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7 Attorneys for Plaintiff Duyen Le, on behalf of himself and all “aggrieved employees” pursuant to
8 Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**

11 DUYEN LE, on behalf of himself and all
12 “aggrieved employees” pursuant to Labor
13 Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 RESPONSIBLE METAL FAB., INC., a
California corporation, and DOES 1
17 through 10, inclusive,

18 Defendants.

CASE No. STK-CV-UOE-2021-934

*Assigned for All Purposes to Judge George J.
Abdallah, Dept. 10A*

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED] ORDER
APPROVING SETTLEMENT OF CLAIMS
AND DISMISSING ACTION WITH
PREJUDICE**

Complaint Filed: February 2, 2021

STIPULATION

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Whereas, Plaintiff filed this representative action, pursuant to the Labor Code § 2698 *et seq.*, the Labor Code Private Attorneys General Act (hereinafter, "PAGA") on February 2, 2021 against Defendant on behalf of the State of California alleging multiple violations of the Labor Code, after complying with the administrative requirements set forth in Labor Code § 2699.3 on August 20, 2020 (Declaration of Evan S. Gaines ["Gaines Decl."] at ¶ 3; Exhibit "A" to Gaines Decl.).

2. Whereas, the operative Complaint in the Lawsuit contains claims for violations of Cal. Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 511, 512, 558, 1194 and 2802 under PAGA, and seeks to recover civil penalties for such alleged violations sustained by all current and/or former employees of Defendants within the State of California.

3. Whereas, Defendants have denied and continue to deny all allegations by Plaintiff in the Lawsuit.

4. Whereas, the parties thereafter conducted informal discovery through which they ascertained the size of the aggrieved employee group and the number of pay periods worked by them during the applicable statutory period to ascertain the total value of Plaintiff's claims. (Gaines Decl. at ¶ 4.)

5. Whereas, the parties thereafter engaged in arm's-length negotiations and reached a resolution of the PAGA claims asserted in the Action. Based on discovery completed, the maximum value of the penalty claims asserted for the time period reviewed, without stacking multiple alleged violations, is \$303,000 and the amount of the settlement is \$300,000, or nearly 100% of the maximum recoverable penalties (based on approximately 3,030 affected pay periods worked by 68 Aggrieved Employees at the rate of \$100 each, without stacking penalties). (Gaines Decl. at ¶ 5.)

6. Whereas, the parties have entered into a settlement agreement to resolve the PAGA claim on behalf of all persons employed by Defendant Responsible Metal Fab, Inc. in California

1 between August 20, 2019 and the date the Court approves their Settlement Agreement and Release.
2 (Gaines Decl. at ¶ 6; Exhibit "B" to Gaines Decl.)

3 7. Whereas, California Labor Code § 2699, subpart 1, states that the "court shall review
4 and approve any penalties sought as part of a proposed settlement agreement pursuant to this part."

5 8. Whereas, based on his extensive experience litigating over 100 representative
6 actions, counsel for Plaintiff believes the Settlement Agreement and Release is fair and reasonable
7 and warrants approval by the Court. (Gaines Decl. at ¶¶ 2, 5; Exhibit "C" to Gaines Decl.)

8 9. Whereas, the parties request that the Court enter the accompanying order, approving
9 their Settlement Agreement and Release (attached to the Gaines Declaration as Exhibit "B"), as
10 permitted by Labor Code § 2699(l), and dismissing the Action with prejudice.
11

12 **IT IS SO STIPULATED.**

13 For Plaintiff:
14 GAINES & GAINES, APLC

For Defendant:
CHAUVEL & GLATT, LLP

15
16 By: Evan S. Gaines
17 Evan S. Gaines, Esq.

By: Nicholas A. Gioiello
April A. Glatt, Esq.
Nicholas A. Gioiello, Esq.

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ORDER

The Court, having reviewed the parties' Settlement Agreement and Release attached as Exhibit "B" to the concurrently-filed Declaration of Evan S. Gaines, together with the Stipulation of the Parties and the Declaration of Evan S. Gaines, and exhibits attached thereto, hereby ORDERS:

1. The settlement between Plaintiff and Defendant for the claims brought pursuant to PAGA as set forth in the Settlement Agreement, is hereby approved.

2. The Court finds the Settlement Agreement and Release was entered into in good faith, that the settlement is fair, reasonable, and adequate, and that the settlement satisfies the standards and applicable requirements for approval of PAGA representative actions under California law.

3. The Court appoints ILYM Group, Inc. as the Settlement Administrator for purposes of administering the Settlement.

4. The Court approves the payments to be paid to the Aggrieved Employees and the State of California as set forth in the Settlement Agreement and Release, pursuant to Labor Code § 2699(l). The Court approves all payments to be made to Plaintiff, Plaintiff's counsel and the parties' chosen settlement administrator, ILYM Group, Inc. ("Settlement Administrator"), based on the terms and timelines as set forth in the Settlement Agreement and Release.

5. The Settlement Sum of \$300,000 shall be paid according to the following schedule:

(a) a payment of Fifty Thousand Dollars and no cents (\$50,000.00) will be paid to the Settlement Administrator by the later of June 15, 2021 or the date the Court enters the order approving the settlement of the PAGA penalties as described in the Settlement Agreement and Release.

(b) a payment of Forty Thousand Dollars and no cents (\$40,000.00) will be paid to the Settlement Administrator no later than December 15, 2021.

(c) a payment of Sixty Thousand Dollars and no cents (\$60,000.00) will be paid to the Settlement Administrator no later than June 15, 2022.

(d) a payment of Sixty Thousand Dollars and no cents (\$60,000.00) will be paid to the Settlement Administrator no later than December 15, 2022.

1 (e) a final payment of Ninety Thousand Dollars and no cents (\$90,000.00) will
2 be paid to the Settlement Administrator no later than December 31, 2022.

3 6. The Settlement Sum shall be allocated as follows:

4 (a) \$120,000 to Plaintiff's Counsel for attorneys' fees and costs;

5 (b) \$10,000 to Plaintiff Le as a general release payment;

6 (c) \$10,000 to ILYM Group, Inc., for costs associated with the administration
7 of the Settlement Agreement and Release;

8 (d) \$120,000 to the LWDA (75% of the \$160,000 Net Settlement Amount); and

9 (e) \$40,000 to the Aggrieved Employees (as defined below) (25% of the
10 \$160,000 Net Settlement Amount).

11 7. The Court approves Plaintiff's individual release: Upon the Effective Date and
12 subject to RMF's full payment of all sums required by this Settlement, Plaintiff Duyen Le shall be
13 deemed to have fully, finally, and forever released the Released Parties from any and all claims,
14 obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties,
15 of whatever kind and nature, character, and description, whether in law or equity, whether sounding
16 in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other
17 source of law, whether known or unknown, and whether anticipated or unanticipated, including
18 unknown claims covered by Civil Code Section 1542, arising through the Effective Date, for any
19 type of relief, including, without limitation, claims for wages, damages, unpaid costs, penalties,
20 liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or
21 equitable relief arising from or related to his employment with RMF. These claims include, but are
22 not limited to, the Released Claims, as well as any other claims under any provision of the
23 California Labor Code or any applicable California Industrial Welfare Commission Wage Orders,
24 and claims under local, state, or federal discrimination statutes, including, without limitation, the
25 California Fair Employment and Housing Act, California Government Code §§ 12940 *et seq.*; the
26 Unruh Civil Rights Act, California Civil Code §§ 51 *et seq.*; the California Constitution; Title VII
27 of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.*; the Americans with Disabilities Act, 42
28 U.S.C. §§ 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001

1 *et seq.*; and all of their implementing regulations and interpretive guidelines With respect to these
2 released claims as described in this Section, Plaintiff Le shall be deemed to have expressly waived
3 and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits she may
4 otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as
5 follows: A general release does not extend to claims which the creditor or releasing party does not
6 know or suspect to exist in his or her favor at the time of executing the release, which if known by
7 him or her must have materially affected his or her settlement with the debtor or released party.
8 Plaintiff understands and acknowledges that the significance and consequence of this waiver of
9 California Civil Code Section 1542 is that even if he should eventually suffer injury arising out of
10 or pertaining to the employment relationship or, where applicable, its termination through the
11 Effective Date, he will be unable to make any claim for those injuries. Furthermore, Plaintiff
12 acknowledges that he consciously intends these consequences even as to claims for injuries that
13 may exist as of the Effective Date but which he does not know exist and which, if known, would
14 materially affect his decision to execute this Agreement, regardless of whether their lack of
15 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

16 8. The Court approves the release as to all persons employed by Defendant
17 Responsible Metal Fab, Inc. in California between August 20, 2019 and the date the Court enters
18 the order approving the Settlement Agreement and Release (the "Aggrieves Employees") of
19 Defendant Responsible Metal Fab, Inc. and its past, present, and future representatives, directors,
20 officers, employees, agents, attorneys, affiliates, members and shareholders, as well as all parent
21 companies, affiliated companies, subsidiary companies, affiliates, client(s), client(s) facilities,
22 consultants, agents, attorneys, predecessors, assignors, and/or assigns. Notwithstanding the
23 Released Parties stated herein this subsection 1.01(i), for avoidance of doubt, nothing in this
24 Agreement is intended to release Dan Martin, Michelle Bieser Martin, Candelario Arreola, Rafael
25 Grimaldo and Jose Vargas (individually or collectively referred to as "Sellers") as it relates to the
26 indemnification of Responsible Metal Fab, Inc. by Sellers based on the Stock Purchase Agreement,
27 dated February 14, 2019 for any and all claims and/or causes of action under the California Private
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1 Attorneys General Act alleged in the Action, or which could have been alleged in the Action based
2 on the facts and claims alleged therein, including but not limited to alleged violations of Labor
3 Code §§ 201-203, 226(a), 226.3, 226.7, 510, 511, 512, 558, 1194 and 2802.

4 9. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement
5 Agreement and Release based on the provisions and timelines set forth within it.

6 10. This Action is hereby DISMISSED WITH PREJUDICE.

7 11. This document shall constitute a Judgment for all purposes.

8 12. This Court shall retain jurisdiction, pursuant to Code of Civil Procedure section
9 664.6 and as otherwise provided by law, with respect to all matters related to the administration
10 and consummation of the Settlement Agreement and Release, and any and all claims asserted in,
11 arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters
12 related to the settlement and the determination of all controversies relating thereto.

13 **IT IS SO ORDERED.**

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15 Dated: _____

16 JUDGE OF THE SUPERIOR COURT

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_____ (For messenger) my business address is:

**April S. Glatt, Esq.
Nicholas A. Gioiello, Esq.
Chauvel & Glatt, LLP
66 Bovet Road, Suite 280
San Mateo, CA 94402-3127**

 X (BY X U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of 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.

____ (BY FACSIMILE TRANSMISSION) On _____, at _____ a.m./p.m., at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (____) ____-____. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

_____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission via email on the counsel of record listed above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 24, 2021, at Calabasas, California.

Beatriz Franco
BEATRIZ FRANCO