pertaining to the
3 dispute, will be submitted to the Court for final resolution. The Class Member must submit information or
4 documents supporting his or her position to the Settlement Administrator prior to the expiration of the
5 Response Deadline. Information or documents submitted after the expiration of the Response Deadline
6 will not be considered by the Settlement Administrator, unless otherwise agreed to by the Parties.

7
8 Paragraph 26(w) is replaced with the following provision that specifies the inclusion of a form for
9 requesting exclusion from the Class with the Notice:

10 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class Member
11 may request to be excluded from the Class by returning a completed "Request for Exclusion" form to the
12 Settlement Administrator within the Response Deadline. The form of Request for Exclusion that will
13 accompany the Notice is attached hereto as **Exhibit "C."** The Request for Exclusion form accompanying
14 the Notice will be pre-printed with the Class Member's name and address to facilitate identification by the
15 Settlement Administrator. The Class Member must sign the Request for Exclusion Notice and include the
16 last four digits of their social security number to confirm identity. If the Class Member does not have a
17 social security number, the Class Member must contact the Settlement Administrator to arrange for an
18 alternative method of verifying identity. The Notice will advise Class Members of these requirements.
19 Any Class Member who timely requests exclusion in compliance with these requirements (i) shall not
20 have any rights under this Settlement other than a right to receive a pro-rata share of the portion of the
21 PAGA payment allocated to the Class Members if the Class Member is also PAGA Employee; (ii) shall
22 not be entitled to receive any Settlement Payments under this Settlement other than as stated in (i) in this
23 paragraph; and (iii) shall not be bound by this Settlement or the Court's Order and Final Judgment other
24 than as it applies to the PAGA Claim.

25
26 Paragraph 32 is replaced with the following provision that specifies the inclusion of a form for
27 requesting exclusion from the Class with the Notice:

28 32. A Notice in approximately the revised form attached hereto as **Exhibit "A"** and the

1 Request for Exclusion in approximately the form attached hereto as **Exhibit “C”** (referred to jointly below
2 as the “Notice packet”) and as approved by the Court, shall be sent by the Settlement Administrator to the
3 Class Members by first class mail. The Notice packet shall be translated into Spanish so that Spanish and
4 English language versions of the Notice packet are included in the mailing. Any returned envelopes from
5 this mailing with forwarding addresses will be utilized by the Settlement Administrator to forward the
6 Notice packets to the Class.

7 (a) Within 15 calendar days from the date of preliminary approval of this Settlement
8 by the Court, Defendant shall provide to the Settlement Administrator a class database containing
9 the following information for each Class Member: (1) name; (2) last known address; (3) social
10 security number; and (4) dates of employment at Defendant’s location in California. This database
11 shall be based on Defendant’s payroll and other business records and shall be provided in a format
12 acceptable to the Settlement Administrator. Defendant agrees to consult with the Settlement
13 Administrator prior to the production date to ensure that the format will be acceptable to the
14 Settlement Administrator. The Settlement Administrator will run a check of the Class Members’
15 addresses against those on file with the U.S. Postal Service’s National Change of Address List; this
16 check will be performed only once per Class Member by the Settlement Administrator. Absent
17 mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator
18 will keep this database confidential and secure and use it only for the purposes described herein,
19 and will return this database to Defendant upon final approval of the settlement or destroy
20 electronic records containing the database after the Settlement is final and all payments are
21 distributed as required under this Agreement. However, Plaintiff’s Counsel shall be entitled to
22 review anonymized data showing the workweeks worked by each Class Member, with Class
23 Member identity concealed through use of an employee number or number assigned by the
24 Settlement Administrator.

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

28 (c) Notice packets returned to the Settlement Administrator as non-deliverable on or

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

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

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

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: 12/15/2021, 2021

By: _____

MANUEL GODOY

DocuSigned by:

9B8F8CA59B824AC...

Plaintiff's Counsel:

Dated: 12/16/, 2021

MOON & YANG, APC

By: _____

**Kane Moon
H. Scott Leviant**



Lilit Tunyan

Attorneys for Plaintiff

Defendant:

Dated: December 13, 2021

INTERTRADE INDUSTRIES LTD

By: Jim Goode
Print Name


Signature

CEO
Title

Defendant's Counsel:

Dated: December 14, 2021

THE ROSE GROUP, APLC

By: 
Kenneth J. Rose
Robert J. Rose

Attorneys for Defendant INTERTRADE
INDUSTRIES, LTD

Exhibit “A”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Godoy v. Intertrade Industries LTD
Orange County Superior Court Case No. 30-2020-01151921-CU-OE-CXC

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF INTERTRADE INDUSTRIES, LTD (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN JULY 17, 2016 AND <<CLASS END DATE>> (THE “CLASS PERIOD”), THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Godoy v. Intertrade Industries LTD*, Orange Superior Court Case No. 30-2020-01151921-CU-OE-CXC (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Randall J. Sherman on <<FA DATE>>, at <<FA TIME>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by completing and submitting the included request to be excluded (“Request for Exclusion form”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Request for Exclusion forms must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request for Exclusion form if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked in California during the Class Period. The “Class Period” is July 17, 2016 through <<CLASS END DATE>>.

According to Defendant’s records, you are a member of the settlement class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$15,000 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of July 17, 2019 through <<CLASS END DATE>>.

What is this case about?

In the Action, Plaintiff Manuel Godoy (“Plaintiff”) alleges on behalf of himself and the Class that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages at termination; (6) failed to furnish accurate itemized wage statements; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiff seeks unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
H. Scott Leviant
Lilit Tunyan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
scott.leviant@moonyanglaw.com
lilit.tunyan@moonyanglaw.com

Defendant’s Counsel

Kenneth J. Rose
Robert H. Rose
THE ROSE GROUP, APLC
9747 Businesspark Ave., Suite 213
San Diego, CA 92131
Telephone: (619) 822-1088
Facsimile: (708) 575-1495
rrose@rosegroupp.us
krose@rosegroupp.us

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$450,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Enhancement to Plaintiff (\$7,500 to be requested); (c) the Court-approved attorneys’ fees and costs to Class Counsel (“Class Counsel’s Fees and Expenses”) (\$150,000.00 in fees and up to \$15,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “PAGA Penalty Payment”) (\$45,000 of a total of \$60,000 allocated to the PAGA settlement); and (e) payment to

the Settlement Administrator for settlement administration services (“Administrative Expenses”) (estimated to be no more than \$15,000).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$15,000 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their “Individual Settlement Payment”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the “Settlement Class Payments”) and each PAGA Employee (the “PAGA Settlement Payments”).

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$15,000 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$15,000 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

Your estimated Individual Settlement Payment is <<**Estimated Settlement Payment**>> and the number of work weeks you worked during the Class Period based on your hire and/or termination dates is <<**Work Weeks**>>. You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<**RESPONSE DEADLINE**>> (the “Response Deadline”) at:

Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863

You must produce documentary evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator and the Parties will attempt to resolve all work week disputes with you informally. If they cannot resolve your work week dispute with you informally, the dispute will be submitted by the Parties to the Court for final resolution. **REMINDER:** If you believe your estimated Settlement Payment is incorrect because your work weeks (the number of weeks you worked within the Class Period) are wrong, your deadline to dispute this is <<**RESPONSE DEADLINE**>>.

For tax reporting purposes, the payments to Class Members will be allocated 33.33% as wages and 66.67% as penalties and interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

Within 28 calendar days after the “Effective Date,” the Administrator will distribute the Individual Settlement Payments to all Settlement Class Members and PAGA Employees. The “Effective Date” is the later of the following events: (a) seven (7) calendar days have passed since final approval is granted if there are no objections to the settlement or intervenors in the action; (b) eighty-one (81) days following notice of entry of the Court’s final order approving the Settlement if there are any objections by any Class Member or any intervenors, but no Notice of Appeal filed within 65 days of entry of the final approval order and judgment; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed,, then twenty-eight (28) days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

Payments to Settlement Class Members and PAGA Employees will issue only AFTER the payment by Defendant of the Gross Settlement Amount. **PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.**

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel’s Fees and Expenses, the Class Representative Enhancement, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys’ fees up to \$150,000.00 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Enhancement made to Plaintiff, not to exceed \$7,500, for his efforts in bringing the Action on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$8,000.00. The PAGA Penalty Payment in the amount of \$45,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$60,000 PAGA Allocation.

What claims are being released by the proposed Settlement?

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

(a) Identity of Released Parties. The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba’s, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively “Releasees”).

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement’s Effective Date, or (2) the satisfaction of Defendant’s obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

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

1) any and all claims stated in the Complaint, or that could have been stated based on the facts alleged in the Complaint, implicitly or explicitly, including but not limited to state wage and hour claims (including all claims under the California Labor Code and Industrial Welfare Commission Wage Orders) for unpaid wages, minimum wage, overtime, meal periods, rest periods, wage statement violations, interest, penalties, and attorneys’ fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but not limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 246, 510, 512, 512.5, 516, 558, 1174,

1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2810.5, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order (“Released Claims”);

2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Complaint, implicitly or explicitly; and,

3) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff’s administrative exhaustion letter submitted to the LWDA (Settlement Exhibit B) and the Complaint in this matter (i.e., the Released PAGA Claims).

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly submit a Request for Exclusion form. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can’t object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can’t ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections should be sent to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Godoy v. Intertrade Industries LTD*, Case No. 30-2020-01151921-CU-OE-CXC); and (5) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

Because of healthcare guidance and Orders of the Orange Superior Court related to COVID-19, the Final Approval Hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman).

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must complete and return the included Request for Exclusion form to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your Request for Exclusion form must be signed and include the last four digits of your social security number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement). If you do not have a social security number, please contact the Settlement Administrator to arrange for an alternate method of confirming your identity.

Your Request for Exclusion form (to remove you from the Class Settlement) must postmarked on or before <<**RESPONSE DEADLINE**>>. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion form by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement, except for any payment you may be receive from the PAGA portion of this Settlement.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's Fees and Expenses, the Class Representative Enhancement, the Administrative Expenses, and the PAGA Allocation on <<**FINAL APPROVAL HEARING DATE & TIME**>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. Because of healthcare guidance and Orders of the Orange County Superior Court related to COVID-19, the hearing may be a telephonic hearing only. As described above, if you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman). The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<**website**>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action Settlement attached to the Declaration of H. Scott Leviant in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Orange County Superior

Court. Because of the Orange County Superior Court's COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://ocjustice.occourts.org/civilwebShoppingNS/Search.do#searchAnchor>. You may need the case number to access and view case documents (30-2020-01151921-CU-OE-CXC) NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “C”

REQUEST FOR EXCLUSION FORM

Superior Court of California for the County of Orange
Manuel Godoy v. Intertrade Industries, LTD, Case No. 30-2020-01151921-CU-OE-CXC

If you want to receive an Individual Settlement Award, you should not fill out this form; you are not required to do anything at this time. This form is to be used only if you want to exclude yourself from the Settlement.

If you exclude yourself from the Settlement: (1) you will not receive any payments or benefits under the Settlement; (2) you will not be able to object to the Settlement; (3) you will not be bound by the class settlement if it is ultimately approved by the Court; and (4) you may pursue any claims which are asserted in the Action, or included in the Released Claims, that you have against Intertrade Industries, LTD (“Defendant”) by filing your own lawsuit.

To be excluded from the Settlement, complete this Request for Exclusion Form and mail it to the Settlement Administrator at the address listed below, postmarked no later than **[Response Deadline--60 days following the date of mailing].**

[INSERT NAME OF SETTLEMENT
ADMINISTRATOR]
[INSERT INFO]

Request for Exclusion

I hereby certify that I am or was employed by Defendant as a non-exempt, hourly employee in California for some period of time between July 17, 2016 and **[]**.

I have received the Notice of Class Action Settlement (“Notice”) in the Action, and I request to be excluded from the Settlement. I understand that by submitting this Request for Exclusion Form, I will not be bound by the class settlement, including the release of Released Claims, as described in the Notice and in the Settlement Agreement on file with the Court, and I will not receive a payment from the class settlement. I understand that I cannot exclude myself from the Individual PAGA Settlement Payment and that I will still receive a pro-rata share of the PAGA Settlement Amount and will be bound by the release of the PAGA claims regardless of whether I exclude myself from the Individual Settlement Payment.

Please print legibly:

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Last four digits of your SSN: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

Exhibit “4”

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Attorneys for Defendant INTERTRADE INDUSTRIES, LTD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MANUEL GODOY, individually, and on
 behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
 California corporation; and DOES 1 through 10,
 inclusive,

Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

[Assigned to Hon. Randall J. Sherman, Dept.
 CX105]

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

Complaint filed: July 17, 2020
 Trial date: Not yet set

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff MANUEL GODOY, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendant INTERTRADE INDUSTRIES, LTD (“INTERTRADE INDUSTRIES” or “Defendant”). Plaintiff and Defendant are collectively referred to herein as “the Parties.”

THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

1. For purposes of this Settlement, “Complaint” refers to the operative complaint, which is the First Amended Complaint.
2. For purposes of this Settlement, this matter, entitled *Godoy v. Intertrade Industries LTD*, Case No. 30-2020-01151921-CU-OE-CXC, is referred to herein as the “Action.”
3. For purposes of this Settlement, the “Class Period” is July 17, 2016 through the date upon which the Court grants preliminary approval of this Settlement, or January 1, 2022, whichever is earlier.
4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt employees of Defendant who worked in California during the Class Period. “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. Defendant’s best estimate is that the Class included approximately **193** individuals on June 29, 2021.
5. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.
6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class Member worked at Defendant’s locations in California during the Class Period.
7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on which Settlement Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as

1 expressly described herein.

2 8. For purposes of the Settlement, “Defendant’s Counsel” means THE ROSE GROUP,
3 APLC.

4 9. For purposes of this Settlement, “PAGA Allocation” means the amount that the Parties
5 have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys
6 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that the PAGA
7 Allocation will be \$60,000 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent
8 (75%), or \$45,000, of the PAGA Allocation will be paid to the LWDA (“PAGA Penalty Payment”), and
9 Twenty Five Percent (25%), or \$15,000, of the PAGA Allocation will be included in the Net Settlement
10 Amount for PAGA Employees (“PAGA Settlement Payment”).

11 10. For purposes of this Settlement, “PAGA Period” means the period between July 17, 2019
12 through the date upon which the Court grants preliminary approval of this Settlement, or March 1, 2022,
13 whichever is earlier.

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

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

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

21 14. For purposes of this Settlement, “Released PAGA Claims” means all claims asserted
22 through California Labor Code §§ 2698, *et seq.*, that were identified by the PAGA Representative in the
23 Notice to the LWDA and are alleged in the Complaint. Plaintiff’s Notice to the LWDA is attached hereto
24 as **Exhibit “B”**.

25 15. For purposes of this Settlement, “Released PAGA Claims Period” means the period
26 between July 17, 2019 through the date upon which the Court grants preliminary approval of this
27 Settlement, or March 1, 2022, whichever is earlier.

28 16. For purposes of this Settlement, “Settlement Payments” means all of the payments to

1 Settlement Class Members (the “Settlement Class Payments”) and all of the payments to the PAGA
2 Employees (the “PAGA Settlement Payment”).

3 **STIPULATED BACKGROUND**

4 17. On July 17, 2020, Plaintiff filed a putative Class Action alleging the following labelled
5 causes of action: (1) Failure to Pay Minimum and Regular Rate [Cal. Lab. Code §§ 204, 1194, 1194.2, and
6 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to
7 Provide Meal Periods [Cal. Lab. Code §§ 226.7]; (4) Failure to Authorize and Permit Rest Breaks [Cal.
8 Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
9 and, (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (7) Unfair
10 Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. On November 20, 2020 Plaintiff filed his
11 First Amended Complaint adding the eight case of action for civil penalties under PAGA [Cal. Lab. Code §
12 2699, *et seq.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for
13 Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning
14 four years before the filing of the initial complaint and ending when Notice to the Class is sent.

15 18. The parties agree that Plaintiff satisfied the administrative exhaustion requirement that is a
16 prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of
17 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”) by submission of the notice to the LWDA and Defendant on
18 August 12, 2020.

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

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

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

- 26 1) Whether or not Defendant paid proper wages to the Class;
27 2) Whether or not Defendant provided meal periods to the Class;
28 3) Whether or not Defendant provided rest periods to the Class;

- 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;
- 5) Whether or not Defendant paid compensation timely throughout Class Members' employment;
- 6) Whether or not Defendant provided accurate itemized statements to the Class;
- 7) Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203;
- 8) Whether or not Defendant maintained requisite records;
- 9) Whether or not Defendant paid proper meal period pay or rest period pay to the Class; and,
- 10) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.

- (c) Plaintiff's claims are typical of the claims of the Class Members.
- (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
- (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
- (f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

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

1 action should this Settlement not become effective.

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

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

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

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

25 25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
26 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
27 Court.
28

PRIMARY TERMS OF SETTLEMENT

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

- (a) It is agreed by and among the Settlement Class, PAGA Employees, and Defendant that this case and any claims, damages, or causes of action arising out of the disputes which are the subject of this case, be settled and compromised as between the Settlement Class, PAGA Employees, and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.
- (b) Effective Date: The terms of settlement embodied in this Settlement shall become effective when all of the following events have occurred: (i) this Joint Stipulation of Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been given to the Class, providing them with an opportunity to dispute information contained in the Notice, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Class and approving this Settlement; and (v) the later of the following events: (a) seven (7) calendar days have passed since final approval is granted if there are no objections to the settlement or intervenors in the action; (b) eighty-one (81) days following notice of entry of the Court's final order approving the Settlement if there are any objections by any Class Member or any intervenors, but no Notice of Appeal filed within 65 days of entry of the final approval order and judgment; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed,, then twenty-eight (28) days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

- (c) Gross Settlement Amount: Defendant's maximum total payment under the Settlement, including all attorney's fees and costs, the Service Payment to the named Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement, is Four Hundred Fifty Thousand Dollars and Zero Cents (**\$450,000.00**) ("Gross Settlement Amount"), subject to the Escalator Clause and except that, to the extent that any portions of the Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions.
- (d) Escalator Clause: Defendant represents that the number of Class Members was approximately one hundred ninety-three (193) as of June 29, 2021, and the number of workweeks worked in the Class Period for those Class Members was approximately fourteen thousand eight hundred thirty-three (14,833.00) as of that date. If it is later determined that, on the date of preliminary approval, the number of workweeks in the Class Period is more than 10% greater than the estimated number of workweeks on June 29, 2021, the Gross Settlement Amount shall be increased by one percent for each percent over the 10% threshold that the actual number of workweeks exceeds the estimated number of workweeks (if the number of workweeks increases by 11%, the Gross Settlement will increase 1%), (the "Escalator Clause").
- (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.
- (f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.
- (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$450,000.00) the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed 33 and 1/3% of the Gross Settlement Amount, or \$150,000.00); (2) reasonable litigation costs (not

to exceed \$15,000.00); (3) the Service Payment (not to exceed \$7,500.00 to the named Plaintiff); (4) the PAGA Penalty Payment in the amount of \$45,000.00 (which is 75% of the PAGA Allocation); and (5) costs of settlement administration (estimated not to exceed \$15,000). Settlement Payments to the Class Members and PAGA Employees will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

(h) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any **employer** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Except for any employer payroll taxes, it is understood and agreed that Defendant's maximum total liability under this Settlement shall not exceed the Gross Settlement Amount. The Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator

(i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member (i.e., those Class Members who do not opt out of the Class Settlement, as defined above) will be paid a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totalling \$15,000, as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows:
$$\frac{\text{[Workweeks worked by a Settlement Class Member]}}{\text{[Sum of all Covered Workweeks worked by all Settlement Class Members]}} \times \text{[Net Settlement Amount - all PAGA Settlement Payments]} =$$

individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $\text{[PAGA Pay Periods worked by a PAGA Employee]} \div \text{[Sum of all PAGA Pay Periods worked by all PAGA Employees]} \times \text{[PAGA Settlement Payment to Employees, i.e. \$15,000]} = \text{individual PAGA Employee's portion of the PAGA Settlement Payment}$. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 20% to wages and 80% to penalties and interest. The PAGA Settlement Payment shares to PAGA Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment.

1 The employer's share of payroll taxes and other required withholdings will be paid
2 as set forth above, including but not limited to the Defendant's FICA and FUTA
3 contributions, based on the payment of claims to the Class Members. IRS Forms
4 1099 will be issued to each Class Member reflecting the payments for penalties and
5 interest. Class Members are responsible to pay appropriate taxes due on the
6 Settlement Payments they receive. To the extent required by law, IRS Forms 1099
7 and W-2 will be issued to each Class Member with respect to such payments.

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

23 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
24 object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3%
25 of the Gross Settlement Amount (\$150,000.00) and reimbursement of litigation
26 costs and expenses not to exceed \$15,000.00. Approved attorney's fees and
27 litigation costs shall be paid at the same time Settlement Payments issue to the
28 Settlement Class.

(n) Service Payment: Subject to Court approval, and in exchange for a general release, Defendant will not object to Class Counsel's application for an additional payment of up to \$7,500.00 to Plaintiff for service as a Class Representative ("Service Payment"). It is understood that the Service Payment is in addition to the individual Settlement Payment to which a Class Representative is entitled to along with the other Class Members. In exchange, Plaintiff has agreed to release all claims, whether known or unknown, under federal law or state law against the Releasees, to the extent permitted by law, through the Class Period ("Plaintiff's Released Claims"). Plaintiff understands that this release includes unknown claims and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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.

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

(o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.

(p) Settlement Administrator: The Settlement Administrator will be Phoenix Class Action Administration Solutions. Settlement Administration Costs are estimated

not to exceed \$8,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement.

(q) Funding of Settlement Account: Defendant will fund the settlement account within seven (7) calendar days of the Effective Date of the Settlement provided that the Settlement Administrator has provided the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of this Settlement.

(r) Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within twenty-eight (28) calendar days of the Effective Date of the Settlement, provided that the Settlement Administrator has provided the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of this Settlement.

(s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the proposed class action Settlement ("Notice"). For each Class Member, there will be pre-printed information on the mailed Notice, based on Defendant's records, stating the Class Member's Covered Workweeks during the Class Period and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment that will be distributed irrespective of any exclusion request. The pre-printed information based on Defendant's records shall be presumed to be correct. A Class Member may dispute the pre-printed information on the Notice as to his or her Covered Workweeks during the Class Period. Class Members must submit any dispute regarding the information on the Notice as to his or her Covered Workweeks within the Response Deadline. Unless a disputing Class Member submits documentary evidence in support of his or her dispute, the records of the Defendant will be determinative.

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

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

1 Class Members submitting a Request for Exclusion will nevertheless receive their
2 pro-rata share of the PAGA Settlement Payment. If the Court approves the
3 compromise of the PAGA Claim, all Class Members are bound by the Court's
4 resolution of the PAGA Claim. Plaintiff shall serve a notice of settlement on the
5 California Labor and Workforce Development Agency at or before the time
6 Plaintiff files the motion for preliminary approval.

7 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
8 Defendant's records used to calculate Covered Workweeks, and the Parties'
9 counsel cannot resolve the dispute informally, the matter will be referred to the
10 Settlement Administrator. The Settlement Administrator will review Defendant's
11 records and any information or documents submitted by the Class Member and
12 issue a non-appealable decision regarding the dispute. The Class Member must
13 submit information or documents supporting his or her position to the Settlement
14 Administrator prior to the expiration of the Response Deadline. Information or
15 documents submitted after the expiration of the Response Deadline will not be
16 considered by the Settlement Administrator, unless otherwise agreed to by the
17 Parties.

18 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
19 Member may request to be excluded from the Class by mailing a "Request for
20 Exclusion" from the Settlement within the Response Deadline, including any clear
21 statement of an intention to be excluded, such as in the following example:

22 "I WISH TO BE EXCLUDED FROM THE CLASS ACTION
23 SETTLEMENT IN THE *GODOY V. INTERTRADE*
INDUSTRIES LTD."

24 In order to confirm the identity of the Class Member requesting exclusion, any
25 Request for Exclusion must include the name, address, telephone number, last four
26 digits of the Class Member's Social Security Number, and the signature of the
27 Class Member requesting exclusion. Any such request must be made in
28 accordance with the terms of the Notice, and the Notice will advise Class Members

1 of these requirements. Any Class Member who timely requests exclusion in
2 compliance with these requirements (i) shall not have any rights under this
3 Settlement other than a right to receive a pro-rata share of the portion of the PAGA
4 payment allocated to the Class Members if the Class Member is also PAGA
5 Employee; (ii) shall not be entitled to receive any Settlement Payments under this
6 Settlement other than as stated in (i) in this paragraph; and (iii) shall not be bound
7 by this Settlement or the Court's Order and Final Judgment other than as it applies
8 to the PAGA Claim.

9 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
10 Member may object to the Settlement. To object, the Class Member may (1)
11 appear in person (including through an audio or video call appearance as allowed
12 by the Court) at the Final Approval Hearing to explain any objection, (2) have an
13 attorney object for the Class Member, or (3) submit a simple written brief or
14 statement of objection to the Settlement Administrator. If any Class Member
15 chooses to submit a written objection, the written objection should contain
16 sufficient information to confirm the identity of the objector and the basis of the
17 objection, including (1) the full name of the Settlement Class Member; (2) the
18 signature of the Settlement Class Member; (3) the grounds for the objection; and
19 (4) be postmarked within the Response Deadline to permit adequate time for
20 processing and review by the Parties of the written statement or objection. Class
21 Counsel shall ensure that any written objections are transmitted to the Court for the
22 Court's review (either by Class Counsel or as an attachment to declaration from the
23 Settlement Administrator). Regardless of the form, an objection alone will not
24 satisfy the requirement that a Settlement Class Member must either make a timely
25 complaint in intervention before final judgment or by file a motion to set aside and
26 vacate the class judgment under Code of Civil Procedure § 663 to have standing to
27 appeal entry of judgment approving this Settlement, as is required under the
28 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal.

1 5th 260 (2018). A Class Member who does not object prior to or at the Final
2 Approval Hearing, will be deemed to have waived any objections and will be
3 foreclosed from making any objections (whether at the Final Approval Hearing, by
4 appeal, or otherwise) to the Settlement. If the objecting Class Member does not
5 formally intervene in the action or move to set aside any judgment and/or the Court
6 rejects the Class Member's objection, the Class Member will still be bound by the
7 terms of this Agreement. Class Counsel and Defendant's Counsel may, at least
8 five (5) calendar days (or some other number of days as the Court shall specify)
9 before the final approval hearing, file responses to any written objections submitted
10 to the Court.

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

15 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

16 27. Subject to the Court's approval, and subject to reconsideration by the Parties after a
17 competitive bidding process, the Parties have agreed to the appointment of Phoenix Class Action
18 Administration Solutions to perform the customary duties of Settlement Administrator. The Settlement
19 Administrator will mail the Notice, both in English and Spanish, to the Class Members.

20 28. The Settlement Administrator will independently review the Covered Workweeks
21 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
22 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
23 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
24 Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its
25 duties.

26 29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
27 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
28 checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in

1 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
2 performance of its duties shall be referred to the Court, if necessary, which will have continuing
3 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
4 contemplated by this Settlement have been fully carried out.

5 30. The Settlement Administrator will post the final judgment approving the Settlement on a
6 website maintained by the Settlement Administrator for a period of not less than 90 calendar days after the
7 final judgment is entered. The address of that website will be included in the Notice.

8 **ATTORNEY'S FEES AND COSTS**

9 31. In consideration for resolving this matter and in exchange for the release of all claims by
10 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to
11 Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount
12 (\$150,000.00 of \$450,000.00) and litigation costs not to exceed \$15,000.00. The amounts set forth above
13 will cover all work performed and all fees and costs incurred to date, and all work to be performed and all
14 fees and costs to be incurred in connection with the approval by the Court of this Settlement and
15 administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve
16 a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s)
17 and the maximum amount set forth above shall be added to the Net Settlement Amount. As with the
18 Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be
19 paid to Class Counsel within 28 calendar days of the Effective Date of the Settlement, provided that the
20 Settlement Administrator has provided the Parties with an accounting of the amounts to be paid by
21 Defendant pursuant to the terms of this Settlement. Class Counsel shall disclose to the Court any fee
22 sharing agreements in existence.

23 **THE NOTICE PROCESS**

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

- (a) Within 15 calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) social security number; and (4) dates of employment at Defendant's location in California. This database shall be based on Defendant's payroll and other business records and shall be provided in a format acceptable to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential and secure and use it only for the purposes described herein, and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement. However, Plaintiff's Counsel shall be entitled to review anonymized data showing the workweeks worked by each Class Member, with Class Member identity concealed through use of an employee number or number assigned by the Settlement Administrator.
- (b) Within 14 calendar days after the Class database is provided to the Settlement Administrator, the Settlement Administrator will mail the Notices to the Class Members by First Class United States mail.
- (c) Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned

mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the Class Member's social security number or other information. In any instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline as described above. A letter prepared by the Settlement Administrator will be included in the re-mailed Notice in that instance, stating the extended Response Deadline if different than the original Response Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final Judgment.

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

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

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

34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member within that time, and the Class Member's relevant claims will remain released by the Settlement.

1 Settlement Payment checks which have expired will not be reissued.

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

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

10 **RELEASE BY THE CLASS**

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

15 (a) **Identity of Released Parties.** The released parties are Defendant, and each of
16 its/their former and present direct and/or indirect owners, dba's, affiliates, parents,
17 subsidiaries, brother and sister corporations, divisions, related companies,
18 successors and predecessors, and current and former employees, attorneys, officers,
19 directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries,
20 subrogees, executors, partners, privies, agents, servants, insurers, representatives,
21 administrators, employee benefit plans, and assigns of said entities (collectively
22 "Releasees").

23 (b) **Date Release Becomes Effective.** The Released Claims will be released upon the
24 later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's
25 obligation to provide to the Settlement Administrator a sum in the amount required
26 to satisfy all required payments and distributions pursuant to this Settlement and
27 the Order and Judgment of final approval. Class Members will not release the
28 Released Claims or Released PAGA Claims until both the Effective Date of the

1 Settlement has occurred, and Defendant has paid all amounts owing under the
2 Settlement.

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

8 1) any and all claims stated in the Complaint, or that could have been stated
9 based on the facts alleged in the Complaint, implicitly or explicitly,
10 including but not limited to state wage and hour claims (including all
11 claims under the California Labor Code and Industrial Welfare
12 Commission Wage Orders) for unpaid wages, minimum wage, overtime,
13 meal periods, rest periods, wage statement violations, interest, penalties,
14 and attorneys' fees, waiting time penalties, withholding from wages and the
15 related provisions of the Labor Code including but not limited to Labor
16 Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 246, 510, 512, 516,
17 512.5, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2810.5,
18 derivative claims under California Business & Professions Code §§ 17200
19 et seq., and all claims under the governing Wage Order ("Released
20 Claims");

21 2) as to any Class Member who cashes their Settlement Payment, the signing
22 and negotiation of that check shall serve as the Class Member's consent to
23 join the action for purposes of releasing claims arising under the Fair Labor
24 Standards Act that are related to the claims stated in the Complaint,
25 implicitly or explicitly; and,

26 3) in addition, as to *all* Class Members employed during the Released PAGA
27 Claims Period, whether requesting exclusion from the Settlement or not,
28 claims arising under the Private Attorneys General Act of 2004, Labor

Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA (**Exhibit B**) and the Complaint in this matter (i.e., the Released PAGA Claims).

EMPLOYMENT BY DEFENDANT

38. Employment of Plaintiff by Defendant is not consideration for, or a condition of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

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

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

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

40. In conjunction with the hearing of a motion for final approval by the Court of the

Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

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

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

NULLIFICATION AND TERMINATION

41. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than

1 adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for
2 any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or
3 rendered void; or (e) the Settlement does not become final for any other reason.

4 42. If 10% or more of the Class Members opt out of this Settlement, then Defendant in its sole
5 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
6 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
7 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's
8 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than five (5)
9 days prior to the date of the Final Approval Hearing. If this option is exercised by Defendant, Defendant
10 shall be solely responsible for the costs incurred by the Settlement Administrator for the settlement
11 administration.

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

17 **PARTIES' AUTHORITY**

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

20 **MUTUAL FULL COOPERATION**

21 45. The Parties agree to fully cooperate with each other to accomplish the terms of this
22 Settlement including, but not limited to, execution of such documents and taking such other action as
23 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
24 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
25 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
26 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
27 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
28 Court's preliminary and final approval of this Settlement.

NO PRIOR ASSIGNMENTS

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

NO ADMISSION OF LIABILITY

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

ENFORCEMENT ACTIONS

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

NOTICES

49. 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 registered or certified mail, return receipt requested, addressed as follows:

Class Counsel:

Kane Moon
H. Scott Leviant
Lilit Tunyan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com

Counsel for Defendant:

Kenneth J. Rose
Robert H. Rose
THE ROSE GROUP, APLC
9747 Businesspark Ave., Suite 213
San Diego, CA 92131
Telephone: (619) 822-1088
Facsimile: (708) 575-1495
rose@rosegroup.us

scott.leviant@moonyanglaw.com
lilit.tunyan@moonyanglaw.com

krose@rosegroup.us

CONSTRUCTION

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

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

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

INTEGRATION CLAUSE

53. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

WAIVER OF APPEALS

54. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees.

BINDING ON ASSIGNS

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

CLASS COUNSEL SIGNATORIES

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

COUNTERPARTS

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

CONFIDENTIALITY & PUBLIC COMMENT

58. The Class Representative and Class Counsel agree they will not make any disparaging comments about Defendant relating to this Settlement of this class action or disclose the negotiations of the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record other than to Class Members, who may receive information about the Settlement that is not in the public record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. To the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a statement that "the case was resolved and it was resolved confidentially". Any communication about the Settlement to Class Members prior to the Court-approved mailing will be limited to (1) a statement that a settlement has been reached, (2) a statement of any of the details that would necessarily be included in any Court-approved Notice if a Class Member requests details about the proposed Settlement, and (3) a warning that the terms of the proposed Settlement have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse, (2) accountants or lawyers as necessary for tax purposes, or (3) Class Members. At all times, the Class Representative is prohibited from communicating

about the terms or the fact of the settlement on any form of social media ("Social Media Bar"). Class Counsel will take all steps necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against any public disclosure of the Settlement. Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

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

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

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: October 12, 2021

By:

DocuSigned by:

8B3F6CA59B824AC

MANUEL GODOY

Plaintiff's Counsel:

Dated: October 12, 2021

MOON & YANG, APC

By:


Kane Moon
H. Scott Lerman
Lilit Tunyan

Attorneys for Plaintiff

Defendant:

Dated: October 18, 2021

INTERTRADE INDUSTRIES LTD

By:

Jim Goode

Print Name


Signature

CEO

Title

Defendant's Counsel:

Dated: October 14 , 2021

THE ROSE GROUP, APLC

By:


Kenneth J. Rose
Robert J. Rose

Attorneys for Defendant INTERTRADE
INDUSTRIES, LTD

EXHIBIT A

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Godoy v. Intertrade Industries LTD
Orange County Superior Court Case No. 30-2020-01151921-CU-OE-CXC

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF INTERTRADE INDUSTRIES, LTD (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN JULY 17, 2016 AND <<CLASS END DATE>> (THE “CLASS PERIOD”), THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Godoy v. Intertrade Industries LTD*, Orange Superior Court Case No. 30-2020-01151921-CU-OE-CXC (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Randall J. Sherman on <<FA DATE>>, at <<FA TIME>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written request to be excluded (“Opt-Out Request”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Opt-Out Requests must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit an Opt-Out Request if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked in California during the Class Period. The “Class Period” is July 17, 2016 through <<CLASS END DATE>>.

According to Defendant’s records, you are a member of the settlement class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$15,000 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of July 17, 2019 through <<PAGA END DATE>>

What is this case about?

In the Action, Plaintiff Manuel Godoy (“Plaintiff”) alleges on behalf of himself and the Class that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages at termination; (6) failed to furnish accurate itemized wage statements; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiff seeks unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
H. Scott Leviant
Lilit Tunyan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
scott.leviant@moonyanglaw.com
lilit.tunyan@moonyanglaw.com

Defendant’s Counsel

Kenneth J. Rose
Robert H. Rose
THE ROSE GROUP, APLC
9747 Businesspark Ave., Suite 213
San Diego, CA 92131
Telephone: (619) 822-1088
Facsimile: (708) 575-1495
rose@rosegroupp.us
krose@rosegroupp.us

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$450,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Enhancement to Plaintiff (\$7,500 to be requested); (c) the Court-approved attorneys’ fees and costs to Class Counsel (“Class Counsel’s Fees and Expenses”) (\$150,000.00 in fees and up to \$15,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “PAGA Penalty Payment”) (\$45,000 of a total of \$60,000 allocated to the PAGA settlement); and (e) payment to the Settlement Administrator for settlement administration services (“Administrative Expenses”) (estimated to be no more than \$15,000).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$15,000 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their “Individual Settlement Payment”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the “Settlement Class Payments”) and each PAGA Employee (the “PAGA Settlement Payments”).

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$15,000 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$15,000 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

Your estimated Individual Settlement Payment is << **Estimated Settlement Payment** >> and the number of work weeks you worked during the Class Period based on your hire and/or termination dates is << **Work Weeks** >>. You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before << **RESPONSE DEADLINE** >> (the “Response Deadline”) at:

Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863

You must produce documentary evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all work week disputes, and its decisions will be final and non-appealable. **REMINDER:** If you believe your estimated Settlement Payment is incorrect because your work weeks (the number of weeks you worked within the Class Period) are wrong, your deadline to dispute this is << **RESPONSE DEADLINE** >>.

For tax reporting purposes, the payments to Class Members will be allocated 20% as wages and 80% as penalties and interest. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

Within 28 calendar days after the “Effective Date,” the Administrator will distribute the Individual Settlement Payments to all Settlement Class Members and PAGA Employees. The “Effective Date” is the later of the following events: (a) seven (7) calendar days have passed since final approval is granted if there are no objections to the settlement or intervenors in the action; (b) eighty-one (81) days following notice of entry of the Court’s final order approving the Settlement if there are any objections by any Class Member or any intervenors, but no

Notice of Appeal filed within 65 days of entry of the final approval order and judgment; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed,, then twenty-eight (28) days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

Payments to Settlement Class Members and PAGA Employees will issue only AFTER the payment by Defendant of the Gross Settlement Amount. **PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.**

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel's Fees and Expenses, the Class Representative Enhancement, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys' fees up to \$150,000.00 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Enhancement made to Plaintiff, not to exceed \$7,500, for his efforts in bringing the Action on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$8,000.00. The PAGA Penalty Payment in the amount of \$45,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$60,000 PAGA Allocation.

What claims are being released by the proposed Settlement?

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

(a) Identity of Released Parties. The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively "Releasees").

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

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

1) any and all claims stated in the Complaint, or that could have been stated based on the facts alleged in the Complaint, implicitly or explicitly, including but not limited to state wage and hour claims (including all claims under the California Labor Code and Industrial Welfare Commission Wage Orders) for unpaid wages, minimum wage, overtime, meal periods, rest periods, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but not limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 246, 510, 512, 512.5, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2810.5, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order ("Released Claims");

- 2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member's consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Complaint, implicitly or explicitly; and,
- 3) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff's administrative exhaustion letter submitted to the LWDA (Settlement Exhibit B) and the Complaint in this matter (i.e., the Released PAGA Claims).

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly file an Opt-Out Request. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can't object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections should be sent to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Godoy v. Intertrade Industries LTD*, Case No. 30-2020-01151921-CU-OE-CXC); and (5) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

Because of healthcare guidance and Orders of the Orange Superior Court related to COVID-19, the Final Approval Hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-

01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman).

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must submit a written request to be excluded from the Class Settlement to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your written request to be excluded from the Class Settlement must be signed and include your full name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement), along with any clear statement that you wish to be excluded, such as in the following example:

“I hereby request to be excluded from the Class Action Settlement in *Godoy v. Intertrade Industries LTD.*”

Your written request to be excluded from the Class Settlement must then be signed and postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a written request to be excluded from the Class Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Class Settlement by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement, except for any payment you may be receive from the PAGA portion of this Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the Administrative Expenses, and the PAGA Allocation on <<FINAL APPROVAL HEARING DATE & TIME>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. Because of healthcare guidance and Orders of the Orange County Superior Court related to COVID-19, the hearing may be a telephonic hearing only. As described above, if you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman). The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<[website](#)>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action Settlement attached to the Declaration of H. Scott Leviant in Support of Plaintiff’s Motion for Preliminary Approval. The Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Orange County Superior Court. Because of the Orange County Superior Court’s COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://ocjustice.occourts.org/civilwebShoppingNS/Search.do#searchAnchor>. You may need the case number to access and view case documents (30-2020-01151921-CU-OE-CXC) NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

EXHIBIT B

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

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

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

July 15, 2020

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL

Intertrade Industries, Ltd.
14600 Hoover Street
Westminster, CA 92683

Notice of Labor Code Violations and PAGA Penalties

Re: ***Manuel Godoy v. Intertrade Industries Ltd.***

To Whom It May Concern:

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

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

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

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 2 of 8

Factual Background Regarding Plaintiff's Employment with Defendant

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

Plaintiff worked for Defendant as a machine technician from approximately May 2018 to February 2020, primarily in Orange County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 4 days per week, and in excess of 10 hours each workday.

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

Failure to Pay for All Hours Worked, Including Overtime

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

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

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

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Further, Plaintiff and the Aggrieved Employees were not paid all overtime compensation at the correct rate of pay for work performed in excess of 8 hours per

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 3 of 8

workday. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

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

Failure to Provide Meal Periods

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

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

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

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

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 4 of 8

Failure to Authorize and Permit Rest Periods

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

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

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

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

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 5 of 8

showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

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

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

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

Failure to Timely Pay All Wages at Termination

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

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

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 6 of 8

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

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

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

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

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

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

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 7 of 8

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

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

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

Action for Civil Penalties Under PAGA

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

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination; and
6. Labor Code § 226 by failing to provide accurate itemized wage statements.
7. Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f)(2).

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

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

LWDA
Notice of Labor Code Violations and PAGA
July 15, 2020
Page 8 of 8

Sincerely,

MOON & YANG, APC

A handwritten signature in blue ink, appearing to read 'Kane Moon', is written over the text 'MOON & YANG, APC'.

Kane Moon
Attorney at Law

7019 2970 0001 5132 1833

US Postal Service
Domestic Mail Only

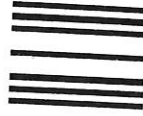
For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee		Postmark Here
\$		
Extra Services & Fees (check box, add fee as appropriate)		
☐ Return Receipt (hardcopy)	\$	
☐ Return Receipt (electronic)	\$	
☐ Certified Mail Restricted Delivery	\$	
☐ Adult Signature Required	\$	
☐ Adult Signature Restricted Delivery	\$	
Postage		
\$		
Total Postage and Fees		
\$		
Sent To	INTERTRADE INDUSTRIES, LTD.	
Street and Apt. No., or PO Box No.	14600 Hoover Street	
City, State, ZIP+4	Westminster, CA 92683	

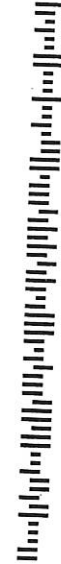
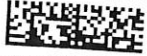
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

 **MOON & YANG, APC**
ATTORNEYS AT LAW
1055 W. SEVENTH STREET, SUITE 1880, LOS ANGELES, CA 90017



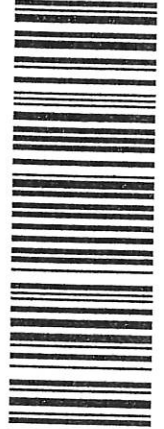
\$7.20
US POSTAGE
FIRST-CLASS
FROM 90017
07/17/2020
stamps
endicia

062S0010480272



Intertrade Industries, Ltd.
14600 Hoover Street
Westminster CA 92683-5346

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



7019 2970 0001 5132 1833

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

INTERTRADE INDUSTRIES, LTD.
14600 Hoover Street
Westminster, CA 92693



9590 9402 5711 9346 4880 24

2. Article Number (Transfer from service label)

7019 2970 0001 5132 1833

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery
☐ Insured Mail Restricted Delivery (over \$500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Exhibit “5”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Godoy v. Intertrade Industries LTD
Orange County Superior Court Case No. 30-2020-01151921-CU-OE-CXC

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF INTERTRADE INDUSTRIES, LTD (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN JULY 17, 2016 AND <<CLASS END DATE>> (THE “CLASS PERIOD”), THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Godoy v. Intertrade Industries LTD*, Orange Superior Court Case No. 30-2020-01151921-CU-OE-CXC (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Randall J. Sherman on <<FA DATE>>, at <<FA TIME>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by completing and submitting the included request to be excluded (“Request for Exclusion form”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Request for Exclusion forms must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request for Exclusion form if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked in California during the Class Period. The “Class Period” is July 17, 2016 through <<CLASS END DATE>>.

According to Defendant’s records, you are a member of the settlement class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$15,000 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of July 17, 2019 through <<CLASS END DATE>>.

What is this case about?

In the Action, Plaintiff Manuel Godoy (“Plaintiff”) alleges on behalf of himself and the Class that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages at termination; (6) failed to furnish accurate itemized wage statements; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiff seeks unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
H. Scott Leviant
Lilit Tunyan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
scott.leviant@moonyanglaw.com
lilit.tunyan@moonyanglaw.com

Defendant’s Counsel

Kenneth J. Rose
Robert H. Rose
THE ROSE GROUP, APLC
9747 Businesspark Ave., Suite 213
San Diego, CA 92131
Telephone: (619) 822-1088
Facsimile: (708) 575-1495
rrose@rosegroupp.us
krose@rosegroupp.us

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$450,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Enhancement to Plaintiff (\$7,500 to be requested); (c) the Court-approved attorneys’ fees and costs to Class Counsel (“Class Counsel’s Fees and Expenses”) (\$150,000.00 in fees and up to \$15,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “PAGA Penalty Payment”) (\$45,000 of a total of \$60,000 allocated to the PAGA settlement); and (e) payment to

the Settlement Administrator for settlement administration services (“Administrative Expenses”) (estimated to be no more than \$15,000).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$15,000 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their “Individual Settlement Payment”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the “Settlement Class Payments”) and each PAGA Employee (the “PAGA Settlement Payments”).

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$15,000 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$15,000 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

Your estimated Individual Settlement Payment is <<**Estimated Settlement Payment**>> and the number of work weeks you worked during the Class Period based on your hire and/or termination dates is <<**Work Weeks**>>. You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<**RESPONSE DEADLINE**>> (the “Response Deadline”) at:

Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863

You must produce documentary evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator and the Parties will attempt to resolve all work week disputes with you informally. If they cannot resolve your work week dispute with you informally, the dispute will be submitted by the Parties to the Court for final resolution. **REMINDER:** If you believe your estimated Settlement Payment is incorrect because your work weeks (the number of weeks you worked within the Class Period) are wrong, your deadline to dispute this is <<**RESPONSE DEADLINE**>>.

For tax reporting purposes, the payments to Class Members will be allocated 33.33% as wages and 66.67% as penalties and interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

Within 28 calendar days after the “Effective Date,” the Administrator will distribute the Individual Settlement Payments to all Settlement Class Members and PAGA Employees. The “Effective Date” is the later of the following events: (a) seven (7) calendar days have passed since final approval is granted if there are no objections to the settlement or intervenors in the action; (b) eighty-one (81) days following notice of entry of the Court’s final order approving the Settlement if there are any objections by any Class Member or any intervenors, but no Notice of Appeal filed within 65 days of entry of the final approval order and judgment; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed,, then twenty-eight (28) days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

Payments to Settlement Class Members and PAGA Employees will issue only AFTER the payment by Defendant of the Gross Settlement Amount. **PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.**

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel’s Fees and Expenses, the Class Representative Enhancement, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys’ fees up to \$150,000.00 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Enhancement made to Plaintiff, not to exceed \$7,500, for his efforts in bringing the Action on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$8,000.00. The PAGA Penalty Payment in the amount of \$45,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$60,000 PAGA Allocation.

What claims are being released by the proposed Settlement?

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

(a) Identity of Released Parties. The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba’s, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively “Releasees”).

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement’s Effective Date, or (2) the satisfaction of Defendant’s obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

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

1) any and all claims stated in the Complaint, or that could have been stated based on the facts alleged in the Complaint, implicitly or explicitly, including but not limited to state wage and hour claims (including all claims under the California Labor Code and Industrial Welfare Commission Wage Orders) for unpaid wages, minimum wage, overtime, meal periods, rest periods, wage statement violations, interest, penalties, and attorneys’ fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but not limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 246, 510, 512, 512.5, 516, 558, 1174,

1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2810.5, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order (“Released Claims”);

2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Complaint, implicitly or explicitly; and,

3) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff’s administrative exhaustion letter submitted to the LWDA (Settlement Exhibit B) and the Complaint in this matter (i.e., the Released PAGA Claims).

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly submit a Request for Exclusion form. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can’t object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can’t ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections should be sent to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Godoy v. Intertrade Industries LTD*, Case No. 30-2020-01151921-CU-OE-CXC); and (5) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

Because of healthcare guidance and Orders of the Orange Superior Court related to COVID-19, the Final Approval Hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman).

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must complete and return the included Request for Exclusion form to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your Request for Exclusion form must be signed and include the last four digits of your social security number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement). If you do not have a social security number, please contact the Settlement Administrator to arrange for an alternate method of confirming your identity.

Your Request for Exclusion form (to remove you from the Class Settlement) must postmarked on or before <<**RESPONSE DEADLINE**>>. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion form by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement, except for any payment you may be receive from the PAGA portion of this Settlement.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's Fees and Expenses, the Class Representative Enhancement, the Administrative Expenses, and the PAGA Allocation on <<**FINAL APPROVAL HEARING DATE & TIME**>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. Because of healthcare guidance and Orders of the Orange County Superior Court related to COVID-19, the hearing may be a telephonic hearing only. As described above, if you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman). The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<**website**>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action Settlement attached to the Declaration of H. Scott Leviant in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Orange County Superior

Court. Because of the Orange County Superior Court's COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://ocjustice.occourts.org/civilwebShoppingNS/Search.do#searchAnchor>. You may need the case number to access and view case documents (30-2020-01151921-CU-OE-CXC) NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “6”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Godoy v. Intertrade Industries LTD
Orange County Superior Court Case No. 30-2020-01151921-CU-OE-CXC

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF INTERTRADE INDUSTRIES, LTD (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN JULY 17, 2016 AND <<CLASS END DATE>> (THE “CLASS PERIOD”), THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Godoy v. Intertrade Industries LTD*, Orange Superior Court Case No. 30-2020-01151921-CU-OE-CXC (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<Estimated Payment>>, which includes your payment from the Class settlement in the estimated amount of <<Estimated Individual Settlement Class Payment>> and, because you [ARE/ARE NOT] also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<Estimated Individual PAGA Settlement Payment>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Randall J. Sherman on <<FA DATE>>, at <<FA TIME>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by <u>completing and submitting the written-included</u> request to be excluded (“ <u>Opt-Out RequestRequest for Exclusion form</u> ”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). <u>Request for Exclusion forms Opt-Out Requests</u> must be submitted by <<RESPONSE DEADLINE>>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit <u>a Request for Exclusion form an Opt-Out Request</u> if you wish to object. <u>Written</u> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked in California during the Class Period. The “Class Period” is July 17, 2016 through <<CLASS END DATE>>.

According to Defendant’s records, you are a member of the settlement class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$15,000 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of July 17, 2019 through <<CLASS END DATE>>.

What is this case about?

In the Action, Plaintiff Manuel Godoy (“Plaintiff”) alleges on behalf of himself and the Class that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages at termination; (6) failed to furnish accurate itemized wage statements; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*]. Plaintiff seeks unpaid wages, actual, consequential and incidental losses and damages, special damages, liquidated damages, injunctive relief, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
H. Scott Leviant
Lilit Tunyan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
scott.leviant@moonyanglaw.com
lilit.tunyan@moonyanglaw.com

Defendant’s Counsel

Kenneth J. Rose
Robert H. Rose
THE ROSE GROUP, APLC
9747 Businesspark Ave., Suite 213
San Diego, CA 92131
Telephone: (619) 822-1088
Facsimile: (708) 575-1495
rrose@rosegroupp.us
krose@rosegroupp.us

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$450,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Enhancement to Plaintiff (\$7,500 to be requested); (c) the Court-approved attorneys’ fees and costs to Class Counsel (“Class Counsel’s Fees and Expenses”) (\$150,000.00 in fees and up to \$15,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “PAGA Penalty Payment”) (\$45,000 of a total of \$60,000 allocated to the PAGA settlement); and (e) payment to

the Settlement Administrator for settlement administration services (“Administrative Expenses”) (estimated to be no more than \$15,000).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$15,000 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their “Individual Settlement Payment”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the “Settlement Class Payments”) and each PAGA Employee (the “PAGA Settlement Payments”).

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$15,000 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$15,000 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

Your estimated Individual Settlement Payment is <<Estimated Settlement Payment>> and the number of work weeks you worked during the Class Period based on your hire and/or termination dates is <<Work Weeks>>. You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<RESPONSE DEADLINE>> (the “Response Deadline”) at:

Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863

You must produce documentary evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator and the Parties will attempt to resolve and decide all work week disputes with you informally. If they cannot resolve your work week dispute with you informally, the dispute will be submitted by the Parties to the Court for final resolution, and its decisions will be final and non-appealable. **REMINDER:** If you believe your estimated Settlement Payment is incorrect because your work weeks (the number of weeks you worked within the Class Period) are wrong, your deadline to dispute this is <<RESPONSE DEADLINE>>.

For tax reporting purposes, the payments to Class Members will be allocated ~~2033.33%~~ as wages and 66.67% as penalties; and ~~8033 1/3% as penalties and~~ interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

Within 28 calendar days after the “Effective Date,” the Administrator will distribute the Individual Settlement Payments to all Settlement Class Members and PAGA Employees. The “Effective Date” is the later of the following events: (a) seven (7) calendar days have passed since final approval is granted if there are no objections to the settlement or intervenors in the action; (b) eighty-one (81) days following notice of entry of the Court’s final order approving the Settlement if there are any objections by any Class Member or any intervenors, but no Notice of Appeal filed within 65 days of entry of the final approval order and judgment; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed,, then twenty-eight (28) days after when any appeal, writ or other appellate proceeding opposing the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

Payments to Settlement Class Members and PAGA Employees will issue only AFTER the payment by Defendant of the Gross Settlement Amount. **PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.**

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel’s Fees and Expenses, the Class Representative Enhancement, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys’ fees up to \$150,000.00 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Enhancement made to Plaintiff, not to exceed \$7,500, for his efforts in bringing the Action on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$8,000.00. The PAGA Penalty Payment in the amount of \$45,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$60,000 PAGA Allocation.

What claims are being released by the proposed Settlement?

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

(a) Identity of Released Parties. The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba’s, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively “Releasees”).

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement’s Effective Date, or (2) the satisfaction of Defendant’s obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

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

1) any and all claims stated in the Complaint, or that could have been stated based on the facts alleged in the Complaint, implicitly or explicitly, including but not limited to state wage and hour claims (including all claims under the California Labor Code and Industrial Welfare Commission Wage Orders) for unpaid wages, minimum wage, overtime, meal periods, rest periods, wage statement violations, interest, penalties, and attorneys’ fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but not limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 246, 510, 512, 512.5, 516, 558, 1174,

1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2810.5, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order (“Released Claims”);

2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Complaint, implicitly or explicitly; and,

3) in addition, as to all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff’s administrative exhaustion letter submitted to the LWDA (Settlement Exhibit B) and the Complaint in this matter (i.e., the Released PAGA Claims).

No Class Member employed during the Released PAGA Claims Period can request exclusion from the settlement of the PAGA Claim. If you are a Class Member, and this Settlement is approved, you will release the PAGA Claim even if you timely and properly ~~file an Opt Out Request~~ [submit a Request for Exclusion form](#). The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can’t object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can’t ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections should be sent to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. If you submit a written objection, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Godoy v. Intertrade Industries LTD*, Case No. 30-2020-01151921-CU-OE-CXC); and (5) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

Because of healthcare guidance and Orders of the Orange Superior Court related to COVID-19, the Final Approval Hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman).

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must ~~submit a written request to be excluded from the Class Settlement~~ complete and return the included Request for Exclusion form to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your Request for Exclusion form ~~written request to be excluded from the Class Settlement~~ must be signed and include your full name, address, and telephone number ~~the last four digits of your social security number~~ (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement). If you do not have a social security number, please contact the Settlement Administrator to arrange for an alternate method of confirming your identity, along with any clear statement that you wish to be excluded, such as in the following example:

~~“I hereby request to be excluded from the Class Action Settlement in *Godoy v. Intertrade Industries LTD.*”~~

Your Request for Exclusion form ~~written request to be excluded~~ (to remove you from the Class Settlement) must ~~then be signed and~~ postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a Request for Exclusion form ~~written request to be excluded from the Class Settlement~~ on time (as evidenced by the postmark), your ~~written~~ request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion form ~~written request to be excluded from the Class Settlement~~ by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered valid. **You will not be entitled to any benefit, including money,** as a result of the Action and Settlement, except for any payment you may be receive from the PAGA portion of this Settlement.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s Fees and Expenses, the Class Representative Enhancement, the Administrative Expenses, and the PAGA Allocation on <<FINAL APPROVAL HEARING DATE & TIME>>, in Department CX105 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. Because of healthcare guidance and Orders of the Orange County Superior Court related to COVID-19, the hearing may be a telephonic hearing only. As described above, if you wish to attend the Final Approval Hearing telephonically, schedule a telephonic appearance via CourtCall, call 1-888-882-6878 or schedule online via their website at <https://courtcall.com/?c=CCHOME>. You will need to use the Case Number for this case (30-2020-01151921-CU-OE-CXC) and the Court Department and name of the Judge (Department CX105, Hon. Randall J. Sherman). The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<[**website**](#)>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action Settlement attached to the Declaration of H. Scott Leviant in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Orange County Superior Court. Because of the Orange County Superior Court's COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://ocjustice.occourts.org/civilwebShoppingNS/Search.do#searchAnchor>. You may need the case number to access and view case documents (30-2020-01151921-CU-OE-CXC) NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “7”



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *



Your Zip/Postal Code *

Court and Hearing Information

Court *

Orange County Superior C

Court Case Number *

30-2020-01151921-CU-

Hearing Date (if any)

12/03/2021

Hearing Time

10:00 a.m.

Hearing Location

751 W. Santa Ana Bouleva

Number of aggrieved employees *

133

Gross settlement amount *

450000

Gross penalty amount *

60000

Penalties to LWDA *

45000

Date of proposed settlement *

10/18/2021

Proposed Settlement and Other Documents

Proposed Settlement *

Choose File

Godoy v. Inte...agreement.pdf

Other Attachment (if any)

Choose File

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Previous Page

Submit

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [H. Scott Leviant](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, October 19, 2021 2:28:19 PM

10/19/2021 02:28:02 PM

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

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

Exhibit “8”

Exhibit “9”



Private Attorneys General Act (PAGA) – Filing

Other Document

PAGA Number (LWDA-CM-): *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".
[Search for PAGA Case number](#)

Your Information (Person Who is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Documents

Other Document *

 INTERTRADE IN...rrections.pdf

Other Attachment (if any)

 No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [H. Scott Leviant](#)
Subject: Thank you for your Other Response or Document Submission
Date: Thursday, December 2, 2021 11:07:20 AM

12/02/2021 11:07:03 AM

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

Item submitted: Other Response or Document Submission

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ **I understand that, if I file, I must comply with the redaction rules consistent with this notice.**

[Previous Page](#)

[Submit](#)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party
4 to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **FIRST SUPPLEMENTAL**
6 **DECLARATION OF H. SCOTT LEVIANT IN SUPPORT OF PLAINTIFF'S MOTION FOR**
7 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action
8 by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the
9 attached service list:

10 Kenneth J. Rose
11 Robert H. Rose
12 THE ROSE GROUP, APLC
13 9747 Businesspark Ave., Suite 213
14 San Diego, CA 92131
15 krose@rosegroup.us
16 rrose@rosegroup.us

17 *Counsel for Defendant Intertrade Industries, LTD*

18 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in
19 the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's
20 practice of collection and processing correspondence for mailing. Under that practice, sealed
21 envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business
22 with postage thereon fully prepaid at Los Angeles, California.

23 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail
24 delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in
25 this action.

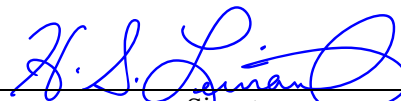
26 ☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the
27 above-named document(s) has (have) been electronically served on counsel of record by an approved
28 electronic service provider. The transmission of these documents was reported complete and a copy of
the service confirmation will be maintained, along with the original document(s) and proof of service
in our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the
offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and
processing correspondence for overnight delivery. Under that practice, overnight packages are
enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are
picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the
foregoing is true and correct. Executed this **December 16, 2021** at Los Angeles, California.

26 H. Scott Leviant
27 Type or Print Name

26 
27 Signature