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Attorneys for Plaintiff and the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

RIVELINO TAVIRA, an individual, on behalf
of himself and others similarly situated,

PLAINTIFF,

v.

GENERAL FOUNDRY SERVICE
CORPORATION; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. RG20072299

[Case Assigned for All Purposes to Hon. Brad
Seligman in Dept. 23]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Preliminary Approval of Settlement and
[Proposed] Order Thereon]*

Date: April 27, 2021

Time: 3:00 p.m.

Dept.: 23

Reservation No.: R-2243711

Complaint Filed: August 24, 2020

FAC Filed: October 29, 2020

Trial Date: None Set

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I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

3. I have been personally involved in all aspects of this litigation since inception including the settlement process. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement in the above-captioned case.

RELEVANT PROCEDURAL HISTORY

4. On August 24, 2020, Plaintiff filed a Class Action Complaint and a notice with California’s Labor and Workforce Development Agency (“LWDA”) regarding his intent to file an action seeking civil penalties under PAGA. On October 29, 2020, Plaintiff filed a First Amended Complaint (“FAC”), adding the PAGA claim based on the facts previously alleged in the Complaint.

5. The FAC alleged claims for: (1) Failure to pay wages and/or overtime pursuant to Labor Code §§ 510, 1194, and 1199; (2) Violation of Labor Code § 226(a); (3) Violation of Business & Professions Code § 17200; and (4) Penalties pursuant to Labor Code § 2699, et seq.

6. The Parties stipulated to the amendment of the FAC to permit Plaintiff to file a Second Amended Complaint (“SAC”). On February 5, 2021, Plaintiff filed his SAC which alleges only two claims: (1) Penalties pursuant to Labor Code §226(a); and (2) PAGA penalties pursuant to Labor Code § 2699, et seq. based upon the alleged Labor Code §226(a) violation.

1 Defendant is required to keep records of its hourly employees' names, home addresses, and social
2 security numbers. (See Wage Order 1-2001, subsection 7(c))

3 15. Plaintiff contends that Settlement Class Members may be readily identified based
4 on Defendant's records

5 16. Plaintiff is confident he will be able to establish that the proposed settlement class
6 is ascertainable and sufficiently numerous.

7 17. Plaintiff argues that there are questions of law and fact common to the proposed
8 settlement class that predominate over any questions affecting only individual Class Members.

9 18. These common questions include:

- 10 1) Whether Defendant failed to provide accurate itemized wage statements;
and,
11 2) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging
12 in the acts previously alleged.

13 19. Plaintiff's challenge to Defendant's uniform policies and practices involves
14 common factual and legal issues that are amenable to class treatment.

15 20. Plaintiff maintains that the proposed Settlement Class Members suffered the same
16 injuries, in the same manner in that Settlement Class Members were not provided with accurate
17 itemized wage statements that comply with California law.

18 21. Plaintiff alleges that Settlement Class Members worked in the same capacity for
19 the same employer and were subject to the same employment policies and practices, the questions
20 of fact and claims regarding the status of these employees are the same for each member of the
21 settling class. Accordingly, for purposes of settlement, certification for settlement purposes is
22 appropriate.

23 22. Plaintiff worked as an "hourly employee" for Defendant.

24 23. He also alleges that he experienced derivative claims for Labor Code §2699, et seq.

25 24. Plaintiff contends that his claims are typical of those of the Settlement Class
26 Members.

27 25. Plaintiff believes that he is capable of fairly representing and adequately protecting
28 the interests of the proposed Settlement Class Members.

1 26. The members of the proposed settlement class all worked for Defendant during the
2 relevant time period and incurred the same type of alleged damages with regard to Defendant's
3 alleged violations of the law.

4 27. Plaintiff has agreed to serve as Class Representative and has retained qualified
5 Counsel who is experienced in prosecuting wage and hour class actions.

6 28. This demonstrates his commitment to bringing about the best possible results for
7 the benefit of the proposed settlement class.

8 29. Plaintiff has provided his Counsel with all necessary and pertinent information.

9 30. He has been an active participant in the litigation including having frequent contact
10 with Settlement Class Members, and working closely with Class Counsel to develop the theories
11 of liability.

12 31. Plaintiff has provided his Counsel with all necessary and pertinent information.

13 32. Therefore, Plaintiff believes that he has and will continue to adequately represent
14 the proposed Settlement Class Members.

15 33. Plaintiff has provided his Counsel with all necessary and pertinent information.

16 34. In this regard, the superiority of class treatment is evident here because individual
17 pursuit of class members' claims may not be economically viable.

18 35. The only alternative to certification would be to force over 55 employees to join
19 this action, file individual, uniform actions, or abandon their legal rights altogether.

20 36. Plaintiff maintains that this economic reality would result in a windfall for
21 Defendant if this case were not certified.

22 **THE PROPOSED SETTLEMENT**

23 37. For purposes of Settlement Agreement, the settlement class is defined as: "all
24 persons who are employed or have been employed as an hourly employee by GENERAL
25 FOUNDRY SERVICE CORPORATION, in the State of California who worked one or more pay
26 periods during the Class Period." ("Settlement Class Members" or "Class Members").

27 38. The Class Period is August 24, 2019 to August 21, 2020.

28 39. Based on documents and other information produced by Defendant, there are

1 approximately 55 Settlement Class Members.

2 40. The proposed Settlement provides for Defendant to pay a Gross Settlement Amount
3 of \$144,325.00, which includes the sum of the Individual Settlement Payments, the Class
4 Representative Enhancement Award, the Class Counsel Award, PAGA Payment, and the
5 Settlement Administrator Costs.

6 41. The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel
7 Award, Class Representative Enhancement Award, Payment to the LWDA, and Settlement
8 Administration Costs.

9 42. The Agreement also contains an escalator clause in the event the number of
10 Proposed Settlement Class Members increases beyond 55 by more than 5%.

11 **KULLAR ANALYSIS**

12 43. The extensive informal discovery conducted before entering into meaningful
13 settlement negotiations permitted Class Counsel to fairly evaluate the strength of the case and the
14 risks associated with ongoing litigation.

15 44. Class Counsel is experienced in handling wage and hour class actions and, after
16 weighing all of the following factors, supports this Settlement Agreement.

17 45. Plaintiff alleges that Defendant provided employees with itemized wage
18 statements, that fail to show the start and end date for each pay period and the address of the legal
19 entity that is the employer.

20 46. Plaintiff takes the position that a review of the paystubs at issue reveals that
21 Defendant's itemized wage statements simply do not show the required information.

22 47. Given that, Plaintiff was confident that he could establish that Defendant violated
23 Labor Code § 226(a) on a class wide basis.

24 48. Plaintiff anticipated that Defendant would seek to minimize the alleged violation
25 as merely "technical".

26 49. Ultimately, Plaintiff does not think this argument is persuasive because the trier of
27 fact can determine from the face of the instrument that the required information is not shown.

28 50. Defendant maintained that Plaintiff was required to show injury per the Labor Code

1 §226 (e)(1) and that Plaintiff would not be able to articulate a cognizable injury here. [“An
2 employee suffering injury as a result of a knowing and intentional failure by an employer to comply
3 with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50)
4 for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee
5 for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand
6 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”].

7 51. Plaintiff maintains that pursuant to Labor Code § 226(e)(2)(B) injury is presumed
8 by virtue of an employer failing to provide a properly itemized wage statement. [“An employee
9 is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate
10 and complete information as required by any one or more of items (1) to (9), inclusive, of
11 subdivision (a) and the employee cannot promptly and easily determine from the wage statement
12 alone... information required to be provided”.]

13 52. Plaintiff certainly anticipated that Defendant would argue Plaintiff could “promptly
14 and easily” determine the start date of the pay period from the face of the wage statement alone by
15 simply counting back from the listed end date of the pay period and likewise.

16 53. Plaintiff maintains that Plaintiff would have to look at documents outside the four
17 corners of the wage statement to determine the exact dates of Defendant’s pay periods such as a
18 calendar or pay date schedule.

19 54. Plaintiff had to acknowledge that there was at least some risk that the trier of fact
20 could determine that the start date of the pay period could easily be determined from the face of
21 the wage statement alone.

22 55. Defendant would argue that Plaintiff and all Proposed Class Members reported to
23 work each day at the location that is “the name and address of the employer” so all employees
24 knew this information.

25 56. Plaintiff ultimately does not think this is a strong argument since Section 226(a)
26 specifically states that this information must be shown on the face of the paystub.

27 57. More importantly from a risk analysis perspective, however, is Plaintiff’s ability to
28 show that any alleged Section 226(a) violation was “knowing and intentional”.

1 58. Defendant maintained that if a Court determined that there was any violation, it
2 would be only a technical violation of Labor Code § 226(a) that did not merit the imposition of
3 penalties.

4 59. Pursuant to Labor Code § 226(e), employees are only entitled to the statutory
5 penalty for a “knowing and intentional failure by an employer to comply with subdivision (a).”
6 Pursuant to Labor Code § 226.3, the Labor Commissioner has the discretion to “decide not to
7 penalize an employer for a first violation when that violation was due to a clerical error or
8 inadvertent mistake.”

9 60. Plaintiff anticipated that at trial, Defendant would argue that any alleged violation
10 was the result of a clerical oversight and, accordingly, Plaintiff could not prove the violation was
11 “knowing and intentional.”

12 61. Consequently, if Defendant could make a potentially persuasive argument that if
13 Defendant did not act knowingly or intentionally there would be no penalties available under Labor
14 Code § 226(e) to the Class Members.

15 62. While Class Counsel maintains that it could establish that the alleged violation was
16 “knowing and intentional”, nonetheless Class Counsel had to recognize that there was risk that a
17 trier of fact might ultimately be swayed by Defendant’s arguments.

18 63. Plaintiff discounted the PAGA claim for multiple reasons during the negotiation
19 process.

20 64. Plaintiff acknowledges that the aggrieved employees’ PAGA claims are derivative
21 of the foregoing class claims.

22 65. A court has discretion to award less than the maximum penalty. Labor Code §
23 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount specified
24 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
25 result in an award that is unjust, arbitrary and oppressive, or confiscatory”). *See e.g., Carrington*
26 *v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award
27 of 10% of maximum PAGA penalty).

28 66. The settlement class is arguably compensated for these violations in the proposed

1 Settlement Agreement, and thus any sizeable PAGA recovery for these same violations could be
2 deemed as duplicative by the Court.

3 67. As such, the Settlement Agreement's contemplated PAGA payment of \$8,000.00
4 is appropriate.

5 68. There is significant expense associated with the class certification process, which
6 the Parties can avoid by entering into the contemplated Settlement Agreement now.

7 69. If the Court did eventually certify a class, trial of a case involving approximately
8 55 Settlement Class Members would require the retention of expensive expert witnesses, the
9 accrual of extensive litigation costs, and a significant time overlay by the parties.

10 70. Moreover, given the complexity and unsettled nature of the issues in this case it is
11 likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal
12 would result in further delay for the Settlement Class Members who are waiting for a resolution in
13 this matter.

14 71. This case has not been certified to be tried as a class action. Moreover, in class
15 actions, decertification is always a possibility. In attempting to certify a class, the parties would
16 need to conduct multiple depositions, including of the Class Representative and of several
17 person(s) most knowledgeable regarding Defendant's policies. There is a risk for both sides as to
18 what these depositions will reveal and whether they will support class certification to the extent
19 expected.

20 72. This Settlement is the result of adversarial, non-collusive, and arms-length
21 negotiations. The Parties arrived at it after extensive investigation and discovery, careful
22 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
23 likely to be awarded to the class were the trier of fact to find Defendant liable.

24 73. Plaintiff valued the Wage Statement Claim, without discount, at \$288,650.

25 74. Plaintiff used \$50 for each initial violation and \$100 thereafter (2,914 x \$100 – 55
26 x \$50 = \$288,650.

27 75. This figure is likely overstated because Labor Code §226(e)(1) puts a \$4,000 cap
28 on wage statement penalties per employee.

1 76. Plaintiff calculated the maximum potential value of the PAGA claim at \$291,400
2 using \$100 per pay period).

3 77. The main risk taken into account with PAGA is the discretionary nature of the
4 penalty award.

5 78. A judge can award the statutory maximum of \$100 for the initial violation and \$200
6 thereafter or – in theory – one cent per wage statement.

7 79. While there is a dearth of available authority, in Plaintiff's view, were he to succeed
8 on the underlying Labor Code Section 226a) violation, it is not likely that a Judge would also
9 award a large amount of PAGA penalties of top of any damages recovered.

10 80. Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
11 Settlement Class Members' claims was \$580,050.

12 81. As a result of the forgoing risks on the merits, Class Counsel believes the Gross
13 Settlement Amount of \$144,325.00 is fair and reasonable.

14 **ATTORNEY COMPETENCE**

15 82. Kingsley & Kingsley is very experienced in prosecuting employment litigation.
16 Since the year 2000, we have focused our practice on wage, hour, and working condition
17 violations. My firm is well versed in class action litigation and has diligently and aggressively
18 pursued this action. Kingsley & Kingsley currently serves as class counsel for several dozen
19 pending class action lawsuits in Northern, Central, Eastern, and Southern California in both State
20 and Federal Court. Throughout the past decade, I have also actively litigated countless wage and
21 hour and consumer class actions. Below is a small, but representative sampling of those cases:

- 22 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
23 2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount
24 of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.
- 25 b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In
26 December 2005, Honorable Rita Miller granted final approval of Settlement in the
27 gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.
- 28 c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the

Honorable Conrad R. Aragon granted final approval of Settlement in the gross amount of \$1,000,000 and the court granted attorneys' fees request of 30%.

d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March 2008, the Honorable Mary Thornton House granted final approval of Settlement in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of 33 1/3%.

e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No. BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.

h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January 2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.

i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-00705 AWIJLT). This certified class action was approved for final settlement by the Honorable Anthony W. Ishii in October 2015, in the gross amount of \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.

j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement

1 in the gross amount of \$995,000.00, and the court granted attorney's fees request
2 of 33.33%.

3 k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016
4 after a class trial with a verdict in the class's favor, the Honorable Daniel P.
5 Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's
6 fees.

7 l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In
8 June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the
9 gross amount of \$2,000,000.00, and the court granted attorney's fees request of
10 33.33%.

11 m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was
12 proposed for final settlement by the Honorable Richard L. Fruin on February 19,
13 2016, in the gross amount of \$5,250,000.

14 n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739).
15 The matter was approved for final settlement by the Honorable Lee Smally Edmund
16 in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of
17 38%.

18 o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for
19 the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The
20 matter was approved for final settlement by the Honorable Anthony W. Ishii in
21 November 2017, in the gross amount of \$6,100,000.00, plus interest, with
22 attorney's fees benchmark award of \$1,525,000.

23 p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-
24 15-101333). The matter was approved for final settlement before the Hon. Stephen
25 D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with
26 attorneys' fees request of 33.33%.

27 83. Kingsley & Kingsley filed its first class certification motion in the year 2000 and
28 since that time has been appointed class counsel on dozens of wage and hour class actions that

1 have been approved for class certification. Since 2011, Kingsley & Kingsley has moved for class
2 certification in 17 matters and has successfully obtained class certification in 16 of those cases. A
3 brief sampling of which includes:

- 4 a. *Lewis v. Collabrus, Inc.*, Santa Clara County Superior Court (109CV-142927),
5 approved for Class Certification in 2011.
- 6 b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Court, filed
7 December 19, 2012), court granted contested class certification and appointed
8 Kingsley & Kingsley class counsel).
- 9 c. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544),
10 contested class certification granted in June 2020.
- 11 d. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),
12 contested class certification granted in August 2020
13 *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct., filed January 27, 2015), court
14 granted contested class certification and appointed Kingsley & Kingsley class
15 counsel.
- 16 e. *Amaro, et al v. Gerawan Farming, Inc.*, United States District Court for the Eastern
17 District of California (1:14-cv-00147-DAD-SAB), contested Class Certification
18 approved in 2016.
- 19 f. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214),
20 contested class certification approved in 2018.
- 21 g. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court
22 (BCV-16-102833), contested class certification approved in 2018.
- 23 h. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
24 filed January 27, 2015) (court granted contested class certification and appointed
25 Kingsley & Kingsley as class counsel).

26 84. Class Counsel is experienced in the handling of wage and hour class actions and
27 supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair
28 and reasonable and in the best interest of the Class.

1 85. After factoring in the risks explained above, Class Counsel believes that the
2 proposed settlement is fair and reasonable.

3 86. This allocation distributes Settlement Agreement funds proportionally to each class
4 member's potential damages and should therefore be approved as fair, adequate, and reasonable.

5 **SERVICE AWARD TO THE NAMED PLAINTIFF**

6 87. The Class Representative is entitled to an enhancement for his valiant effort and
7 time expended in this matter. The time spent by Rivelino Tavira is significant and includes
8 researching and retaining competent counsel; providing information to Class Counsel regarding
9 the nature of the work at Defendant; compiling relevant documents; working closely with Class
10 Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the
11 status of the case with Class Counsel; discussing the case via telephone with many Settlement
12 Class Members; and responding promptly to Class Counsel's communications regarding
13 settlement.

14 88. As set forth in the Settlement Agreement, Plaintiff will also be entering into a
15 general release of liability pursuant to Civil Code Section 1542.

16 89. Class Counsel considers this to be a fair and reasonable enhancement. The
17 enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming
18 forward to litigate this matter on behalf of all Settlement Class Members. Plaintiff will provide a
19 detailed declaration with the Final Approval Motion detailing his participation and further
20 justification for the enhancement.

21 **SUBMISSION TO THE LABOR WORKFORCE DEVELOPMENT AGENCY**

22 90. Proof of submission of Plaintiff's Motion, all related documents, and copy of the
23 email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as
24 Exhibit "2."

25 **EXHIBITS**

26 91. Attached hereto as Exhibit "1" is a true and correct copy of the fully-executed Joint
27 Stipulation of Class Action and Release of Claims ("Settlement" or "Settlement Agreement").

28 92. Attached hereto as Exhibit "2" is a true and correct copy of the proof of submission

1 of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
2 receipt.

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

5 This Declaration was executed this 17th day of March, 2021, in Altadena, California.

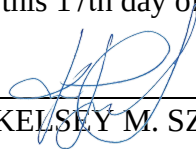
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EXHIBIT "1"

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

RIVELINO TAVIRA an individual, on behalf
of himself and others similarly situated

PLAINTIFF,

v.

GENERAL FOUNDRY SERVICE
CORPORATION; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. RG20072299

[Case Assigned for All Purposes to Hon. Brad
Seligman in Dept. 23]

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

1 This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by
2 and between Plaintiff RIVELINO TAVIRA, individually and on behalf of the Settlement Class
3 and the State of California, as a private attorney general, on the one hand, and Defendant
4 GENERAL FOUNDRY SERVICE CORPORATION on the other hand.

5 This Joint Stipulation of Class Action Settlement and Release of Claims shall be binding
6 on Plaintiff, the current and former employees s/he seeks to represent, the Settlement Class, and
7 on Defendant and subject to the definitions, recitals, and terms set forth herein and the approval of
8 the Court.

9 **I. DEFINITIONS**

10 **1. Action**

11 “Action” or “Lawsuit” means the civil action filed in the Superior Court of the State of
12 California for the County of Alameda, entitled RIVELINO TAVIRA, an individual, on behalf of
13 himself and others similarly situated, Plaintiff v. GENERAL FOUNDRY SERVICE
14 CORPORATION, and Does 1 thru 50, inclusive, Defendants, Case No. RG20072299 filed on
15 August 24, 2020.

16 **2. Class Counsel**

17 “Class Counsel” means Kingsley & Kingsley, APC, who, subject to Court approval, shall
18 act as counsel for Settlement Class Members.

19 **3. Class Counsel Award**

20 “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution
21 of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this
22 Lawsuit.

23 **4. Class Information**

24 “Class Information” or “Class Data” means information regarding Settlement Class
25 Members that Defendant will in good faith compile from their records and provide to the
26 Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include:
27 each Settlement Class Member’s full name; last known address; last known home telephone
28 number; social security number; dates of employment, and Compensable Work Weeks.

1 **5. Class Members or Settlement Class Members**

2 “Class Members” or “Settlement Class Members” means all persons who are employed or
3 have been employed as an hourly employee by GENERAL FOUNDRY SERVICE
4 CORPORATION, in the State of California who worked one or more pay periods during the Class
5 Period.

6 **6. Class Period**

7 “Class Period” means the period from August 24, 2019 to August 21, 2020.

8 **7. Class Representative**

9 “Class Representative” means Plaintiff RIVELINO TAVIRA.

10 **8. Class Representative Enhancement Award**

11 “Class Representative Enhancement Award” means the amount that the Court authorizes
12 to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of
13 Plaintiff’s efforts and risks in assisting with the prosecution of the Lawsuit and in return for
14 executing a general release with Defendant.

15 **9. Compensable Work Weeks**

16 “Compensable Work Weeks” means an estimate of the number of weeks in which
17 Settlement Class Member(s) performed work for Defendant in the State of California, excluding
18 vacation, leaves of absence, or any gaps in employment, during the Class Period based on
19 Defendant’s records.

20 **10. Complaint**

21 “Complaint” means the operative complaint, filed in the Action.

22 **11. Court**

23 “Court” means the Superior Court for the County of Alameda, State of California.

24 **12. Defendant**

25 “Defendant” means Defendant GENERAL FOUNDRY SERVICE CORPORATION.

26 **13. Effective Date**

27 “Effective Date” of the Settlement means the date on which the Court’s order granting
28 Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the

1 following events: (i) upon the Court signing the Final Approval Order granting approval of this
2 Settlement Agreement if no objections to the settlement are filed, or if an objection is filed but is
3 withdrawn prior to the Court's Final Approval Hearing; or (ii) in the event there are written
4 objections filed prior to the final approval hearing which are not thereafter withdrawn prior to the
5 hearing, the later of the following events: (a) the day after the last day by which a notice of appeal
6 of the order may be timely filed with the California Court of Appeal, and none is filed; (b) if an
7 appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the
8 last date for filing a request for further review of the Court of Appeal's decision passes and no
9 further review is requested; (c) if an appeal is filed and there is a final disposition by ruling,
10 dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal's
11 decision is requested, the day after the request for review is denied with prejudice and/or no further
12 review of the order can be requested; or (d) if review is accepted, the day the Supreme Court of
13 the State of California affirms the Settlement.

14 **14. Final Approval Hearing**

15 "Final Approval Hearing" means the final hearing held to ascertain the fairness,
16 reasonableness, and adequacy of the Settlement.

17 **15. Final Approval Order**

18 "Final Approval Order" means the proposed order granting final approval of the Parties'
19 settlement, in a form substantially similar to the order attached hereto as Exhibit C.

20 **16. Final Judgment**

21 "Final Judgment" means a judgment issued by the Court approving this Agreement as
22 binding upon the Parties. The Final Judgment shall constitute a judgment respecting the Parties
23 within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d,
24 and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in *Arias v.*
25 *Superior Court*, 46 Cal. 4th 969 (2009).

26 **17. Gross Settlement Amount**

27 "Gross Settlement Amount" means the agreed upon settlement amount totaling
28 \$144,325.00 to be paid by Defendant in full settlement of the Released Claims, and includes

without limitation the Class Counsel Award, Class Representative Enhancement Award, Individual Settlement Payments, PAGA Payment, and Settlement Administrator Costs.

18. Individual Settlement Payment

“Individual Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member, based upon his/her Compensable Work Weeks.

19. LWDA

“LWDA” means the California Labor and Workforce Development Agency.

20. Net Settlement Amount

“Net Settlement Amount” means the Gross Settlement Amount, less Court-approved Class Counsel Award, Class Representative Enhancement Award, payment to the LWDA, and Settlement Administration Costs.

21. Notice of Class Action Settlement

“Notice of Class Action Settlement” means the Notice of Pendency of Class Action Settlement and Hearing Date for Court Approval substantially in the form attached hereto as Exhibit A, which shall include an approximation of each Settlement Class Member’s anticipated Individual Settlement Payment. It is the notice approved by the Parties and subject to Court approval explaining the terms of this Agreement and the settlement process, which the Settlement Administrator will mail to each Settlement Class Member.

22. PAGA

“PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2699 et seq.

23. PAGA Payment

“PAGA Payment” means the payment made hereunder to the LWDA pursuant to PAGA.

24. Participating Class Members

“Participating Class Members” means those Class Members who did not file a valid and timely Request for Exclusion pursuant to section III, paragraph 11 of this Agreement.

25. Parties

“Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either

1 Plaintiff or Defendant, individually.

2 **26. Payment Ratio**

3 “Payment Ratio” means the respective Compensable Work Weeks during which an
4 employee worked, in proportion to the aggregate number of workweeks worked by all Settlement
5 Class Members.

6 **27. Plaintiff**

7 “Plaintiff” means Plaintiff RIVELINO TAVIRA.

8 **28. Preliminary Approval Date**

9 “Preliminary Approval Date” means the date on which the Court issues an order granting
10 preliminary approval of the proposed in a form substantially similar to the order attached hereto
11 as Exhibit B.

12 **29. Released Claims**

13 “Released Claims” means any and all claims that are asserted in the operative complaint
14 and which could have been asserted based on the facts alleged in the complaint, for failure to issue
15 accurate itemized wage statements under Labor Code § 226, claims for penalties under the Labor
16 Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”) for failure to issue
17 accurate itemized wage statements under Labor Code § 226, claims for restitution and other
18 equitable relief, liquidated damages, punitive damages, or penalties.

19 **30. Released Parties**

20 “Released Parties” means Defendant and any of its former and present parents,
21 subsidiaries, affiliates, officers, directors, employees, partners, shareholders, attorneys, agents,
22 successors, assigns, or legal representatives.

23 **31. Request for Exclusion**

24 “Request for Exclusion” means a letter setting forth a Class Member’s name, present
25 address, and a simple statement electing to be excluded from the Settlement.

26 **32. Response Deadline**

27 “Response Deadline” means the date sixty (60) days after the Settlement Administrator
28 mails the Notice of Class Action Settlement to Settlement Class Members, which is the last date

on which Settlement Class Members may: (a) submit a Request for Exclusion; (b) file and serve objections to the settlement; or (c) dispute the information contained in the Notice of Class Action Settlement.

33. Settlement

“Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to this Joint Stipulation of Class Action Settlement and Release of Claims.

34. Settlement Administrator

“Settlement Administrator” means the third-party company that the Parties have jointly selected to be responsible for administering the Settlement. This Settlement Administrator is ILYM Group, Inc.

35. Settlement Administrator Costs

“Settlement Administrator Costs” means the amount to be paid to the Settlement Administrator from the Gross Settlement Amount for administration of this Settlement.

II. RECITALS

1. Class Certification.

The Parties stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this Settlement, the Parties agree that this stipulation regarding class certification will be revoked and the Parties will return to a point in litigation prior to the execution of this Agreement.

2. Procedural History.

On August 24, 2020, Plaintiff filed a Class Action Complaint and a notice with California’s Labor and Workforce Development Agency (“LWDA”) regarding his intent to file an action seeking civil penalties under PAGA. On October 29, 2020, Plaintiff filed a First Amended Complaint (“FAC”), adding the PAGA claim based on the facts previously alleged in the Complaint.

The operative Complaint alleges claims for: (1) Failure to pay wages and/or overtime pursuant to Labor Code §§ 510, 1194, and 1199; (2) Violation of Labor Code § 226(a); (3) Violation of Business & Professions Code § 17200; and (4) Penalties pursuant to Labor Code §

1 2699, et seq.

2 The Parties will stipulate to the amendment of the FAC to permit Plaintiff to file a Second
3 Amended Complaint (“SAC”) and Defendant to file an answer to the SAC. The SAC will include
4 only two claims: (1) Penalties pursuant to Labor Code §226(a); and (2) PAGA penalties pursuant
5 to Labor Code § 2699, et seq. based upon the alleged Labor Code §226(a) violation.

6 After the matter was at issue, the Parties began to engage in informal discovery to
7 understand the nature of the allegations and the scope of potential liability. Defendant provided
8 Plaintiff’s counsel with pertinent data for the Class Members so that the Parties could fully-
9 investigate the claims at issue and understand their strengths and weaknesses.

10 Defendant denies any liability or wrongdoing of any kind associated with the claims
11 asserted in Plaintiff’s Complaint, disputes the damages and penalties claimed by Plaintiff, and
12 further contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate
13 for class or representative action treatment. This Stipulation is a compromise of disputed claims.
14 Nothing contained in this Stipulation, no documents referred to herein, and no action taken to carry
15 out this Stipulation, shall be construed or used as an admission by or against Defendant as to the
16 merits or lack thereof of the claims asserted in this Lawsuit. Defendant contends, among other
17 things, that, at all times, it has complied with all applicable state, federal and local laws related to
18 the Settlement Class Members’ employment.

19 The Class Representative is represented by Class Counsel. Class Counsel conducted an
20 investigation into the facts relevant to the Lawsuit, including reviewing documents and
21 information provided by Defendant. Based on their own independent investigation and evaluation,
22 Class Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate,
23 and in the best interest of the Settlement Class in light of all known facts and circumstances,
24 including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a
25 class and representative action trial on the merits, and numerous potential appellate issues.
26 Although Defendant denies any liability, Defendant is agreeing to this Settlement solely to avoid
27 the cost of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and
28 forever settle, compromise and discharge all disputes and claims arising from or relating to the

1 Actions on the terms set forth herein.

2 **3. Benefits of Settlement to Class Members.**

3 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
4 necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has
5 also taken into account the uncertainty and risk of the outcome of further litigation, and the
6 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of
7 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both
8 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
9 damages for the Settlement Class Members. Plaintiff and Class Counsel have also taken into
10 account Defendant's agreement to enter into a settlement that confers substantial relief upon the
11 members of the Settlement Class. Based on the foregoing, Class Counsel have concluded that
12 settlement for the consideration and on the terms set forth in this Settlement Agreement, is fair,
13 reasonable, and adequate and is in the best interest of the putative class in light of all known facts
14 and circumstances, including the risk of significant delay, defenses asserted by Defendant,
15 Defendant's financial condition, numerous potential appellate issues, and other risks inherent in
16 litigation.

17 **4. Defendant's Reasons for Settlement.**

18 Defendant has concluded that any further defense of this litigation would be protracted and
19 expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have
20 been and, unless this Settlement is completed, will continue to be devoted to, the defense of the
21 claims asserted by Plaintiff and Settlement Class Members. Defendant has also taken into account
22 the risks of further litigation in reaching its decision to enter into this Settlement. Even though
23 Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in
24 this Lawsuit, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set
25 forth in this Agreement to put to rest the claims in this Lawsuit. Defendant contends that it has
26 complied with all applicable state, federal, and local laws.

27 **5. Settlement of Disputed Claims.**

28 This Agreement is a compromise of disputed claims. Defendant has claimed and continues

1 to claim that the Released Claims have no merit and do not give rise to liability. Settlement Class
2 Members have claimed and continue to claim that the Released Claims have merit and give rise to
3 liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing
4 contained in this Agreement, no documents referred to herein, and no action taken to carry out this
5 Agreement, may be construed or used as an admission by or against the Settlement Class Members
6 or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

7 **III. TERMS OF AGREEMENT**

8 **1. Release as To All Participating Class Members.**

9 As of the Effective Date, the Participating Class Members, including Plaintiff, release the
10 Released Parties from the Released Claims during the Class Period.

11 **2. Release of Claims by Plaintiff**

12 As of the Effective Date, Plaintiff releases the Released Parties from all of the Released
13 Claims during the Class Period. Plaintiff, for himself and his heirs, successors and assigns, further
14 waives, releases, acquits and forever discharges the Released Parties from any and all claims,
15 actions, charges, complaints, grievances and causes of action, of whatever nature, whether known
16 or unknown, which exist or may exist on Plaintiff's behalf as of the date of this Agreement,
17 including, but not limited to, any and all tort claims, contract claims, wage claims, wrongful
18 termination claims, disability claims, benefit claims, public policy claims, retaliation claims,
19 statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims,
20 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any
21 federal, state or other governmental statute, law, regulation or ordinance, including, but not limited
22 to, claims for violation of the FLSA, the California Labor Code, the Wage Orders of California's
23 Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities
24 Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income
25 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and
26 Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's
27 Whistleblower Protection Act, California Business & Professions Code §§17200 et seq., and any
28 and all claims arising under any federal, state or other governmental statute, law, regulation or

1 ordinance.

2 Plaintiff's releases set forth herein include a waiver of all rights under California Civil
3 Code §1542, which provides:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
5 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
6 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
7 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
8 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
9 **THE DEBTOR OR RELEASED PARTY.**

10 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
11 which he now knows or believes to exist, but Plaintiff expressly agrees to fully, finally and forever
12 settle and release any and all claims against the Released Parties, known or unknown, suspected
13 or unsuspected, which exist or may exist on behalf of or against the other at the time of execution
14 of this Agreement, including, but not limited to, any and all claims relating to or arising from
15 Plaintiff's employment with Defendant.

16 **3. Tax Liability and Medicare.**

17 The Parties make no representations as to the tax treatment or legal effect of the payments
18 called for hereunder, and Settlement Class Members are not relying on any statement or
19 representation by the Parties in this regard. Participating Class Member' understand and agree
20 that they will be responsible for the payment of taxes and penalties assessed on the payments
21 described herein and will hold the Parties free and harmless from and against any claims resulting
22 from treatment of such payments as non-taxable damages, including the treatment of such payment
23 as not subject to withholding or deduction for payroll and employment taxes. Moreover, this
24 Agreement is based upon a good faith determination of the Parties to resolve a disputed claim. The
25 Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42
26 U.S.C. Sec. 1395y(b), especially since this is strictly a wage and hour case. The Parties resolved
27 this matter in compliance with both state and federal law. The Parties made every effort to
28 adequately protect Medicare's interest and incorporate such into the settlement terms. Plaintiff
warrants that he is not a Medicare beneficiary as of the date of this Agreement. Because Plaintiff
is not a Medicare recipient as of the date of this Agreement, no conditional payments have been

made by Medicare.

4. Circular 230 Disclaimer.

Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

5. Preliminary Approval of Settlement.

Plaintiff will move the Court to grant preliminary approval of this Settlement, certifying the Settlement Class for settlement purposes only and setting a date for a final approval hearing. All Parties agree to work diligently and cooperatively to have this Settlement presented to the Court for preliminary approval. The proposed preliminary approval order shall provide for the Notice of Class Action Settlement to be sent to Settlement Class Members as specified herein.

6. Data to Settlement Administrator.

Upon the Court granting preliminary approval of this Agreement, Defendant shall provide the Settlement Administrator with the Class Information for purposes of mailing the Notice of Class Action Settlement to the Settlement Class Members within ten (10) days. No later than three

(3) days after receipt of the Class Information, the Settlement Administrator shall notify counsel for the Parties that the list has been received and state the number of Settlement Class Members.

7. Notice by First Class U.S. Mail.

Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within fifteen (15) days of preliminary approval of this Settlement, the Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all Settlement Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member, including performing a skip-trace to identify any updated addresses. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.

8. Undeliverable Notices.

Any Notice of Class Action Settlement returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or social security number of the Settlement Class Member whose notice was undeliverable, and shall then re-mail all returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable. Settlement Class Members who receive a re-mailed Notice of Class Action Settlement shall have their Response Deadline extended twenty (20) days from the original Response Deadline.

9. Disputes Regarding Individual Settlement Payments.

Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the dates of employment stated on their Notice of Class Action Settlement, to provide documentation and/or an explanation to show contrary information by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine

1 the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this
2 Agreement. The Settlement Administrator's determination of the eligibility for and amount of any
3 Individual Settlement Payment shall be binding upon the Settlement Class Members and the
4 Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's
5 records will be given a rebuttable presumption of accuracy.

6 **10. Disputes Regarding Administration of Settlement.**

7 Any disputes not resolved by the Settlement Administrator concerning the administration
8 of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to
9 any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the
10 disputes without the necessity of involving the Court.

11 **11. Exclusions.**

12 The Notice of Class Action Settlement shall state that Settlement Class Members who wish
13 to exclude themselves from the Settlement must submit a Request for Exclusion by the Response
14 Deadline. The Request for Exclusion: (1) must contain the name, address, and telephone number
15 of the Settlement Class Member requesting exclusion; (2) must contain a statement expressing that
16 the Settlement Class Member elects to be excluded from the Settlement; and (3) must be signed
17 by the Settlement Class Member. Any Request for Exclusion must be postmarked or fax stamped
18 by the Response Deadline and returned to the Settlement Administrator at the specified address or
19 fax number. The date of the postmark on the return mailing envelope or fax stamp on the Request
20 for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has
21 been timely submitted. The Request for Exclusion will be deemed invalid if it does not contain a
22 Settlement Class Member's name, address, telephone number, and signature. Any Settlement
23 Class Member who requests to be excluded from the Settlement Class will not be entitled to any
24 recovery under the Settlement and will not be bound by the terms of the Settlement or have any
25 right to object, appeal, or comment thereon. Settlement Class Members who fail to submit a valid
26 and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms
27 of the Settlement and any Final Judgment entered in this Lawsuit if the Settlement is approved by
28 the Court. No later than seven (7) calendar days after the Response Deadline, the Settlement

1 Administrator shall provide counsel for the Parties with a complete list of all members of the
2 Settlement Class who have timely submitted a Request for Exclusion.

3 **12. Objections.**

4 The Notice of Class Action Settlement shall state that Settlement Class Members who wish
5 to object to the Settlement may do so in writing or in person at the Final Approval Hearing. Any
6 written objection (“Notice of Objection”) must be mailed to the Settlement Administrator by the
7 Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for
8 determining that a Notice of Objection was timely received. The Notice of Objection must be
9 signed by the Settlement Class Member and state: (1) the full name of the Settlement Class
10 Member; (2) the dates of employment of the Settlement Class Member; and (3) the basis for the
11 objection. Class Counsel will ensure that any Notice(s) of Objection received by the Settlement
12 Administrator by the Response Deadline are filed with the Court along with the Motion for Final
13 Approval. Either of the Parties may file a responsive document to any objection before the Final
14 Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who
15 has not filed a written objection must file a notice of appearance with the Court and serve Class
16 Counsel and counsel for Defendant no later than the Response Period Deadline. Class Counsel
17 shall not represent any Settlement Class Members with respect to any such objections.

18 A Settlement Class Member may not both submit a Request for Exclusion and an
19 Objection. If a Settlement Class Member submits both, the Settlement Administrator will contact
20 the Settlement Class Member to determine the Settlement Class Member’s intent.

21 If any Objection is ultimately overruled by the Court, the Settlement Class Member will be
22 bound by the Release.

23 Any Class Member who fails to submit a timely written objection or to present an objection
24 in person at the Final Approval Hearing shall be deemed to have waived any objections and shall
25 be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

26 **13. No Solicitation of Settlement Objections or Exclusions.**

27 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
28 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement

Class Members to submit either written objections to the Settlement or requests for exclusion from the Settlement, or to appeal from the Court's Final Judgment.

14. Funding and Allocation of Gross Settlement Amount.

No later than twenty (20) days after the Effective Date, Defendant shall provide the Gross Settlement Amount to the Settlement Administrator to fund the Settlement, as set forth in this Agreement. Defendant will not be obligated to make any payments contemplated by this Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and after the Effective Date of the Agreement.

15. Net Settlement Amount.

The Net Settlement Amount will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Class Representative Enhancement Award, PAGA Payment, and Settlement Administrator Costs from the Gross Settlement Amount. The anticipated Net Settlement Amount is \$76,216.67. The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Settlement Amount:	\$	\$144,325.00
Class Representative Enhancement Award:	\$	\$2,500
Class Counsel Fees:	\$	\$48,108.33
Class Counsel Costs:	\$	\$5,000
PAGA Payment:	\$	\$8,000
		<i>(\$6,000 to the LWDA and \$2,000 to remain in the Net Settlement Amount)</i>
Settlement Administrator Costs:	\$	\$6,500
Net Settlement Amount	\$	\$76,216.67

This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Amount, which includes, the Class Counsel Award, Class Representative Enhancement Award, Individual Settlement Payments, PAGA Payment, and Settlement Administrator Costs. No portion of the Gross Settlement Amount will revert to Defendant. Defendant's share of payroll taxes and other required withholdings from Individual Settlement

1 Payments, including but not limited to Defendant's FICA and FUTA contributions, shall be paid
2 separately from, and in addition to, the Gross Settlement Amount.

3 Based on the anticipated Net Settlement Amount, the average Individual Settlement
4 Payment is expected to be approximately \$1,385.75 (\$76,216.67/55).

5 **16. Individual Settlement Payments.**

6 Individual Settlement Payments will be paid from the Net Settlement Amount and shall be
7 paid pursuant to the settlement formula set forth herein. Individual Settlement Payments shall be
8 mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing
9 address. All Individual Settlement Payments will be allocated as one hundred percent (100%)
10 statutory and civil penalties.

11 **17. Class Member's Payment Ratio.**

12 Participating Class Members will be paid on a pro-rata basis. A Participating Class
13 Member's Individual Settlement Payment will be based on the number of Compensable
14 Workweeks during which s/he worked in proportion to the aggregate number of workweeks
15 worked by all Settlement Class Members during the Class Period.

16 **18. Payment to Class Member.**

17 Checks shall be made payable to each Participating Class Member for payment of each
18 Participating Class Member's Individual Settlement Payment as set forth in section III, paragraph
19 16 of this Agreement.

20 **19. Form of Payment to Class Member.**

21 The Individual Settlement Payment amount due to each Participating Class Member shall
22 be paid in the form of a check to each Participating Class Member.

23 **20. Unclaimed Settlement Payment(s).**

24 After one hundred and sixty (160) days of the mailing of the Individual Settlement Payment
25 checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment
26 checks will be transmitted to the State of California Office of the Controller Unclaimed Property
27 Fund in the name of the Participating Class Member who did not cash his/her Settlement check.
28 The Parties agree to coordinate their efforts to seek Court approval for such an escheatment process

1 of uncashed funds. If, for some reason, the Court does not approve the escheatment of uncashed
2 funds, the Parties agree to proceed pursuant to California Code of Civil Procedure section 384,
3 distribute uncashed funds as described therein, and agree upon the non-profit Bet Tzedek Legal
4 Services as the cy pres designee pursuant to Code of Civil Procedure section 384(b)(3)(C).

5 **21. Class Representative Enhancement Award.**

6 Plaintiff will request that the Court approve a Class Representative Enhancement Award
7 of up to \$2,500. Subject to Court approval, in exchange for the release of all Released Claims and
8 for their time and effort in bringing and prosecuting this matter, Plaintiff shall be paid a Class
9 Representative Enhancement Award of up to \$2,500. The Class Representative Enhancement
10 Award shall be paid to Plaintiff from the Gross Settlement Amount within ten (10) calendar days
11 after Defendant remits the Gross Settlement Amount to the Settlement Administrator. The
12 Settlement Administrator shall issue an IRS Form 1099 – MISC to Plaintiff for his respective Class
13 Representative Enhancement Award. Plaintiff shall be solely and legally responsible to pay any
14 and all applicable taxes on his Class Representative Enhancement Award and shall hold harmless
15 Defendant and Class Counsel from any claim or liability for taxes, penalties, or interest arising as
16 a result of the Class Representative Enhancement Award. The Class Representative Enhancement
17 Award shall be in addition to the Plaintiff's Individual Settlement Payment as a Settlement Class
18 Member. Any amount requested by Plaintiff for the Class Representative Enhancement Award
19 and not granted by the Court shall return to the Net Settlement Amount and be distributed to
20 Participating Class Members as provided in this Agreement.

21 **22. Class Counsel Award.**

22 Class Counsel will request that the Court approve attorneys' fees in the amount of up to
23 thirty-three and one-third percent (33.33%) (\$48,108.33) of the Gross Settlement Amount
24 (\$48,108.33). Class Counsel will request that the Court approve the reimbursement of any
25 litigation costs or expenses associated with Class Counsel's prosecution of this matter from the
26 Gross Settlement Amount not to exceed \$5,000. Class Counsel shall be paid any Court-approved
27 attorneys' fees and costs no later than ten (10) calendar days after Defendant remits the Gross
28 Settlement Amount to the Settlement Administrator. Class Counsel shall be solely and legally

1 responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The
2 Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments
3 made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class
4 Counsel any particular amount in attorneys’ fees and costs. Any amount requested by Class
5 Counsel for the Class Counsel Award and not granted by the Court shall return to the Net
6 Settlement Amount and be distributed to Participating Class Members as provided in this
7 Agreement.

8 **23. Settlement Administrator Costs.**

9 The Parties agree to allocate up to \$6,500 of the Gross Settlement Amount for Settlement
10 Administrator Costs. The Settlement Administrator shall have the authority and obligation to make
11 payments, credits and disbursements to Settlement Class Members in the manner set forth herein,
12 calculated in accordance with the methodology set out in this Agreement and orders of the Court.
13 The Settlement Administrator shall be paid any Court-approved Settlement Administration Costs
14 no later than ten (10) calendar days after Defendant remits the Gross Settlement Amount to the
15 Settlement Administrator. The Parties agree to cooperate in the Settlement administration process
16 and to make all reasonable efforts to control and minimize the cost and expenses incurred in
17 administration of the Settlement.

18 **24. Responsibilities of the Settlement Administrator.**

19 The Settlement Administrator shall be responsible for the following: processing and
20 mailing payments to Plaintiff, Class Counsel, and Participating Class Members; printing, and
21 mailing the Notice of Class Action Settlement and tax forms to the Participating Class Members
22 as directed by the Court; receiving and reporting the requests for exclusion and objections
23 submitted by Settlement Class Members; providing declaration(s) as necessary in support of
24 preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree
25 or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall
26 keep the Parties timely apprised of the performance of all Settlement Administrator
27 responsibilities.

28 **25. Payment to the LWDA.**

1 A total amount of \$8,000 from the Gross Settlement Amount will be allocated as the PAGA
2 Payment to be paid as penalties under the Labor Code Private Attorneys General Act of 2004, to
3 the LWDA. Seventy-five percent (75%) or \$6,000 of the PAGA Payment will be paid to the
4 LWDA and the remaining twenty-five (25%) or \$2,000 shall be included in the Net Settlement
5 Amount distributed to putative Class Members.

6 **26. Final Approval Hearing and Entry of Final Judgment.**

7 Upon expiration of the Response Deadline, with the Court's permission, a final approval
8 hearing shall be conducted to determine final approval of the Settlement along with the amount
9 properly payable for: (i) the Class Counsel Award; (ii) the Class Representative Enhancement
10 Award; (iii) Individual Settlement Payments; (iv) the Settlement Administrator Costs; and (v)
11 PAGA Payment.

12 **27. Final Approval Order.**

13 Plaintiff will request, and Defendant will concur in said request, that the Court enter, after
14 the Final Approval Hearing, a Final Approval Order in the form attached hereto as Exhibit C.
15 Plaintiff will request that the Final Approval Order certify the Settlement Class; find that this
16 Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to
17 carry out the provisions of this Agreement.

18 **28. Nullification of Settlement Agreement.**

19 In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court
20 denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgement as
21 provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement
22 Agreement shall be null and void and any order or judgement entered by the Court in furtherance
23 of this Settlement shall be treated as void from the beginning. To the extent the total number of
24 opt outs exceed 10%, Defendant has the option to nullify this settlement within ten (10) court days
25 of the last day of the response period via a written notice to Plaintiff's counsel. If one or more of
26 such events occur causing the Settlement Agreement to become null and void. the Parties shall
27 proceed in all respects as if this Agreement had not been executed, except that any fees already
28 incurred by the Settlement Administrator shall be paid by the party terminating the Settlement or

1 Defendant will be solely responsible for the costs incurred for the settlement administration should
2 it exercise its' option to nullify this agreement. The return of any paid Settlement funds to
3 Defendant shall occur no later than five (5) business days after one or more of the triggering events
4 leading to nullification occurs. In the event an appeal is filed from the Court's Final Judgment, or
5 any other appellate review is sought, administration of the Settlement shall be stayed pending final
6 resolution of the appeal or other appellate review, but any fees incurred by the Settlement
7 Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment,
8 or any other appellate review, shall be paid to the Settlement Administrator by Defendant within
9 thirty (30) days of said notification.

10 **29. Increase in Class Members.**

11 It was represented to Class Counsel that the Settlement Class is estimated to be 55 people.
12 Upon receipt of the Class Data, the Settlement Administrator shall confirm to Plaintiff that the
13 Class Data is consistent with these representations. To the extent the number of Settlement Class
14 Members increases beyond 55 by more than 5%, Defendant shall have the option to increase the
15 Gross Settlement Amount by a proportionate amount. For example, if the number of Settlement
16 Class Members increases by 6%, Defendant shall increase the Gross Settlement Amount by 6%.
17 If the increase causes an increase of the cost of Settlement Administration beyond the amount that
18 has been approved by the Court, Defendant shall separately bear the increased cost of Settlement
19 Administration outside of the Gross Settlement Amount. If Defendant fails to increase the Gross
20 Settlement Amount proportionately or remit payment of the increased cost of Settlement
21 Administration, Plaintiff shall have the right to terminate this Agreement and the Parties will be
22 restored to their positions prior to the Settlement and the Settlement shall be null and void.

23 **30. No Effect on Employee Benefits.**

24 Amounts paid to Plaintiff or other Settlement Class Members pursuant to this Agreement
25 shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for,
26 or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)
27 of Plaintiff or Settlement Class Members.

28 **31. No Admission by Defendant.**

1 Defendant denies any and all claims alleged in this Lawsuit and deny all wrongdoing
2 whatsoever. This Agreement is not a concession or admission and shall not be used against
3 Defendant as an admission or indication with respect to any claim of any fault, concession, or
4 omission by Defendant.

5 **32. Exhibits and Headings.**

6 The terms of this Agreement include the terms set forth in any attached Exhibits, which are
7 incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are
8 an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this
9 Agreement are inserted for convenience of reference only and do not constitute a part of this
10 Agreement.

11 **33. Interim Stay of Proceedings.**

12 Upon full execution of this Agreement, the Parties agree that based upon Code of Civil
13 Procedure §583.310 (“the 5 year rule”), the Lawsuit shall be stayed in its entirety except for the
14 proceedings necessary to implement and complete the Settlement.

15 **34. Amendment or Modification.**

16 This Agreement may be amended or modified only by a written instrument signed by
17 counsel for all Parties or their successors-in-interest.

18 **35. Entire Agreement.**

19 Apart from the fully-executed Memorandum of Understanding, which the Parties
20 specifically agree to integrate herein, this Agreement and any attached Exhibits constitute the
21 entire Agreement among these Parties, and no oral or written representations, warranties, or
22 inducements have been made to any Party concerning this Agreement or its Exhibits other than
23 the representations, warranties, and covenants contained and memorialized in the Agreement and
24 its Exhibits. The Parties are entering into this Agreement based solely on the representations and
25 warranties herein and not based on any promises, representation, and/or warranties not found
26 herein.

27 **36. Authorization to Enter into Settlement Agreement.**

28 Counsel for all Parties warrant and represent they are expressly authorized by the Parties

whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he does have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

37. Binding on Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

38. California Law Governs.

All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted according to the laws of the State of California.

39. Counterparts.

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

40. Jurisdiction of the Court.

Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith. All terms of this Agreement are subject to approval by the Court.

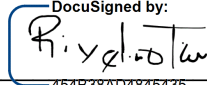
41. Invalidity of Any Provision.

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

4 WHEREFORE, Plaintiff, on behalf of himself and the Settlement Class Members, and
5 Defendant has executed this Agreement as of the dates set forth below.

6 **IT IS SO AGREED:**

7
8 Dated: enero 9, 2021

By: 
454B38AD4845435...
RIVELINO TAVIRA

9
10
11 Dated: _____

By: _____
GENERAL FOUNDRY SERVICE
CORPORATION

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

4 WHEREFORE, Plaintiff, on behalf of himself and the Settlement Class Members, and
5 Defendant has executed this Agreement as of the dates set forth below.

6 **IT IS SO AGREED:**

7
8 Dated: _____

By: _____
RIVELINO TAVIRA

9
10
11 Dated: 12-23-2020

By: 
GENERAL FOUNDRY SERVICE
CORPORATION

EXHIBIT “A”

[CLASS MEMBER NAME]

RIVELINO TAVIRA v. GENERAL FOUNDRY SERVICE CORPORATION

**Superior Court of the State of California, County of Alameda
Case No.: RG20072299**

If you are a current or former employee for GENERAL FOUNDRY SERVICE CORPORATION (“GENERAL FOUNDRY” or “Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

- This lawsuit involves a class defined as “all persons who are employed or have been employed as an hourly employee by GENERAL FOUNDRY SERVICE CORPORATION, in the State of California who worked one or more pay periods during the Class Period.”
- The Class Period is time period from August 24, 2019 to August 21, 2020.
- You are receiving this Notice because the records reflect that you may be one of the above Class Members.
- Plaintiff in this class action alleges that Defendant failed to provide accurate itemized wage statements and is liable for statutory penalties under the Labor Code and civil penalties under California’s Private Attorneys General Act or “PAGA.” GENERAL FOUNDRY denies Plaintiff’s claims and asserts that it has complied with all of its legal obligations to its employees.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Defendant’s defenses.
- You will not be penalized or retaliated against by GENERAL FOUNDRY for participating in this class action settlement. If you are currently employed by GENERAL FOUNDRY, your employment will not be affected in any way. Current employees of GENERAL FOUNDRY who choose to participate in the settlement will not be required to resign and can continue to work for GENERAL FOUNDRY.
- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue for Defendant’s alleged failure to provide accurate itemized wage statements during the Class Period.
-------------------	--

ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from this lawsuit. Keep your rights to file a separate claim against GENERAL FOUNDRY for Defendant's alleged failure to provide accurate itemized wage statements during the Class Period. If you ask to be excluded, you will not receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against for the same legal claims in this lawsuit.
OBJECT	Object to the terms of this Settlement.

Your options are explained in this notice.
To opt out or object, you must act by XXXX.

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of GENERAL FOUNDRY's employees. You have received this notice because GENERAL FOUNDRY's records indicate that you are a member of this class.

2. What is this lawsuit about?

This lawsuit was filed on August 24, 2020 on behalf of all persons who are employed or have been employed as an hourly employee by GENERAL FOUNDRY in the State of California. The operative complaint alleges class-wide causes of action against GENERAL FOUNDRY for failure to provide accurate itemized wage statements pursuant to Labor Code § 226(a) and penalties under the Labor Code Private Attorneys General Act, Labor Code § 2699 et seq.

This means that Plaintiff alleges that Defendant has failed to provide accurate itemized wage statements during the Class Period.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the Class Members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be protracted and expensive, and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Amount is \$144,325.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys' fees: \$48,108.33
- Litigation Costs: \$5,000
- Class Representative Enhancement Award: \$2,500
- Penalties to the Labor & Workforce Development Agency: \$6,000
- Claims Administration Costs: \$6,500

After these deductions, approximately \$76,216.67 will be available for payment to the Settlement Class Members receiving this notice ("Net Settlement Amount").

Each Participating Class Member's Individual Settlement Payments shall be determined on a pro rata basis based upon the number of workweeks during which the employee worked in proportion to the aggregate number of workweeks by all Settlement Class Members.

All Individual Settlement Payments will be allocated as 100% statutory and civil penalties.

According to GENERAL FOUNDRY's records, the total number of pay periods that you worked as an employee *during the relevant time period* is _____. If you disagree with this information and would like someone to look into the matter, please follow the procedure below.

Based on these pay periods, your estimated settlement amount is _____.

The average estimated settlement payment is \$_____.

6. What if I disagree with the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of pay periods, you will need to write a letter setting forth the number of pay periods that you believe are correct. You may attach any relevant documentation in support thereof. You must mail your letter to:

Settlement Administrator
c/o ILYM Group, Inc.
[Toll-free Number]
[Settlement Website]

You must submit such information by **XXXX**. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

You do not have to do anything if you want to receive a share of the net settlement amount. However, you should make sure the Settlement Administrator always has your current mailing

address in order to ensure you receive your settlement share. If you do nothing, you will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: **TO BE INSERTED FROM SETTLEMENT AGREEMENT**.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself (“opt out”) by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, ILYM Group, Inc., by **XXXX**.

Settlement Administrator
c/o ILYM Group, Inc.
[Toll-free Number]
[Settlement Website]

The Request for Exclusion: (1) must contain the name, address, and telephone number of the Settlement Class Member requesting exclusion; (2) must contain a statement expressing that the Settlement Class Member elects to be excluded from the Settlement; and (3) must be signed by the Settlement Class Member.

If your Request for Exclusion is postmarked after **XXXX**, it will be rejected, and you will be a Participating Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue GENERAL FOUNDRY separately about the claims made in this lawsuit.

10. What if I have an objection?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator no later than **XXXX** at:

Settlement Administrator
c/o ILYM Group, Inc.
[Toll-free Number]
[Settlement Website]

Any written objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; and (3) the basis for the objection.

Any class member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to

the Court. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant no later than the Response Period Deadline. The Final Approval and Fairness Hearing will be held in Dept. 23 of the Alameda County Superior Court, located at 2233 Shore Line Dr, Alameda, CA 94501 on _____, 2021, at XX (a.m./p.m.) (Pacific Time).

A Settlement Class Member may not both submit a Request for Exclusion and an Objection. If a Settlement Class Member submits both, the Settlement Administrator will contact the Settlement Class Member to determine the Settlement Class Member's intent.

If any Objection is ultimately overruled by the Court, the Settlement Class Member will be bound by the Release.

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

Class Counsel:	Counsel for GENERAL FOUNDRY SERVICE CORPORATION:
Kingsley & Kingsley, APC Kelsey M. Szamet, Esq. 16133 Ventura Blvd., Suite 1200 Encino, CA 91436 Telephone: (818) 990-8300	The Goldstein Law Firm, PC Charles H. Goldstein, Esq. Joseph A. Goldstein, Esq. 8912 Burton Way Beverly Hills, CA 90211 Telephone: (310) 553-4746

11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 23 of the Alameda County Superior Court, located at 2233 Shore Line Dr, Alameda, CA 94501 on _____, 2021, at XX (a.m./p.m.) (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Enhancement Awards, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also visit the settlement website at [Website Address], telephone ILYM Group, Inc. (listed above), telephone Class Counsel (listed above) or visit the Court website at <http://www.alameda.courts.ca.gov/pages.aspx/domainweb>. Enter this website address and then click on the box labeled DOMAIN WEB. Then click on the box to "Search by Case Number". You will have to checkbox indicating that you are not a robot and then enter the Case Number RG20072299 in the empty box. You will be taken to the Court's page for this case and review

documents and information there.

**Please do not telephone the Court, the Office of the Clerk, or GENERAL FOUNDRY's
counsel for information regarding this settlement.**

EXHIBIT “B”

KINGSLEY & KINGSLEY, APC
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eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq., Cal. Bar No. 260264
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Telephone: (818) 990-8300
Fax: (818) 990-2903

Attorneys for Plaintiff and the Proposed Class

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cgoldsteinesq@gmail.com
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Telephone: (310) 553-4746
Fax: (310) 282-8070

Attorneys for Defendant General Foundry Service Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

RIVELINO TAVIRA an individual, on behalf
of himself and others similarly situated

PLAINTIFF,

v.

GENERAL FOUNDRY SERVICE
CORPORATION; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. RG20072299

[Case Assigned for All Purposes to Hon. Brad
Seligman in Dept. 23]

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

Date: April 27, 2021
Time: 3:00 p.m.
Dept.: 23
Reservation No.: R-2243711

Complaint Filed: August 24, 2020
FAC Filed: October 29, 2020
Trial Date: None Scheduled

1 The Motion for Preliminary Approval of the Joint Stipulation of Class Action Settlement
2 and Release of Claims (“Settlement Agreement”), a copy of which is attached to the Declaration
3 of Kelsey M Szamet as Exhibit “1”, came before this Court on April 27, 2021. The Court, having
4 considered the papers submitted in support of the motion of the parties, **HEREBY ORDERS THE**
5 **FOLLOWING:**

6 1. The Court grants preliminary approval of the Settlement Agreement and the
7 Settlement Class based upon the terms set forth in the Settlement Agreement filed herewith. The
8 Settlement is fair, adequate, and reasonable to the Class. The Court finds that: (a) the Agreement
9 resulted from extensive arm’s length negotiations; and (b) the Agreement is sufficient to warrant
10 notice of the Settlement to persons in the Settlement Class and a full hearing on the final approval
11 of the Settlement.

12 2. Settlement “Class Member(s)” means “all persons who are employed or have been
13 employed as an hourly employee by GENERAL FOUNDRY SERVICE CORPORATION, in the
14 State of California who worked one or more pay periods during the Class Period.”

15 3. The Settlement falls within the range of reasonableness and appears to be
16 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
17 and final approval by this Court.

18 4. The Court makes the following preliminary findings for settlement purposes
19 only:

- 20 A. The Settlement Class, which consists of approximately 55 persons, is so
numerous that joinder of all members is impracticable;
- 21 B. There appear to be questions of law or fact common to the Settlement
22 Class for purposes of determining whether this Settlement should be
approved;
- 23 C. Plaintiff’s claims appear to be typical of the claims being resolved through
24 the proposed settlement;
- 25 D. Plaintiff appears to be capable of fairly and adequately protecting the
26 interests of the Settlement Class Members in connection with the proposed
settlement;
- 27 E. Common questions of law and fact appear to predominate over questions
28 affecting only individual persons in the Settlement Class. Accordingly,
the Settlement Class appears to be sufficiently cohesive to warrant
settlement by representation; and

F. Certification of the Settlement Class appears to be superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class.

5. The Court approves, as to form and content, the Class Notice to Class Members in substantially the form attached to the Settlement Agreement as Exhibit A.

6. The Court approves the procedure for Class Members to object to the Settlement as set forth in the Class Notice to Class Members.

7. The Court approves the procedure for Class Members to become Participating Class Members as set forth in the Class Notice to Class Members.

8. The Court directs the mailing of the Class Notice to Class Members by first class mail to the Class Members in accordance with the Implementation Schedule set forth below. The Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

9. The Court confirms Eric B. Kingsley and Kelsey M. Szamet of Kingsley & Kingsley, APC as Class Counsel.

10. The Court confirms RIVELINO TAVIRA as the Class Representative.

11. The Court approves ILYM Group, Inc. as the Settlement Administrator.

12. The Court orders that pursuant to the California Private Attorneys General Act, Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Settlement has been and will continue to be given to the Labor & Workforce Development Agency.

13. The Court orders the following Implementation Schedule for further proceedings:

a.	Preliminary Approval	_____
b.	Deadline for Defendant to Provide Class Data to Settlement Administrator	10 business days from Preliminary Approval
c.	Mail Notice to Class Members	15 calendar days from Settlement Administrator's receipt of Class Data

d.	Deadline for Class Members to Postmark Request for Exclusion	60 calendar days from mailing of Notice Packet (judged by postmark date)
e.	Deadline for Class Members to Postmark Any Objection	60 calendar days from mailing of Notice Packet (judged by postmark date)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	To be determined by the Court _____
g.	Deadline for Class Counsel to file Motion for Class Counsel Award	To be determined by the Court _____
h.	Final Approval Hearing	To be determined by the Court _____

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Settlement Agreement, does not occur for any reason, the Settlement Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are hereby stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to members of the Settlement Class.

DATED: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT “C”

KINGSLEY & KINGSLEY, APC
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Beverly Hills, CA 90211
Telephone: (310) 553-4746
Fax: (310) 282-8070

Attorneys for Defendant General Foundry Service Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

RIVELINO TAVIRA, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

GENERAL FOUNDRY SERVICE
CORPORATION; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. RG20072299

[Case Assigned for All Purposes to Hon. Brad
Seligman in Dept. 23]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Date: XX

Time: XX

Dept.: 23

Complaint Filed: August 24, 2020
FAC Filed: October 29, 2020
Trial Date: None Scheduled

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

2 The above captioned Action is a class action lawsuit brought by Plaintiff RIVELINO
3 TAVIRA (“Plaintiff”) against Defendant GENERAL FOUNDRY SERVICE CORPORATION
4 (“Defendant”). The Motion for Final Approval of Class Action Settlement came before this Court
5 on XXXX.

6 **WHEREAS**, Judge Brad Seligman granted preliminary approval of the Joint Stipulation
7 of Class Action Settlement and Release of Claims (“Settlement Agreement”), attached to the
8 concurrently filed Declaration of Kelsey M. Szamet as Exhibit “1”, on XX.

9 **WHEREAS**, Plaintiff RIVELINO TAVIRA has applied to the Court for an order granting
10 final approval of the Settlement Agreement.

11 **WHEREAS**, the Settlement Agreement sets forth the terms and conditions of the proposed
12 Settlement and for entry of an order of final approval and entry of final judgment thereon. The
13 Court having read and considered Plaintiff’s Motion for Final Approval of Class Action
14 Settlement; Motion for Approval of Approval of Attorneys’ Fees and Costs; the Declarations of
15 Kelsey M. Szamet, RIVELINO TAVIRA, and [Name of Declarant] of ILYM Group, Inc.; and the
16 supporting documents annexed thereto, now finds:

17 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

18 1. The Court has personal jurisdiction over all Settlement Class Members and that the
19 Court has subject matter jurisdiction to approve the Settlement;

20 2. The terms of the Settlement are fair, just, reasonable, and adequate, consistent and
21 in compliance with California Code of Civil Procedure, the California and United States
22 Constitutions (including the due process clauses), the California Rules of Court and any other
23 applicable law, and in the best interest of each of the Parties and the Class members and is hereby
24 finally approved in all respects.

25 3. The Parties are hereby directed to perform the terms of the Settlement as described
26 in the Settlement Agreement according to its terms and provisions.

27 4. The Settlement Agreement is binding on Plaintiff and all other Settlement Class
28 Members, except those timely and properly filed Requests for Exclusions, as well as their heirs,

1 executors, and administrators, successors, and assigns.

2 5. There are XX (XX) valid requests for exclusion and XX objections.

3 6. It is ordered that the Settlement Class is certified for settlement purposes only. The
4 Court finds that an ascertainable class exists and a well-defined community of interest exists in the
5 questions of law and fact involved because in the context of the Settlement: (i) there are questions
6 of law and fact common to the Class Members which, as to the Settlement and all related matters,
7 predominate over any individual questions; (ii) the Claims of Plaintiff are typical of the Claims of
8 the Class members; and (iii) in negotiating, entering into and implementing the Settlement,
9 Plaintiff and Plaintiff's Attorneys have fairly and adequately represented and protected the interest
10 of the Class Members.

11 7. The Court finds that the Notice and notice methodology implemented pursuant to
12 this Settlement (i) constituted the best practicable notice; (ii) constituted notice that was reasonably
13 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the
14 Action, their right to object to or exclude themselves from the proposed Settlement and their right
15 to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due, adequate and
16 sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements
17 of the California Code of Civil Procedure, the California and United States Constitution (including
18 the Due Process Clause), the California Rules of Court and any other applicable law.

19 8. The Settlement Class is hereby made final. The Settlement Class is defined as: "all
20 persons who are employed or have been employed as an hourly employee by GENERAL
21 FOUNDRY SERVICE CORPORATION, in the State of California who worked one or more pay
22 periods during the Class Period."

23 9. The "Covered Period" or "Class Period" is August 24, 2019 to August 21, 2020.

24 10. The Settlement Agreement is not an admission by Defendant, nor is this Final Order
25 a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final
26 Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the
27 Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or
28 wrongdoing on the part of Defendant.

1 11. Pursuant to the Settlement Agreement, upon entry of this Final Order, Plaintiff and
2 each Settlement Class Member shall fully release and discharge the Released Parties pursuant to
3 the following release, which provides:

4 [TO BE INSERTED FROM THE SETTLEMENT AGREEMENT].

5 12. Plaintiff and all Settlement Class Members who have not been timely and properly
6 excluded from the Settlement Class, and any person acting on their behalf, are permanently barred
7 and enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as Class
8 Members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any
9 state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any
10 jurisdiction based on the Released Claims; and (ii) organizing such non-excluded Class Members
11 into a separate class for purposes of pursuing as a purported class action (including by seeking to
12 amend a pending complaint to include class allegations, or by seeking class certification in a
13 pending action) any lawsuit based on or relating to the Released Claims;

14 13. The Settlement Agreement provides that the Gross Settlement Amount is one
15 hundred forty-four thousand, three hundred twenty-five dollars and zero cents (\$144,325.00). The
16 Net Settlement Amount shall be determined according to the terms of the Settlement Agreement.

17 14. The Court orders the calculations and the payments to be made and administered in
18 accordance with the terms of the Settlement Agreement.

19 15. The Court hereby finds that Plaintiff and Class Counsel adequately represented the
20 Settlement Class for purposes of entering into and implementing the settlement. The Court hereby
21 confirms Kingsley & Kingsley, APC as Class Counsel in the Action.

22 16. The Court hereby finds the unopposed application of Class Counsel for a costs and
23 attorneys' fees award provided for under the proposed Settlement to be fair and reasonable in light
24 of all the circumstances and is hereby granted. Of the Gross Settlement Amount, \$48,108.33 shall
25 be paid for attorney fees and \$XX shall be paid for litigation costs.

26 17. The unopposed application of Class Counsel for a \$2,500 Enhancement Award is
27 hereby granted..

28 18. The unopposed application of Class Counsel for claims administration fees to

1 ILYM Group, Inc. is hereby granted. Of the Gross Settlement Amount, \$6,500 shall be paid for
2 settlement administration fees.

3 19. The Court approves the PAGA Penalties in the amount of \$8,000. The Court
4 approves 75% of the PAGA Penalties being allocated to the LWDA in the amount of \$6,000. The
5 Court further directs that the remaining 25% of the PAGA Penalties, in the amount of \$2,000 shall
6 be allocated to the Participating Class Members.

7 20. If a Settlement Class Member does not cash his or her settlement check within 160
8 days, the uncashed funds shall be transmitted by the Settlement Administrator to the State of
9 California Office of the Controller Unclaimed Property Fund in the name of the Participating Class
10 Member who did not cash his/her Settlement check.

11 21. Defendant shall have no further liability for costs, expenses, interest, attorneys'
12 fees, or for any other charge, expense, or liability, except as provided for in the Settlement
13 Agreement.

14 22. The Parties, are authorized, without further approval from the Court, to agree to
15 and to adopt such amendments, modifications and expansions of this Stipulation and all exhibits
16 attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of
17 Settlement Class Members under the Stipulation.

18 23. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court
19 shall retain continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well
20 as the administration and enforcement of the terms of the Settlement of this action to enforce the
21 terms of the judgment. Without affecting the finality of the Final Judgment, the Court shall retain
22 continuing jurisdiction over the Actions, the Parties, and the Settlement Class, as well as the
23 administration and enforcement of the Settlement. Any disputes or controversies arising with
24 respect to the interpretation, consummation, enforcement, or implementation of the Settlement
25 shall be presented by motion to the Court; provided however, that nothing in this Part shall restrict
26 the ability of the Parties to exercise their rights to terminate the Settlement pursuant to the terms
27 of the Settlement Agreement.

28 24. This Final Order shall constitute a final judgment.

1 25. The Court hereby dismisses the action (including all individual claims and Released
2 Claims presented thereby) with prejudice, without fees or costs to any party except as provided in
3 the Settlement Agreement.
4

5 **DATED:** _____
6 **JUDGE OF THE SUPERIOR COURT**
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(Proof of Submission to the LWDA)

EXHIBIT "2"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On March 17, 2021, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing [] (the original) [X] (a true copy thereof) in a sealed envelope addressed as stated on the attached service list:

Charles H. Goldstein, Esq.
cgoldsteinesq@gmail.com
Joseph A. Goldstein, Esq.
josephgoldsteinesq@gmail.com
The Goldstein Law Firm, PC
8912 Burton Way
Beverly Hills, CA 90211
Attorney for Defendant

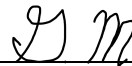
[XX] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] (BY ELECTRONIC SERVICE): I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 17, 2021, at Northridge, California.



Gabrielle Medrano