

1 Sarkis Sirmabekian [SBN 278588]
2 **SIRMABEKIAN LAW FIRM, PC**
3 3435 Wilshire Blvd., Suite 1710
4 Los Angeles, California 90010
5 Telephone: (818) 473-5003
6 Facsimile: (818) 476-5619
7 Email: *contact@slawla.com*

8 *Attorney for Plaintiff GILBERTO MORALES*

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12

13 GILBERTO MORALES, an individual;

14 Plaintiff,

15 v.

16 CALIFORNIA TEAM REALTY, a business
17 entity form unknown; CEDELCO
18 CONSTRUCTION INC, a California
19 Corporation; SAUL RENE DELGADO, an
20 individual; CESAR DELGADO, an
21 individual; and DOES 1 through 50,
22 inclusive;

23 Defendants.

Case Number: 30-2021-01198968-CU-OE-CXC

[Honorable Glenda Sanders; Department CX101]

**PLAINTIFF GILBERTO MORALES' NOTICE
OF MOTION AND UNOPPOSED MOTION
FOR COURT APPROVAL OF PAGA
SETTLEMENT; MEMORANDUM OF POINTS
AND AUTHORITIES;**

**DECLARATION OF SARKIS SIRMABEKIAN,
ESQ. IN SUPPORT;**

Hearing:

Date: October 14, 2022

Time: 1:30 p.m.

Dept.: CX101

Complaint Filed: May 5, 2021

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

25 PLEASE TAKE NOTICE that, on October 14, 2022, at 1:30 p.m. or as soon thereafter as the
26 matter may be heard in department CX101 of the Orange County Superior Court Civil Complex Center,
27 located at 751 W Santa Ana Blvd, Santa Ana, California 92701, the honorable Glenda Sanders
28 presiding, Plaintiff GILBERTO MORALES ("Plaintiff") will and hereby does apply for a Court order
approving the Private Attorneys General Act ("PAGA") settlement in this matter.

1 The basis for this motion is that the Parties have reached and fully executed a settlement of the
2 above-entitled case which includes settlement of the PAGA claims. One aspect of Plaintiff's claim
3 included a prayer for remedies under the PAGA. Pursuant to statute, settlement of PAGA claims
4 requires court approval. *See Labor Code section 2699(l)*. Thus, the Parties seek court approval of the
5 claim to PAGA penalties.

6 This motion is based on this notice, the memorandum of points and authorities, all the
7 declaration in support filed concurrently, and all exhibits attached thereto, as well as all records on file
8 with this Court and the argument that is presented at the time of the hearing.

9
10 DATED: August 31, 2022

SIRMABEKIAN LAW FIRM, PC

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13 By: 

14 Sarkis Sirmabekian, Esq.
15 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 5, 2021, Plaintiff GILBERTO MORALES (“Plaintiff”) filed a Complaint against
4 Defendants CALIFORNIA TEAM REALTY, CEDELCO CONSTRUCTION INC, SAUL RENE
5 DELGADO, and CESAR DELGADO (“Defendants”), and DOES 1 through 50, inclusive (collectively
6 “Defendants”) for wage and hour violations under the California Labor Code. *See Declaration of Sarkis*
7 *Sirmabekian* ¶2. (“*Sirmabekian Decl.*”)

8 On February 24, 2021, Plaintiff filed with the Labor and Workforce Development Agency
9 (“LWDA”) the PAGA Notice Letter for alleged violations of the California Labor Code and violations
10 of the State’s Private Attorneys’ General Act, California Labor Code § 2698 *et seq.*, (“PAGA” or the
11 “PAGA Claim”) and concurrently therewith, a copy of Plaintiff’s PAGA Notice Letter was served via
12 certified mail to Defendants in this action. *Sirmabekian Decl.* ¶3. Attached to the Declaration of Sarkis
13 Sirmabekian, Esq. as “EXHIBIT 1” is a true and correct copy of Plaintiff’s PAGA Notice Letter.

14 Pursuant to *Labor Code* §2698.3(a)(2), a PAGA Plaintiff is required to wait 65-days to allow
15 the LWDA to decide whether they shall investigate and/or handle the matter and §2698.3(a)(2)(A)
16 specifically authorizes the PAGA Plaintiff to pursue the PAGA action after 65-days has elapsed without
17 hearing from the LWDA. Here, after waiting 65-days the LWDA at no time notified PAGA Plaintiff
18 or his counsel that they intend to investigate or handle the matters involved in Plaintiff’s PAGA Notice.
19 A true and correct copy of Plaintiff’s PAGA Notice Letter was also attached with Plaintiff’s operative
20 Complaint in this action as Exhibit A thereto. To date, the LWDA has taken no action against
21 Defendants on the PAGA Notice, has not investigated and has not issued any citations against
22 Defendants on the PAGA Notice and the LWDA has not notified the Parties regarding any intention to
23 investigate, consistent with *Labor Code* section 2699.3 (2) (A) or (2) (B). *Id.* *Sirmabekian Decl.* ¶4.

24 Under *Labor Code* section 2699(l) “[t]he Superior Court shall review and approve any penalties
25 sought” as part of the resolution of a case that involved PAGA claims.” *Labor Code* § 2699(l). Pursuant
26 to *Labor Code* section 2699(l)(2), a copy of Plaintiff’s Unopposed PAGA Approval Motion moving
27 papers, which includes a copy of the Parties’ PAGA Settlement Agreement document, was concurrently
28 filed/served to the LWDA at the time of filing with the Court, per the enclosed proof of service. *Id.* ¶5.

1 **Mediation and Settlement Agreement:**

2 On May 19, 2022, the Parties participated in a full-day mediation with mediator Barry M.
3 Appell, Esq. of Alternative Resolution Centers. As a result of a series of arms-length negotiations, on
4 June 30, 2022, the Parties reached a binding agreement and executed a Memorandum of Understanding,
5 regarding the individual and PAGA claim between the Parties in this action. A true and correct copy of
6 the Memorandum of Understanding may be found attached as “EXHIBIT 2” of the Declaration of
7 Sarkis Sirmabekian, Esq. *Sirmabekian Decl.* ¶6.

8 **PAGA Stipulation:**

9 On August 31, 2022, the Parties executed a Stipulation for Order Approving PAGA Settlement
10 document. Attached to the Declaration of Sarkis Sirmabekian, Esq. as “EXHIBIT 3” is a true and
11 correct copy of the Parties Stipulation for Order Approving PAGA Settlement. *Id.* ¶7.

12 By this motion, the Parties request a Court Order approving the terms of the PAGA Settlement,
13 entering judgment on PAGA Claims, and dismissal, with prejudice, of Plaintiff’s individual claims.
14 Defendants do not oppose this motion. *Id.* ¶8.

15 **II. ARGUMENT**

16 **A. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT**

17 **1. The Court’s duty to review and approve any settlement of PAGA penalties.**

18 PAGA permits an aggrieved employee to sue an employer for civil penalties associated with
19 the employer’s violation of various California Labor Code provisions. *Labor Code section 2699(a)*.
20 Pursuant to the statute, of the amount paid to settle a claim for PAGA penalties, twenty five percent
21 (25%) is payable to the employee prosecuting the action and seventy-five percent (75%) is payable to
22 the California Labor and Workforce Development Agency (“LWDA”). *Labor Code section 2699(i)*.
23 Under *Labor Code section 2699(l)*, “[t]he Superior Court shall review and approve any penalties
24 sought” as part of the resolution of a case that involved PAGA claims.” *Labor Code section 2699(l)*.

25 The Senate Daily Journal for the 2003-2004 Regular Session, pages 4754-55 contained the
26 following letter dated July 29, 2004, from Senator Joseph L. Dunn, regarding the intent of the PAGA:
27 “The purpose of the court review of penalties in subdivision (l) is to ensure that settlements involving
28 penalties arising under *Labor Code Section 2699* do not undercut the dual statutory purposes of

1 punishment and deterrence, or result in unjust, arbitrary and oppressive, or confiscatory settlements.”

2 **2. The Court should approve the proposed settlement of the PAGA penalties**
3 **because the settlement is fair and reasonable under the circumstances of this**
4 **case.**

5 For purposes of Plaintiff representative claims under PAGA, the alleged aggrieved individuals
6 (“Aggrieved Employees”) are defined by Plaintiff to be all current and former non-exempt employees,
7 who worked at least one pay period for CTR during the PAGA Period. The PAGA Period is defined to
8 be from September 5, 2019 through the date this Court approves the settlement described herein (the
9 “PAGA Settlement”) and enters judgment pursuant to the terms of the PAGA Settlement (the
10 “Approval Date”). Defendants represent that they have employed 12 persons from the beginning of the
11 PAGA Period through present, who were employed for a total of 750 Pay Periods.

12 Here, PAGA counsel reviewed a sampling of time and pay records for 12 Aggrieved
13 Employees. Based on the data produced pursuant to informal discovery, as well as PAGA Counsel’s
14 own independent investigation and evaluation and the Mediator’s efforts, PAGA Counsel believes that
15 the settlement with Defendants for the consideration and on the terms set forth in the PAGA Settlement
16 Agreement is fair, reasonable, and adequate and is in the best interest of the PAGA Members in light
17 of all known facts and circumstances, including the risk of significant delay and uncertainty associated
18 with litigation, various defenses asserted by Defendants, the risk of not prevailing at trial, and numerous
19 potential appellate issues, etc. Based on careful consideration of the strengths and weakness of this
20 action, the Parties firmly believes that this Settlement is fair and reasonable for Plaintiff, the PAGA
21 workforce, and the LWDA.

22 **Settlement Sums:**

23 The maximum settlement amount that Defendant will pay in connection with the Settlement is
24 \$70,000, \$25,000 of which will be allocated to the PAGA claims (the “PAGA Settlement Sum”). One-
25 third (1/3) of the PAGA Gross Settlement Amount (“PGSA”), \$8,333.33, plus \$1,850.00 for costs,
26 totaling \$10,183.33, shall be paid to Plaintiff’s counsel Sirmabekian Law Firm PC, for attorney’s fees
27 and costs incurred on the PAGA claims; an enhancement payment to Plaintiff in the amount of up to
28 \$500.00; and \$1,895.00 shall be paid to the settlement administrator. The remaining balance of

1 \$12,421.67 (the “PAGA Net Settlement Amount” or “PNSA”), shall be classified for tax purposes as
2 civil penalties (“Civil Penalty Allocation”), unless otherwise required by law. Seventy-Five Percent
3 (75%) of the Civil Penalty Allocation, \$9,316.25, shall be paid to the LWDA, which represents civil
4 penalties payable to the LWDA under the PAGA, *Labor Code section 2698, et seq.* Twenty Five
5 Percent (25%) of the Civil Penalty Allocation, \$3,105.42, (the “Aggrieved Employee Amount”) shall
6 be paid to the PAGA Members, pursuant to *Labor Code § 2699(i)*, divided amongst PAGA Members
7 based on each PAGA Member’s respective number of pay periods worked for Defendants in California
8 during the PAGA Period.

9 **Liability is Contested:**

10 The strength of Plaintiff’s PAGA claim is balanced by the fact that liability is contested,
11 Defendant is represented by talented counsel who are prepared to zealously litigate this case, and there
12 is no way to determine what would transpire at trial. In addition, the state of the law regarding PAGA
13 liability continues to evolve, and there could be further changes that could have a detrimental impact
14 on the viability of Plaintiff’s PAGA claim prior to trial. *See ZB, N.A. v. Superior Court of San Diego*
15 *Cty.*, No. S246711, 2019 WL 4309684, Cal. Sept. 12, 2019. In addition to the risks presented by
16 pursuing this matter to trial, there is also the likelihood that the non-prevailing party would appeal any
17 judgment rendered at trial. The Settlement is also in the best interest of judicial efficiency in this case,
18 as it would eliminate a complex representative action, which also alleges individual claims, from this
19 Court’s calendar. (*Id.*) Therefore, based on the aforementioned reasons, the global Settlement presented
20 is fair and reasonable for Plaintiff, the PAGA workforce, and the LWDA.

21 This proposed resolution of the alleged PAGA remedies is fair and reasonable given the facts
22 that:

- 23 a. The core claim asserted by the Plaintiff is independent of any PAGA remedies;
- 24 b. This was not a case where the PAGA penalties represent a significant portion of the
25 amount of damage in dispute. Rather, Plaintiff alleged numerous individual wage
26 and hour claims such as for unpaid wages, rest and meal break premiums, failure to
27 furnish accurate wage and hour statements, failure to pay wages, upon discharge,
28 failure to indemnify and illegal deductions from wages, etc., and for statutory

attorney's fees;

c. A primary claim in this case is for meal and rest break violations, however, Plaintiff understands that establishing break violations under the Labor Code may require the presentation of highly individualized evidence/testimony to establish the reason for any violations.

d. Defendant has only 12 current and former employees in the PAGA Period. The release for those 12 employees will be limited only to claims for PAGA penalties. Those employees will not relinquish any other individual claims they may have. Nothing here shall be construed as an admission that any employee has any valid individual claim against Defendant.

e. Defendants vigorously dispute and deny the allegations and various causes of action asserted in the Action, including, without limitation, Plaintiff's individual claims and the Aggrieved Employees' claim for civil penalties pursuant to PAGA.

f. Plaintiff is mindful of the risks involved with pursuing claims against Defendants, the economic future of which is uncertain. Plaintiff, the LWDA, and the aggrieved employees gain much value from settling these PAGA claims at \$25,000 for 12 employees, which will result in above average distributions to each of them in this time of need.

Moreover, a trial court does not abuse its discretion in approving the settlement of a case involving PAGA claims even when the settlement allocates none of the settlement payment to PAGA claims. *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 589. Nordstrom was a putative wage an hour class action in which the employer agreed to pay up millions in cash plus another \$2.5 million in merchandise vouchers to settle all claims (including PAGA claims). *Nordstrom*, 186 Cal.App.4th at 580. Certain class members objected to the settlement released those claims without any consideration paid to the LWDA pursuant to them. *Id.* at 589. On Appeal, the appellate court held that the trial court did not abuse its discretion in approving the class settlement even though it released PAGA claims without any money paid to the LWDA for those claims. *Ibid.* ("We find no abuse of discretion in the trial court's approval of the settlement agreement containing these terms," even though

1 the agreement released PAGA claims without any consideration paid to the LWDA for those releases).

2 Here, the parties have allocated a reasonable sum of \$25,000 to the PAGA claim to resolve the
3 PAGA claim. Under the circumstances of this case, this is a fair and reasonable allocation. Thus, the
4 parties request that the Court approve this aspect of the settlement.

5 **3. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

6 The Parties considered a number of risk factors in this action in determining what an acceptable
7 settlement would be after Defendants produced the core timekeeping and payroll documents during
8 settlement negotiations. Although Plaintiff's counsel believes it is unlikely, Plaintiff faces the potential
9 risk of an adverse ruling at trial and being bound by a decision that awards no penalties on the many
10 claimed violations in light of Defendants' vigorous dispute and denial of the allegations and various
11 causes of action asserted in the Action, including, without limitation, Plaintiff's individual claims and
12 the Aggrieved Employees' claim for civil penalties pursuant to PAGA. Conversely, Defendants face
13 substantial risk and liability if Plaintiff and the Aggrieved Employees are able to prove the underlying
14 violations under the Labor Code, leading to civil penalty liability under PAGA.

15 **4. The PAGA Settlement Furthers the Purposes of the PAGA.**

16 Finally, the Court should not place undue emphasis on the amount of the PAGA allocation since
17 PAGA does not require this focus and, as amended in July 2016, the statute expressly contemplates the
18 possibility of approval with no penalty payments.

19 The LWDA has the discretion not to assess penalties in favor of other enforcement proprieties.
20 *Scharwartz v. Poizner* (2010) 187 Cal.App.4th 592, 615 [an agency's decision not to prosecute or
21 enforce, whether through civil or criminal process, is a decision generally committed to the agency's
22 absolute discretion"]. The PAGA statute grants this Court the same discretion. *See Lab. Code section*
23 *2699(e)(2)*.

24 Moreover, some of the top enforcement proprieties of the LWDA are "to vigorously enforce
25 minimum labor standards in order to ensure employees are not required or permitted to work under
26 substandard unlawful conditions..." and "to protect employers who comply with the law from those
27 who attempt to gain a competitive advantage at the expense of their workers by failing to comply with
28 minimum labor standards." Lab. Code section 90.5(a). The priorities include ensuring that overtime

1 compensation is paid and that unlawful pay practices stop. See Lab. Code sections 1193.5 and 1194.5
2 [referenced in the enforcement proprieties set forth in Labor Code section 90.5(b)].

3 Here, the settlement agreement furthers the LWDA's enforcement of these priorities. Hence,
4 the PAGA settlement payment contributes to the enforcement of the Labor Code and should therefore
5 be approved under PAGA.

6 **5. Notice to Aggrieved Employees**

7 A notice to aggrieved employees will accompany the payment to PAGA members. The notice
8 informs the recipient as to the scope of the released claims, and as to the recipient's responsibility for
9 any taxes payable on the amount received. *Sirmabekian Decl.* ¶9. A copy of such notice is attached as
10 "EXHIBIT 4" to the Declaration of Sarkis Sirmabekian, Esq.

11 **6. Plaintiff's Motion for Court Approval of PAGA Settlement moving papers** 12 **were concurrently filed/served with the LWDA, in compliance with Labor** 13 **Code § 2699(l)(2)**

14 Plaintiff's Motion for Court Approval of PAGA Settlement moving papers were concurrently
15 filed/served with the LWDA, in compliance with *Labor Code* § 2699(l)(2), per the attached proof of
16 service document on the last page of the Motion. *Sirmabekian Decl.* ¶10.

17 **B. ATTORNEYS' FEES AND COSTS INCURRED ARE REASONABLE**

18 **1. Attorneys' fees**

19 A customary award for attorney's fees in the amount of one-third (1/3) of the PAGA Gross
20 Settlement Amount ("PGSA"), \$8,333.33, plus \$1,850.00 for costs, totaling \$10,183.33, to be paid to
21 Plaintiff's counsel Sirmabekian Law Firm PC, for attorney's fees and costs incurred on the PAGA
22 claims are fair and reasonable. *Sirmabekian Decl.* ¶11. Work done by Plaintiff's counsel commenced
23 with the pre-filing case analysis and research since retaining Plaintiff in or around February 2021,
24 continued through Settlement in August 2022, and will continue until the conclusion of this matter.
25 Plaintiff's counsel's work has been necessary to successfully conclude this matter. Plaintiff's attorneys
26 will continue working on the matter after approval continuing to keep in contact with the Claims
27 Administrator to ensure proper administration of settlement checks. *Sirmabekian Decl.* ¶12. Plaintiff's
28 counsel believes that his hourly rate of \$550.00/hr. is comparable to the rates requested by and awarded

1 to other plaintiffs' attorneys with similar experience, background and levels of success achieved in
2 prosecuting similar types of class actions, and Plaintiff's counsel has been approved at that rate in other
3 complex cases. *Sirmabekian Decl.* ¶13.

4 **III. CONCLUSION**

5 Based on the foregoing, the Parties respectfully request that the Court grant the Parties' joint
6 request for approval of the PAGA settlement.

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8
9 DATED: August 31, 2022

Respectfully submitted,

SIRMABEKIAN LAW FIRM, PC

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11 By: 

12 Sarkis Sirmabekian, Esq.
13 Attorney for Plaintiff
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I, SARKIS SIRMABEKIAN, hereby declare as follows:

1. That I am an attorney at law, duly licensed to practice before all courts of the State of California. I am the attorney representing Plaintiff GILBERTO MORALES (“Plaintiff”) in this action. In that capacity, I am familiar with the day-to-day handling of this matter. If called upon to testify, I could and would competently attest to the following, which is submitted of my own personal knowledge, except as to those matters that are stated upon information and belief.

2. May 5, 2021, Plaintiff GILBERTO MORALES (“Plaintiff”) filed a Complaint against Defendants CALIFORNIA TEAM REALTY, CEDELCO CONSTRUCTION INC, SAUL RENE DELGADO, and CESAR DELGADO (“Defendants”), and DOES 1 through 50, inclusive (collectively “Defendants”) for wage and hour violations under the California Labor Code. This matter involves Labor Code violations, which includes wage and hour claims. The Complaint alleges ten (10) substantive claims:

- a. Failure to Pay Minimum Wage (Cal. Lab. Code section 1197);
- b. Failure to Compensate for all Hours Worked (Cal. Lav. Code section 1198);
- c. Failure to Pay Overtime Compensation (Cal. Lab. Code section 1198);
- d. Failure to Pay Rest Period Compensation (Cal. Lab. Code section 226.7);
- e. Failure to Pay Meal Period Compensation (Cal. Lab. Code section 226.7);
- f. Failure to Furnish Accurate Wage and Hour Statements (Cal. Lab. Code section 226);
- g. Failure to Pay Wages Upon Discharge (Cal. Lab. Code section 201);
- h. Statutory Penalties (Cal. Lab. Code sections 203 and 558);
- i. Failure to Indemnify and Illegal Deductions from Wages (Cal. Lab. Code section 2802);
- j. Violation of the Private Attorneys General Act of 2004, Cal. Lab. Code §2698 *et seq.*; and
- k. Violations of California's Unfair Competition Act (Bus. & Prof. Code §17200 *et seq.*).

3. On February 24, 2021, Plaintiff filed with the Labor and Workforce Development Agency (“LWDA”) the PAGA Notice Letter for alleged violations of the California Labor Code and violations of the State’s Private Attorneys’ General Act, California Labor Code § 2698 et seq., (“PAGA” or the “PAGA Claim”) and concurrently therewith, a copy of Plaintiff’s PAGA Notice Letter was served via

1 certified mail to Defendants in this action. Attached hereto as “**EXHIBIT 1**” is a true and correct copy
2 of Plaintiff’s PAGA Notice Letter.

3 4. Pursuant to *Labor Code §2698.3(a)(2)*, a PAGA Plaintiff is required to wait 65-days to allow
4 the LWDA to decide whether they shall investigate and/or handle the matter and §2698.3(a)(2)(A)
5 specifically authorizes the PAGA Plaintiff to pursue the PAGA action after 65-days has elapsed without
6 hearing from the LWDA. Here, after waiting 65-days the LWDA at no time notified PAGA Plaintiff
7 or his counsel that they intend to investigate or handle the matters involved in Plaintiff’s PAGA Notice.
8 A true and correct copy of Plaintiff’s PAGA Notice Letter was also attached with Plaintiff’s operative
9 Complaint in this action as Exhibit A thereto. To date, the LWDA has taken no action against
10 Defendants on the PAGA Notice, has not investigated and has not issued any citations against
11 Defendants on the PAGA Notice and the LWDA has not notified the Parties regarding any intention to
12 investigate, consistent with Labor Code section 2699.3 (2) (A) or (2) (B).

13 5. Under Labor Code section 2699(l) “[t]he Superior Court shall review and approve any penalties
14 sought” as part of the resolution of a case that involved PAGA claims.” Labor Code § 2699(l). Pursuant
15 to Labor Code section 2699(l)(2), a copy of Plaintiff’s Unopposed PAGA Approval Motion moving
16 papers, which includes a copy of the Parties’ PAGA Settlement Agreement document, was concurrently
17 filed/served to the LWDA at the time of filing with the Court, per the enclosed proof of service.

18 6. On May 19, 2022, the Parties participated in a full-day mediation with mediator Barry M.
19 Appell, Esq. of Alternative Resolution Centers. As a result of a series of arms-length negotiations, on
20 June 30, 2022, the Parties reached a binding agreement and executed a Memorandum of Understanding,
21 regarding the individual and PAGA claim between the Parties in this action. Attached hereto as
22 “**EXHIBIT 2**” is a true and correct copy of the Memorandum of Understanding.

23 7. On August 31, 2022, the Parties executed a Stipulation for Order Approving PAGA Settlement
24 document. Attached hereto as “**EXHIBIT 3**” is a true and correct copy of the Parties Stipulation for
25 Order Approving PAGA Settlement.

26 8. By this motion, the Parties request a Court Order approving the terms of the PAGA Settlement,
27 entering judgment on PAGA Claims, and dismissal, with prejudice, of Plaintiff’s individual claims.
28 Defendants do not oppose this motion.

1 9. notice to aggrieved employees will accompany the payment to PAGA members. The notice
2 informs the recipient as to the scope of the released claims, and as to the recipient's responsibility for
3 any taxes payable on the amount received. Attached hereto as "**EXHIBIT 4**" is a true and correct copy
4 of the Notice to Aggrieved Employees document.

5 10. Motion for Court Approval of PAGA Settlement moving papers were concurrently filed/served
6 with the LWDA, in compliance with Labor Code § 2699(1)(2), per the attached proof of service
7 document on the last page of the Motion.

8 11. A customary award for attorney's fees in the amount of one-third (1/3) of the PAGA Gross
9 Settlement Amount ("PGSA"), \$8,333.33, plus \$1,850.00 for costs, totaling \$10,183.33, to be paid to
10 Plaintiff's counsel Sirmabekian Law Firm PC, for attorney's fees and costs incurred on the PAGA
11 claims are fair and reasonable.

12 12. Work done by Plaintiff's counsel commenced with the pre-filing case analysis and research
13 since retaining Plaintiff in or around February 2021, continued through Settlement in August 2022, and
14 will continue until the conclusion of this matter. Plaintiff's counsel's work has been necessary to
15 successfully conclude this matter. Plaintiff's attorneys will continue working on the matter after
16 approval continuing to keep in contact with the Claims Administrator to ensure proper administration
17 of settlement checks.

18 13. I believe that my hourly rate of \$550.00/hr. is comparable to the rates requested by and awarded
19 to other plaintiffs' attorneys with similar experience, background and levels of success achieved in
20 prosecuting similar types of class actions, and Plaintiff's counsel has been approved at that rate in other
21 complex cases.

22 I declare under the penalty of perjury under the laws of the State of California that the foregoing is
23 true and correct. Executed on August 31, 2022, in Los Angeles, California.

24 
25 _____
26 Sarkis Sirmabekian, Esq.
27 Declarant, Attorney for Plaintiff
28

EXHIBIT 1



SIRMABEKIAN
LAW FIRM

3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010

6314 San Fernando Rd.
Glendale, CA 91201

T (818) 473-5003
F (818) 476-5619

sarkis@slawla.com
www.slawla.com

February 24, 2021

CALIFORNIA TEAM REALTY
190 W 3RD ST
SANTA ANA, CA 92701

via U.S. Certified Mail

SAUL RENE DELGADO
190 W 3RD ST
SANTA ANA CA 92701

via U.S. Certified Mail

CEDELCO CONSTRUTION INC
190 W 3RD ST
SANTA ANA CA 92701

via U.S. Certified Mail

CESAR DELGADO
190 W 3RD ST
SANTA ANA CA 92701

via U.S. Certified Mail

Labor and Workforce Development Agency
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

filed online at
<http://www.dir.ca.gov/>

RE: GILBERTO MORALES' Notice of Labor Code Violations Pursuant to California Labor Code Section 2699 et seq.

Dear Sir or Madam:

Please be advised GILBERTO MORALES (hereinafter "Plaintiff") has retained Sirmabekian Law Firm, PC to represent him and other aggrieved employees for various California Labor Code violations including wage and hour claims against CALIFORNIA TEAM REALTY, SAUL RENE DELGADO, CEDELCO CONSTRUTION INC, and CESAR DELGADO (hereafter referred to as "Employer" or "You" and/or referred to with "Your" and "Yours", and "EMPLOYER").

EMPLOYER is hereby on notice that Plaintiff seeks compensation and all other available relief. Pursuant to the procedures specified in California Labor Code Section 2699.3, Plaintiff claims that EMPLOYER has violated, and/or caused to be violated,

several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code 2698 *et seq.*

The scope of this PAGA letter is intended to include Plaintiff and all other aggrieved employees of all positions against whom the below labor law violations have been committed. The scope includes each employee of each employer named above, whether or not such employee was also employed by any of the remaining employers. Plaintiff and other aggrieved employees engaged in working as laborers and other positions for Defendants.

Defendants employed Plaintiff as a laborer, for approximately seven years, until approximately January 18, 2021.

EMPLOYER deprived Plaintiff and other aggrieved employees of certain protections of the Industrial Welfare Commission Orders, including overtime pay, minimum wage, meal and rest periods, and failure to reimburse under Labor Code 2802, among numerous other California Labor Code violations. Some examples are that Plaintiff was paid outside of payroll, and paid approx. \$140/day or \$50/night, regardless of the actual number of hours Plaintiff worked. Plaintiff often worked 12 or more hours, but received this flat pay.

Plaintiff and other aggrieved employees engaged in working as laborers and other positions for Defendants, and failed to primarily engage in managerial duties. They lacked the requisite discretion and independent judgment required by the labor code and the IWC Orders (without limitation) to qualify as exempt from various labor law protections. By misclassifying Plaintiff and other aggrieved employees, EMPLOYER deprived them of many protections. In addition, EMPLOYER's non-exempt classified employees, including laborers and other employees are and were also deprived of the same.

Misclassification of Employee as Independent Contractor

It unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Cal. Lab. Code § 226.8(a)(1). This permits Plaintiff to recover a civil penalty from five thousand dollars (\$5,000) to twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code § 226.8(b)-(c). Here, EMPLOYER improperly and willfully classified one or more employees, including its laborers by paying him outside of payroll although his position required him to work as an employee for EMPLOYER, among many other duties which were directly related to the services provided by EMPLOYER. Plaintiff got paid flat amounts per shift, regardless of actual hours worked. He did drywall and flooring, imperative jobs for EMPLOYER'S realty and construction business. EMPLOYER supplied the instrumentalities, tools, and the place for the employees to do their work (all work was done under EMPLOYER's supervision; the employees' investment in the equipment or materials required were limited or non-existent; no special skills were required of the employees; the employees' services were to be performed for a long period of time with a high degree of permanence in the working relationship; and the parties believed they were maintaining an employer-employee relationship.).

Unlawful Failure to Pay Overtime

EMPLOYER fails to maintain a policy that compensates Plaintiff and other employees for all hours worked, including overtime. Specifically, EMPLOYER only pays employees for the majority of time that they spend at work. Many employees, including Plaintiff, routinely worked work over eight (8) hours per day and/or forty (40) hours per week but are not paid one and one-half their regular rate of pay for overtime work. Plaintiff's shift was typically 7 a.m. to 7 p.m. However, he was required to work beyond the end of his shift at various times when a job needed to be completed. In addition, he was required to work some weekends but was paid at his daily/per shift flat rate despite exceeding 8 hours per day or 40 hours per week. Consequently, he was not paid the overtime hours he had accrued. Further, the overtime hours Plaintiff accrued were not accurately reflected on the payments he received from EMPLOYER.

As a result of violations of California Labor Code §§ 510, 1194, and applicable Industrial Welfare Commission Wage Orders for failure to pay overtime, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, EMPLOYER has required employees to work hours in excess of eight hours in a day and forty in a week but has not paid these employees overtime compensation. As a result, Plaintiff and other employees have been denied "the unpaid balance of the full amount of this ... overtime compensation" as required by California Labor Code § 1194, and EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Minimum Wage

EMPLOYER has failed to maintain a policy that compensates Plaintiff and other employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and applicable Industrial Welfare Commission Wage Orders, for failure to pay minimum wage, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.* In addition, EMPLOYER required Plaintiff to work on his last day, February 24, 2020, but did not pay him for this shift.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty meal periods as required by California law. Plaintiff and similarly situated employees regularly worked in excess of five (5) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and applicable Industrial Welfare Commission Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods. Some employees were also due a second meal break as they worked in excess of ten (10) hours.

They would be required to work through their meal breaks, or take short meal breaks, and no premium compensation was provided. Many employees, including Plaintiff, were forced to skip or take untimely breaks without appropriate compensation. Plaintiff would frequently be required to skip his lunch altogether to accommodate his work schedule. As a result of violations of California Labor Code §§ 226.7 and 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

EMPLOYER has failed to maintain a policy that provides Plaintiff and other employees with off-duty rest periods as required by California law. Plaintiff and other employees regularly worked in excess of 3.5 hours or major fraction thereof during work days without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and applicable Wage Orders. EMPLOYER failed to pay Plaintiff and other employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Many employees, including Plaintiff, were forced to skip or take untimely rest breaks without appropriate compensation. Plaintiff was not afforded any rest breaks during his shifts. As a result of violations of California Labor Code §§ 226.7, 512 and applicable Industrial Welfare Commission Wage Orders, EMPLOYER is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Sick Leave and Sick Leave Balance

Labor Code § 246(i) requires Defendants to provide Plaintiff his sick leave balance periodically. Defendants never did so. Plaintiff's pay stubs don't reflect sick leave, no separate statement was provided nor was Plaintiff ever afforded sick leave per § 246 and the applicable wage order.

Unlawful Failure to Furnish Wage Statements

EMPLOYER has violated California Labor Code § 226(a) by willfully failing to furnish Plaintiff and other employees with required wage statement information. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in

subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Plaintiff was completely deprived of wage statements, as he was paid outside of payroll, and unlawfully treated as an independent contractor. Plaintiff and others were deprived of wage statements altogether, or various necessary items of information such as total hours worked, applicable hourly rates, and the employers' address. Moreover, EMPLOYER's employees' work hours, overtime time hours and pay, missed rest or meal break premiums, wages, without limitation, were misreported on their wage statements. Plaintiff typically worked over forty (40) hours a week, ran errands for EMPLOYER, and was not provided with any rest breaks. As a result of violations of California Labor Code § 226(a), EMPLOYER is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

EMPLOYER has failed to keep payroll records showing total hours worked and wages paid to Plaintiff and other employees. Under California Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to ... employees." Because EMPLOYER did not keep accurate time records reflecting hours worked for Plaintiff and other employees, including but not limited to work on weekends, work after the end of the shift, and running errands for EMPLOYER, it is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.* To the extent that EMPLOYER's failure to keep accurate payroll records was willful, it is liable for civil penalties under California Labor Code § 1174.5.

Unlawful Violation of California Labor Code § 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 *et seq.*, an employer who "requires or causes any employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of the Labor Code regarding employees' wages, hours, and working conditions, is subject to PAGA penalties. As described above, EMPLOYER has required Plaintiff and other employees to work hours in excess of eight (8) in a day and forty (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed to pay minimum wage, failed to appropriately account for and pay for commissions, and has violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating § 1199(b)).

Accordingly, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Wages Due Upon Termination

EMPLOYER has violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and other employees at the time employment was terminated, EMPLOYER willfully failed to pay Plaintiff and other

employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202. Plaintiffs and other employees' final wages were deliberately ignored, and payment avoided by EMPLOYER. Pursuant to §§ 203 and 256 of the Labor Code, Plaintiffs and other employees are now also entitled to recover up to thirty (30) days of wages due to Defendant's "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

Additionally, because EMPLOYER violated California Labor Code §§ 201, 201and 203 of the Labor Code, EMPLOYER is liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Conclusion

EMPLOYER has violated or has caused to be violated a number of California wage and hour laws. Plaintiff therefore intends to file civil claims for the aforementioned violations of the Labor Code and other law. Plaintiff requests the agency review this notice per PAGA's provisions.

Sincerely,

SIRMABEKIAN LAW FIRM, PC

A handwritten signature in black ink, appearing to read 'Sarkis Sirmabekian', with a stylized, cursive flourish.

Sarkis Sirmabekian, Esq.

EXHIBIT 2

MEMORANDUM OF UNDERSTANDING

Subject to approval by the Orange County Superior Court and with the provision that this Memorandum of Understanding ("MOU") will be further memorialized in a Joint Stipulation for Settlement (or similar long-form Settlement Agreement), the Parties hereby agree to the following binding settlement of Plaintiff Gilberto Morales ("Plaintiff") individual and PAGA (Cal. Lab. Code § 2699, *et seq.*) claims designated as *Gilberto Morales v. California Team Realty, et seq.*, Case No. 30-2021-01198968-CU-OE-CXC (the "Action").

The Parties attended a mediation on May 19, 2022. With the assistance of mediator Barry Appell, Esq., the Parties reached the following binding agreement to resolve all the putative representative claims asserted in Plaintiff's operative complaint in the Action.

NOW, THEREFORE, the Parties hereto agree as follows:

1. Parties. This MOU is entered into, on the date of the final signature below, by and between Plaintiff, on behalf of herself and "Aggrieved Employees" (defined below), on the one hand, and defendants *California Team Realty, Cedelco Construction Inc., Saul Rene Delgado, and Cesar Delgado* (collectively "CTR"), on the other hand, to memorialize the essential terms of the settlement of Plaintiff's individual and representative claims asserted in the Action. Plaintiff and CTR may individually be referred to as a "Party" or collectively referred to as the "Parties" throughout this MOU.
2. Enforceability. This MOU becomes enforceable upon its execution by the signatories set forth below. The Parties agree to enter into a long-form, Joint Stipulation for Settlement (or similar long-form Settlement Agreement) that contains the terms set forth in this MOU and more specific information and procedures as required by law. Nonetheless, the Parties intend that the terms set forth herein in this MOU are fully enforceable by the Orange County Superior Court upon motion of any Party.
3. Duties Upon Execution. The Parties agree to fully cooperate to obtain approval of the settlement, pursuant to the terms set forth herein. The Parties also pledge their good faith effort and fair dealing in providing assistance and assent to a final Joint Stipulation for Settlement (or similar long-form Settlement Agreement), and in effectuating the terms of the settlement of Plaintiff's representative claims asserted in the Action.
4. PAGA Members: "PAGA Members" consist of all current and former non-exempt employees who worked at least one pay period for CTR in California at any time during the PAGA Period.
5. PAGA Period. The "PAGA Period" shall be from September 5, 2019 through the date the Court enters the order granting approval of the PAGA settlement.
6. Maximum Settlement Amount: The Maximum Settlement Amount that Defendant CTR will pay in connection with the Settlement is \$70,000.00, \$25,000.00 of which will be allocated to the PAGA claims. The remainder will be allocated pursuant to Paragraph 9 below. The Maximum Settlement Amount is all-inclusive of all payments contemplated in this

resolution, including, but not limited to attorney's fees and costs. The Maximum Settlement Amount, therefore, is inclusive of all settlement payments to the Plaintiff for his individual wage and all other claims; the PAGA Members eligible for settlement payments; the payment to the California Labor Workforce Development Agency ("LWDA") for its share of the settlement of claims; Plaintiff's Counsel's attorneys' fees and expenses (including all attorneys' fees and expenses incurred to date and to be incurred in documenting the Settlement, securing trial and appellate court approval of the Settlement, attending to the administration of the Settlement, and obtaining a dismissal of the Action) and the Settlement Administrator's fees and expenses. Plaintiff is responsible for allocating enough monies to obtain court approval for a full PAGA release. The Defendant will pay the Maximum Settlement Amount upon expiration of the appeal period after the final Court approval of the Settlement.

7. PAGA Gross Settlement Amount. The Parties agree to settle the Action for the non-reversionary PAGA Gross Settlement Amount ("PGSA") of \$45,000.00. From the PGSA, Plaintiff will seek, and CTR shall not oppose: (a) attorneys' fees of one-third of the PGSA; (b) attorneys' litigation costs and expenses related to the Action; (c) settlement administration costs; and (d) an enhancement payment to Plaintiff in the amount of up to \$500.00. After the amounts for attorneys' fees, costs, administration costs, and enhancement payment are deducted from the PGSA, the remaining amount shall be known as the "PAGA Net Settlement Amount" or "PNSA."

The Net Settlement Amount shall be paid (i) 75% to the California Labor and Workforce Development Agency (LWDA) and (ii) 25% to PAGA Members, pursuant to Labor Code § 2699(i), divided amongst PAGA Members based on each PAGA Member's respective number of pay periods worked for CTR in California during the PAGA Period.

Plaintiff agrees that counsel for Plaintiff will notify the LWDA of the settlement at the same time the settlement is submitted to the Court for approval, seek approval of the settlement, and perform any and all statutory tasks as required by law.

The Parties further agree that should the Court deny approval of the settlement based on the allocation of the PGSA or PNSA, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the settlement.

8. Release of Claims. Upon Court approval of the Settlement and performance of the payment obligations therein, Plaintiff and PAGA Members will fully and finally release and discharge CTR and its former, present and future owners, parents, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives ("Released Parties"), from all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA asserted, or that could have been asserted in the Complaint, including, but not limited to, those under California Labor Code §§ 201, 202, 203, 204, 206.5, 210, 221, 223, 224, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, Wage Order sections 3, 4, 7, 9, 11, 12, 20, and a California Civil Code § 1542 release as to those sections, that arose during the PAGA Period, based on the factual allegations pled in the operative complaint in the Action. These released claims include, but are not limited to the following claims: (a)

failure to pay all overtime wages; (b) failure to pay all minimum wages; (c) failure to pay wages, (d) failure to pay for all work, including off-the-clock work (e) failure to provide proper meal periods; (d) failure to authorize and permit rest periods; (e) failure to furnish accurate wage statements; (f) failure to reimburse employees for business expenses; (g) misclassification of employees as independent contractors, and (h) failure to timely pay final wages, including any related claims for attorneys' fees, costs, or interest resulting therefrom ("Released Claims").

9. Plaintiff's Release of All Claims: CTR shall pay \$45,000.00 to Plaintiff in exchange for a release as to Released Parties of all claims, causes of action, and matters that are based on, arise from, pertain and relate to, result from and could have been alleged based on the facts, claims and allegations pertaining and related to and forming the basis of the Action, including a Civil Code Section 1542 release and waiver of all claims known and unknown, without exception, which statute provides that:

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

10. Tax Issues. Plaintiff has sole responsibility for all tax consequences of payments and penalties and agrees to indemnify Defendants regarding same.

11. Representation as to number of PAGA Members: CTR represents that it has employed 12 persons from the beginning of the PAGA Period through present, who were employed for a total of 750 Pay Periods. If as of the date of court approval, the number of Pay Periods exceeds 750 by more than ten percent (10%) (i.e. the number of Pay Periods exceeds 750 by 8 or more Pay Periods), then the amount of the Gross Settlement Amount shall increase in proportion to the increased percentage. For example, if such increase in Pay Periods during the Class Period is 11% over 750 class members, the Gross Settlement Fund will increase by 11%, but in no event increase the Maximum Settlement Amount.

12. Obtaining Approval of PAGA Settlement. Plaintiff will prepare and file a motion, if necessary, with the Court requesting Approval of the PAGA Settlement. If the Court does not approve the settlement reached at mediation, the Parties agree to work cooperatively together to renegotiate the terms of any settlement within 60 days of the first date the Court fails to approve the settlement. Should Court approval of a settlement still not occur within 60 days after any such renegotiation, then any settlement and agreement is null and void, of no force and effect whatsoever and shall not be referred to or used for any purpose whatsoever and the Parties will be restored to their positions prior to mediation, unless the Parties mutually agree otherwise in writing.

13. Settlement Administrator. Phoenix Settlement Administrators will serve as the "Settlement Administrator" for all purposes.

14. PAGA Information. CTR will provide PAGA Members' information (names, addresses, phone numbers, social security numbers, and number of pay periods worked for CTR

in California during the PAGA Period) to the Settlement Administrator to assist the settlement process within ten (10) business days of the court signing the approval order.

15. Court approval of the Settlement. Payments to PAGA Members, the LWDA, Plaintiff, and Plaintiff's Counsel shall be made by the Settlement Administrator within 21 days of the first payment by CTR.

16. No Admission. The Parties agree that this MOU is not evidence that the operative complaint filed in the Action by Plaintiff has any merit, nor does it constitute an admission of any wrongdoing by CTR. CTR does not admit to liability or to the suitability of this case for representative litigation other than for purposes of settlement. This MOU will not be deemed admissible in any other proceeding or in this proceeding other than to effectuate this settlement. If the Court does not grant approval of this settlement, then the Parties revert to their previous positions and CTR will contend that a representative action is not appropriate.

17. Returned or Uncashed Checks: Any Settlement check to any PAGA Members that is not negotiated within one hundred eighty (180) days of mailing to the PAGA Members shall be directed to the State Controller's Office under the Unclaimed Property Statutes.

18. Discovery Stayed. Discovery is stayed in the Action while the Parties work toward settlement and court approval of the settlement. The Parties shall submit stipulations of settlement within 30 days of execution of a full and complete settlement agreement, which fully executed settlement agreement should occur within 45 days of the settlement.

19. Advice of Counsel. The Parties to this MOU are represented by competent counsel, and they have had an opportunity to consult with counsel. The Parties to this MOU agree that it reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

20. Confidential. The Parties agree that this MOU is confidential (except for purposes of enforcement) and that no Party will communicate with or to anyone the settlement or anything to do with the settlement, including, but not limited, to the issuance of any press release nor other public or non-public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the settlement. The Parties and their counsel agree that they will not initiate or have any contact with the press, respond to any press inquiry, or have any communication with the press about this case. Any breach of the confidentiality provision will result in a payment of liquidated damages in the amount of 2% of the settlement payment by the breaching party. The Parties may file this Agreement with the Court to obtain Court approval, and such filing shall not constitute a breach of this Paragraph.

21. Counterparts. This MOU may be signed in counterparts.

22. Disclosure. The Parties intend that this MOU shall be fully enforceable and binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law, notwithstanding the mediation confidentiality provisions that otherwise might apply under local, federal and state law.

23. Contact With the Court. The Parties agree that mediator Barry Appell, Esq. may, at his discretion, execute a Declaration supporting the settlement and the Court may, in its discretion, contact Barry Appell, Esq. to discuss the settlement.

24. Settlement Purposes Only. The Parties agree that the subsequent filing of a Joint Stipulation of Settlement (or similar Settlement Agreement) is for settlement purposes only and if, for any reason, the settlement is not approved, the Joint Stipulation of Settlement and this MOU will be of no force or effect.

25. Neutral Reference: CTR shall not authorize or knowingly permit any disparaging or critical statements in reference to Plaintiff's employment with CTR. In response to requests for employment verification, CTR will only provide (i) dates of Plaintiff's employment and (ii) position.

26. No Disparagement: The Parties shall not make any disparaging or critical statement about, relating or pertaining to, or otherwise involving each other.

27. Integration Clause. The Parties to this Memorandum agree that the long-form Settlement Agreement will contain an integration clause.

GILBERTO MORALES Signature: _____ Date: _____	CALIFORNIA TEAM REALTY Signature: _____ By: Saul Rene Delgado Date: 6/27/22
CEDELCO CONSTRUCTION INC. Signature: _____ By: Cesar Delgado Date: 06-26-22	SAUL RENE DELGADO Signature: _____ Date: 6/27/22
CESAR DELGADO Signature: _____ Date: 06-26-22	
APPROVED AS TO CONTENT: SIRMABEKIAN LAW FIRM, PC	OLSON LAW FIRM

Signature: <u></u>	Signature: _____
Date: <u>6/30/22</u>	Date: _____

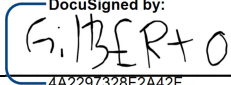
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26. No Disparagement: The Parties shall not make any disparaging or critical statement about, relating or pertaining to, or otherwise involving each other.

27. Integration Clause. The Parties to this Memorandum agree that the long-form Settlement Agreement will contain an integration clause.

GILBERTO MORALES DocuSigned by:  4A2297328F2A42F... Signature: _____ Date: 6/23/2022 _____	CALIFORNIA TEAM REALTY Signature: _____ By: Saul Rene Delgado Date: _____
CEDELCO CONSTRUCTION INC. Signature: _____ By: Cesar Delgado Date: _____	SAUL RENE DELGADO Signature: _____ Date: _____
CESAR DELGADO Signature: _____ Date: _____	
APPROVED AS TO CONTENT: SIRMABEKIAN LAW FIRM, PC	OLSON LAW FIRM

Signature: _____ Date: 6/23/2022 _____	DocuSigned by: <i>Sarkis Sirmabekian</i> 847C4C6AA169454...	Signature: _____ Date: _____
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EXHIBIT 3

Sarkis Sirmabekian [SBN 278588]
SIRMABEKIAN LAW FIRM, PC
3435 Wilshire Blvd., Suite 1710
Los Angeles, California, 90010
Telephone: 818.473.5003
Facsimile: 818.476.5619
E-mail: *contact@slawla.com*

Attorney for Plaintiff,
GILBERTO MORALES

Shawn M. Olson, Esq. [SBN 245688]
OLSON LAW FIRM
7372 Prince Drive, Suite 104
Huntington, California, 92647
Telephone: 714.847.2500
Facsimile: 714.847.2500
E-mail: *Shawn@shawnolsonlaw.com*

Attorney for Defendants,
CALIFORNIA TEAM REALTY, CEDELCO CONSTRUCTION INC.,
SAUL RENE DELGADO and CESAR DELGADO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

GILBERTO MORALES, an individual;

Plaintiff,

v.

CALIFORNIA TEAM REALTY, a business
entity form unknown; CEDELCO
CONSTRUCTION INC., a California
Corporation; SAUL RENE DELGADO, an
individual; CESAR DELGADO, an individual;
and DOES 1 through 50, inclusive;

Defendants.

CASE NO.: 30-2021-01198968-CU-OE-
CXC

Assigned to: *Honorable Glenda Sanders,*
Dept. CX-101

**STIPULATION BY ALL PARTIES FOR
ORDER APPROVING SETTLEMENT
PURSUANT TO CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT AND ENTERING
JUDGMENT**

Plaintiff GILBERTO MORALES ("Plaintiff") and Defendants CALIFORNIA TEAM
REALTY, CEDELCO CONSTRUCTION INC., SAUL RENE DELGADO and CESAR DELGADO
("Defendants") (collectively, "the Parties"), by and through their respective counsel of record, hereby
stipulate as follows:

DEFINITIONS

1. “Aggrieved Employee” or “Aggrieved Employees” means all current and former non- exempt employees who worked at least one pay period for Defendants in California at any time during the PAGA Period.
2. The “PAGA Period” shall be from September 5, 2019 through the date the Court enters the order granting final approval of the PAGA settlement.
3. “Aggrieved Employees’ Counsel” means Sarkis Sirmabekian, Esq. of Sirmabekian Law Firm, PC.
4. “Aggrieved Employees’ Counsel Costs” means verified litigation costs in an amount not to exceed \$1,850.00 as approved by the Court.
5. “Aggrieved Employees’ Counsel Fees” means the amount to be paid, after Court approval, to Aggrieved Employees’ Counsel for all past and future attorneys’ fees incurred by Aggrieved Employees’ Counsel in the Lawsuit for PAGA claims on behalf of Representative Plaintiffs and the Aggrieved Employees including, but not limited to, future attorneys’ fees incurred in securing final approval of the Settlement in the amount of Eight Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33), representing one-third of the PGSA.
6. “Agreement” means this Stipulation and Settlement Agreement, including any attached exhibits.
7. “Complaint” means the operative Complaint filed in the Lawsuit.
8. “Counsel for Defendants” or “Defense Counsel” means Shawn M. Olson.
9. “Court” means the Orange County Superior Court, in which the Lawsuit is currently pending, the Honorable Judge Glenda Sanders presiding. Court shall also mean any other Court that acquires proper jurisdiction of this Lawsuit.
10. “Distributable Amount” means the amount that is distributable to the Aggrieved Employees, and equals the PGSA less Aggrieved Employees’ Counsel Fees, Aggrieved Employees’ Counsel Costs, Settlement Administration Costs, and payment to the California Labor & Workforce Development Agency (“LWDA”).
11. “Effective Date” means the later of (a) the date of entry of Order granting approval of this Settlement, if no objection to the Settlement is filed, (b) the date on which the time for all

- appeals from objections to the Settlement has passed, if one or more objections to the Settlement are filed, and (c) if an appeal is taken, the date on which any reviewing court issues a decision, the time for further appeal has expired, and the trial court has regained jurisdiction.
12. "Maximum Settlement Amount" means the total amount of Seventy Thousand Dollars and No Cents (\$70,000.00), the maximum amount to be paid by Defendants pursuant to the terms of this Agreement, regardless of how the court rules on the first or subsequent motions for approval.
13. "Lawsuit" means this lawsuit and the operative Complaint in the matter entitled *Gilberto Morales v. California Team Realty, et seq.*, Case No. 30-2021-01198968-CU-OE-CXC, Orange County Superior Court.
14. "Notice of Settlement" means the form to be prepared and approved by both Counsel for Defendants and Aggrieved Employees' Counsel and sent to the Aggrieved Employees with the Settlement Payments to inform them of the material terms of the Agreement and the Released Claims.
15. "Notice Returns" means envelopes containing the Notice of Settlement that were mailed by the Settlement Administrator to Aggrieved Employees but were undelivered and returned to the Settlement Administrator by the United States Postal Service.
16. "Order and Judgment" means the order and judgment entered by the Court pursuant to the terms set forth in this Agreement (i) approving finally and fully the terms contained in this Agreement; (ii) permanently enjoining and forever barring from prosecuting any and all Released Claims against Defendants or the Released Persons; (iii) entering a final judgment in the Lawsuit; and (iv) retaining jurisdiction to enforce the terms of this Agreement following approval of the Settlement. Aggrieved Employees' Counsel will submit with its approval motion a proposed Order and Judgment – the form and content of which is agreed to by Counsel for Defendants.
17. "Personal Release" means the Representative Plaintiff's irrevocable and unconditional release, acquittal, and discharge of the Released Persons and all persons and/or corporate entities acting by, through, under or in concert with any of them, or any of them, from any and all complaints,

1 claims, liabilities, obligations, promises, agreements, controversies, damages, costs, losses,
2 debts and expenses (including attorneys' fees and costs actually incurred), of any nature
3 whatsoever, including but not limited to the release of any and all claims arising under any of
4 the following, as amended: the National Labor Relations Act ("NLRA"), Title VII of the Civil
5 Rights Act of 1964, Sections 1981 through 1988 of Title 42 of the United States Code, the
6 Employee Retirement Income Security Act of 1974 ("ERISA"), the Americans with
7 Disabilities Act of 1990 ("ADA"), the Fair Labor Standards Act ("FLSA"), the Occupational
8 Safety and Health Act ("OSHA"), the Consolidated Omnibus Budget Reconciliation Act of
9 1985 ("COBRA"), the Genetic Information Nondiscrimination Act ("GINA"), the Family and
10 Medical Leave Act ("FMLA"), the Worker Adjustment and Retraining Notification Act
11 ("WARN"), the California Fair Employment and Housing Act ("FEHA"), the Family and
12 Medical Leave Act of 1993 ("FMLA") and the California Family Rights Act ("CFRA"), the
13 Private Attorneys' General Act ("PAGA"), the California Worker Adjustment and Retraining
14 Notification Act ("Cal-WARN"), the California Business and Professions Code, including the
15 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, the California Minimum Wage
16 Law, the Equal Pay Law for California, the California Labor Code (including specifically,
17 Section 132a) and California Wage Orders, together with any alleged violation of the United
18 States or any state Constitution, any local, state or federal law, regulation or ordinance, and/or
19 public policy, contract or tort or common-law, any claim for injunctive or declaratory relief
20 any violation of the penal code, and any other claim whether cognizable at law or in equity
21 having any bearing whatsoever on Representative Plaintiff's application for employment,
22 employment with, or separation of employment from the Released Persons, which
23 Representative Plaintiffs ever had, now have, or shall have, from the beginning of time to the
24 date of the Effective Date.

25 18. As to the foregoing claims, Representative Plaintiffs expressly waive the benefits of California
26 Civil Code §1542. Civil Code §1542 provides:

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

19. "Per Capita Payment" means the amount payable to each Aggrieved Employee on an equal per capita basis.

20. "Redirected Notice" means a second Notice of Settlement mailed by the Settlement Administrator to a new or different address for an Aggrieved Employee that was obtained by the Settlement Administrator as a result of a Notice Return.

21. "Released Claims" means any and all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA that arose during the PAGA Period, based on the factual allegations pled in the operative complaint in the Lawsuit, with respect to the following claims: (a) failure to pay minimum wage (*Labor Code* §§ 200, 206, 216, 218.6, 221, 226, 500, 510, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1199); (b) failure to compensate for all hours worked (*Labor Code* §§ 200, 204, 226, 226.8, 432.5, 450, 500, 510, 1194, 1194.2, 1197 and 1198); (c) failure to pay overtime compensation (*Labor Code* §§ 200, 226, 500, 510, 558, 1194 and 1198); (d) failure to provide meal periods and pay meal period compensation (*Labor Code* §§ 226.7 and 512); (e) failure to authorize and permit rest periods and pay rest period compensation (*Labor Code* §§ 226.7 and 558.2); (f) failure to furnish accurate wage statements (*Labor Code* §§ 226, 226.3, 1174, 1174.5 and 558.1); (g) failure to timely pay final wages upon discharge (*Labor Code* §§ 201, 203, 256 and 558.1); (h) statutory penalties (*Labor Code* §§ 201, 201.5, 202, 203, 205.5 and 558); (i) failure to indemnify and illegal deductions from wages (*Labor Code* §§ 200, 203, 226 and 2802); (j) violation of *Cal. Gov. Code* § 12940 *et seq.*; (k) violation of *Gov. Code* § 12940(m); (l) violation of *Gov. Code* § 12940(n); (m) violation of *Gov. Code*

§ 12940(h) and *Gov. Code* § 12653; (n) violation of *Lab. Code* § 98.6 and § 1102.5; (o) Wrongful Termination In Violation Of Public Policy; (p) FEHA Wrongful Termination; (q) violation of the Private Attorneys General Action of 2004, *Labor Code* § 2698, *et seq.*; (m) unfair competition, *Business and Professions Code* § 17200, *et seq.*, including any related claims for attorneys’ fees, penalties, costs, or interest resulting therefrom. (“Claims”) The Released Claims shall specifically include all civil penalties or other amounts which are or may be available under or through the PAGA based on the facts that were alleged in the operative complaint filed in the Lawsuit, and/or predicated any of the Labor Code violations asserted in the operative complaint filed in the Lawsuit, inclusive of all Representative Aggrieved Employees’ and the Aggrieved Employees’ attorneys’ fees and costs. As to the foregoing claims, Representative Plaintiffs and Aggrieved Employees release PAGA civil penalties recoverable under any theory of liability upon which such civil penalties under the PAGA could have been recovered based upon the allegations in the operative complaint filed in the Lawsuit.

22. “Released Persons” means Defendants and their respective agents, attorneys, insurers, past, present and future divisions, affiliates, any DBAs, predecessors, successors, shareholders, officers, directors, managers, employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by, through, under or in concert with any of them.

23. “Representative Plaintiff” or “Plaintiff” means Gilberto Morales and his respective representative(s), heir(s), assign(s), attorney(s) and/or insurer(s).

24. “Settlement to Plaintiff” means an amount of Forty-Five Thousand Dollars and No Cents (\$45,000.00) to be paid to Plaintiff in exchange for the Personal Release.

25. “Settlement Administration Costs” means the fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement including, but not limited to: (i) fees and costs associated with preparing, issuing and/or monitoring reports, filings and notices (including the cost of printing, verifying addresses through a United States Postal Service national change of address database (which provides

1 updated addresses for any individual who has moved in the previous four years who has
2 notified the U.S. Postal Service of a forwarding address) to obtain current address information,
3 skip tracing, and mailing all notices and other documents to the Aggrieved Employees)
4 required to be prepared in the course of administering the Settlement; (ii) computing the
5 amount of the Settlement Payments, taxes, and any other payments to be made under this
6 Agreement; (iii) handling inquiries about the calculation of individual Settlement Payments or
7 mailings; (iv) establishing and operating a physical Settlement payment center address, and
8 phone number to receive Aggrieved Employees' inquiries about the Settlement; (v) remitting
9 any tax deductions or subtractions applicable under the law and/or pursuant to this Agreement
10 and preparing and submitting any filings required by any governmental taxing authority or
11 other governmental agency and/or Defendants' worker's compensation insurer; and (vi)
12 establishing a Qualified Settlement Fund. Settlement Administration Costs will not exceed
13 Thousand Eight Hundred and Ninety-Five Dollars and No Cents (\$1,895.00).

14 26. "Settlement Administrator" refers to Phoenix Settlement Administrators, to administer this
15 Settlement and to act as the administrator to process the Settlement under the terms of this
16 Agreement.

17 27. "Settlement Payment(s)" refers to the payment(s) to any Aggrieved Employee pursuant to the
18 terms of this Agreement.

19 28. "Settlement and Release Period" means from September 5, 2019 through the date the Court
20 enters the order granting final approval of the PAGA settlement.

21
22 **WHEREAS**, on or about February 24, 2021, Plaintiff by and through Plaintiff's counsel, sent
23 a notice to the California Labor Workforce Development Agency ("LWDA") and Defendants (the
24 "PAGA Notice") alleging that Defendants engaged in violations of the California Labor Code and
25 California Wage Orders, seeking civil penalties pursuant to the California Labor Code Private
26 Attorneys' General Act ("PAGA");

27 **WHEREAS**, on or about May 5, 2021, Plaintiff filed a Complaint in the California Superior
28 Court for the County of Orange entitled Gilberta Morales v. California Team Realty, et seq. (the

1 “Action”) alleging individual employment claims;

2 **WHEREAS**, this Settlement is entered into on June 30, 2022 by and between Plaintiff, on
3 behalf of themselves and “Aggrieved Employees” (defined below), on the one hand, and
4 Defendants(collectively, “CTR”), on the other hand, to memorialize the essential terms of the
5 settlement of Plaintiff’s representative claims asserted in the Action.

6 **WHEREAS**, on or about May 5, 2021, Plaintiff filed a Complaint, alleging the following
7 causes of action: (1) Failure to Pay Minimum Wage; (2) Failure to Compensate for All Hours Worked
8 (3) Failure to Pay Overtime Compensation; (4) Failure To Pay Meal Period Compensation; (5) Failure
9 To Rest Period Compensation; (6) Failure To Furnish Accurate Wage and Hour Statements; (7) Failure
10 to Pay Wages Upon Discharge; (8) Statutory Penalties; (9) Failure to Indemnify and Illegal Deductions
11 From Wages; (10) Violation Of The Private Attorneys General Act Of 2004; (11) Unfair Competition;

12 **WHEREAS**, for purposes of Plaintiff representative claims under PAGA, and for purposes of
13 the Action (as defined below) and this PAGA Agreement, the alleged aggrieved individuals
14 (“Aggrieved Employees”) are defined by Plaintiff to be all current and former non-exempt employees,
15 who worked at least one pay period for CTR during the PAGA Period. The PAGA Period is defined
16 to be from September 5, 2019 through the date this Court approves the settlement described herein
17 (the “PAGA Settlement”) and enters judgment pursuant to the terms of the PAGA Settlement (the
18 “Approval Date”);

19 CTR represents that it has employed 12 persons from the beginning of the PAGA Period
20 through present, who were employed for a total of 750 Pay Periods. If as of the date of court approval,
21 the number of Pay Periods exceeds 750 by more than ten percent (10%) (i.e., the number of Pay
22 Periods exceeds 750 by 8 or more Pay Periods), then the amount of the Gross Settlement Amount shall
23 increase in proportion to the increased percentage. For example, if such increase in Pay Periods during
24 the Class Period is 11 % over 750 class members, the Gross Settlement Fund will increase by 11%,
25 but in no event increase the Maximum Settlement Amount.

26 **WHEREAS**, Defendants vigorously dispute and deny the allegations and various causes of
27 action asserted in the Action, including, without limitation, Plaintiff’s individual claims and the
28 Aggrieved Employees’ claim for civil penalties pursuant to PAGA;

1 **WHEREAS**, the Parties engaged in an informal exchange of documents and information
2 including Defendants' financial records. The Parties have also conducted extensive independent
3 investigation and evaluations of the claims and defenses in this matter. Both Plaintiff's counsel and
4 Defendants' counsel have significant experience litigating and resolving the type of wage-and-hour
5 claims alleged in the Action, including claims for civil penalties under PAGA;

6 **WHEREAS**, the Parties agree to fully cooperate to obtain approval of the settlement, pursuant
7 to the terms set forth herein. The Parties also pledge their good faith effort and fair dealing in providing
8 assistance and assent to a final Joint Stipulation for Settlement (or similar long-form Settlement
9 Agreement), and in effectuating the terms of the settlement of Plaintiff's representative claims asserted
10 in the Action.

11 **WHEREAS**, according to the PAGA Settlement Agreement, Plaintiff's "PAGA Claims" are
12 defined as any and all claims for civil penalties pursuant to PAGA based on the allegations in
13 Plaintiff's Complaints and/or PAGA Notices, broadly construed, including, but not limited to, civil
14 penalties based on or arising from California Labor Code Sections 98.6, 200, 201, 201.5, 202, 203,
15 204, 205.5, 206, 206.5, 208, 210, 215, 216, 218.5, 221, 223, 224, 225.5, 226, 226(a)(1), 226(a)(5),
16 226(a)(8), 226(a)(9), 226(c), 226(e)(1), 226(f), 226.3, 226.6, 226.7, 226.8, 227.3, 233 *et seq.*, 246,
17 247, 432.5, 450, 500, 510, 512, 512(a), 551, 552, 553, 558, 558(a)(3), 558.1, 1102.5, 1174, 1174.5,
18 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1198.5, 1198.5(k), 1199, 1776, 2698 *et seq.*,
19 2699.3(c)(1), 2699(i), 2802 and 2810.5 *et seq.*, California Code of Civil Procedure Section 1021.5,
20 3294, California Constitution Article I § 8, Government Code Section 12926.1, 12940 *et seq.*,
21 12940(h) *et seq.*, 12940(m), 12940(n), 12945.2, 12945.2(c)(3)(C), 12965(b), 12965(c) California
22 Business and Professions Code Section 17200 *et seq.*, and the California Wage Orders, whether known
23 or unknown, suspected or unsuspected, concealed or hidden, that were alleged in the Action and/or
24 the PAGA Notice, or that could have been alleged in the Action and/or PAGA Notices, which Plaintiff
25 and any Aggrieved Employee have or had at any time through and including the Approval Date,
26 against any of the Releasees identified in the PAGA Settlement Agreement. A true and correct copy
27 of the PAGA Settlement Agreement is attached hereto as Exhibit A, and its defined terms are hereby
28 incorporated by reference;

1 **WHEREAS**, California Labor Code Section 2699(l)(2) requires that this Court review and
2 approve any settlement pursuant to PAGA;

3 **WHEREAS**, the Parties recognize that the issues presented in the Action are likely only to be
4 resolved with extensive and costly discovery, pretrial and trial proceedings, and that further litigation
5 will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential
6 benefits of litigation. The Parties agree that it reflects their good faith compromise of the claims raised
7 in the Action, based upon their assessment of the mutual risks and costs of further litigation and the
8 assessments of their respective counsel;

9 **WHEREAS**, the Parties have provided a copy of this Joint Stipulation and the proposed PAGA
10 Settlement Agreement to the LWDA in accordance with Labor Code Section 2699(l)(2), and a proof
11 of service to the LWDA is attached hereto as Exhibit B;

12 **WHEREAS**, in consideration of the terms and conditions set forth in the PAGA Settlement
13 Agreement, the Parties agree to be bound to the terms and conditions set forth in the PAGA Settlement
14 Agreement, including that:

15 Upon expiration of the appeal period after the final Approval Date, the Company shall
16 pay the total sum of Twenty-Five Thousand Hundred Dollars (\$25,000.00) (the “PAGA Settlement
17 Sum”) on account of disputed and alleged civil penalties as follows:

18 A. One-third (1/3) of the PAGA Gross Settlement Amount (“PGSA”), \$8,333.33,
19 plus \$1,850.00 for costs, totaling \$10,183.33, shall be paid to Plaintiff’s counsel Sirmabekian Law
20 Firm PC, for attorney’s fees and costs incurred on the PAGA claims; an enhancement payment to
21 Plaintiff in the amount of up to \$500.00; and \$1,895.00 shall be paid to the settlement administrator.

22 B. The remaining balance after deducting the amount being paid to Plaintiff’s
23 counsel for attorney’s fees, costs, and administration on the PAGA claims, \$12,421.67 (the “ PAGA
24 Net Settlement Amount” or “PNSA”), shall be classified for tax purposes as civil penalties (“Civil
25 Penalty Allocation”), unless otherwise required by law, and shall be distributed as follows:

26 The remaining balance after deducting the above amounts being paid to Plaintiff’s
27 counsel, Aggrieved Employees’ Counsel will request, and Defendants will not oppose:
28

1 i. Seventy-Five Percent (75%) of the Civil Penalty Allocation, \$9,316.25,
2 shall be paid to the LWDA, which represents civil penalties payable to the LWDA under the PAGA,
3 Labor Code section 2698, *et seq.*;

4 ii. Twenty Five Percent (25%) of the Civil Penalty Allocation, \$3,105.42,
5 (the "Aggrieved Employee Amount") shall be paid to the PAGA Members, pursuant to Labor Code §
6 2699(i), divided amongst PAGA Members based on each PAGA Member's respective number of pay
7 periods worked for Defendants in California during the PAGA Period.

8 Plaintiff agrees that counsel for Plaintiff will notify the LWDA of the settlement at the same
9 time the settlement is submitted to the Court for approval, seek approval of the settlement, and perform
10 any and all statutory tasks as required by law.

11 The Parties further agree that should the Court deny approval of the settlement based on the
12 allocation of the PGSA or PNSA, the Parties agree to re-negotiate in good faith in an effort to obtain
13 approval of the settlement.

14 **WHEREAS**, upon Court approval of the Settlement and performance of the payment
15 obligations therein, Plaintiff and PAGA Members will fully and finally release and discharge
16 Defendants and its former, present and future owners, parents, and subsidiaries, and all of their current,
17 former and future spouse(s), children, officers, directors, members, managers, employees, consultants,
18 partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal
19 representatives ("Released Parties"), from all claims, rights, demands, liabilities and causes of action
20 for civil penalties under the PAGA asserted, or that could have been asserted in the Complaint,
21 including, but not limited to, those under California Labor Code §§ 201, 202, 203, 204, 206.5, 210,
22 221, 223, 224, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
23 1197.1, 1198, 1199, 2802, Wage Order sections 3, 4, 7, 9, 11, 12, 20, and a California Civil Code §
24 1542 release as to those sections, that arose during the PAGA Period, based on the factual allegations
25 pled in the operative complaint in the Action. These released claims include, but are not limited to the
26 following claims: (a) failure to pay all overtime wages; (b) failure to pay all minimum wages; (c)
27 failure to pay wages, (d) failure to pay for all work, including off-the-clock work (e) failure to provide
28 proper meal periods; (d) failure to authorize and permit rest periods; (e) failure to furnish accurate

1 wage statements; (f) failure to reimburse employees for business expenses; (g) misclassification of
2 employees as independent contractors, (h) failure to timely pay final wages, and (i) failure to
3 indemnify and illegal deductions from wages, including any related claims for attorneys' fees, costs,
4 or interest resulting therefrom ("Released Claims").

5 **WHEREAS**, defendants shall pay \$45,000.00 to Plaintiff and his Counsel in exchange for a
6 release as to Released Parties of all claims, including individual, and representative action claims, all
7 causes of action, and matters that are based on, arise from, pertain and relate to, result from and could
8 have been alleged based on the facts, claims and allegations pertaining and related to and forming the
9 basis of the Action, , including a Section 1542 release and waiver of all claims known and unknown,
10 without exception, which statute provides that:

11
12 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
13 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
14 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
15 **RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE**
16 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
17 **DEBTOR OR RELEASED PARTY.**

18 **WHEREAS**, CTR will provide PAGA Members' information (names, addresses, phone
19 numbers, social security numbers, and number of pay periods worked for CTR in California during
20 the PAGA Period) to the Settlement Administrator to assist the settlement process within ten (10)
21 business days of the court signing the approval order.

22 Plaintiff has sole responsibility for all tax consequences of payments and penalties and agrees
23 to indemnify Defendants regarding same.

24 Parties agree that Phoenix Settlement Administrators, shall be the Settlement
25 Administrator. Payments to PAGA members, the LWDA, Plaintiff, and Plaintiff's Counsel shall be
26 made by the Settlement Administrator within 21 days of the first payment by CTR. All checks to
27 Aggrieved Employees will be sent by the Settlement Administrator to each Aggrieved Employees'
28 last known address on file with Defendants and shall remain valid and negotiable for 180 days from
the date of their issuance to Aggrieved Employees. If any checks are returned as undeliverable, the

1 Settlement Administrator shall make reasonable efforts to obtain an updated address and reissue a
2 check to that Aggrieved Employee. All funds not claimed within 180 days of the initial mailing shall
3 be directed to the State Controller's Office under the Unclaimed Property Statutes in the name(s) of
4 the individual(s) who did not cash his or her check(s).

5 **WHEREAS**, discovery is stayed in the Action while the Parties work toward settlement and
6 court approval of the settlement. The Parties shall submit stipulations of settlement within 30 days of
7 execution of a full and complete settlement agreement, which fully executed settlement agreement
8 should occur within 45 days of the settlement.

9 **WHEREAS**, the Parties agree that this PAGA Settlement is not evidence that the operative
10 complaint filed in the Action by Plaintiff has any merit, nor does it constitute an admission of any
11 wrongdoing by CTR. CTR do not admit to liability or to the suitability of this case for representative
12 litigation other than for purposes of settlement. This PAGA Settlement will not be deemed admissible
13 in any other proceeding or in this proceeding other than to effectuate this settlement. If the Court does
14 not grant approval of this settlement, then the Parties revert to their previous positions and CTR will
15 contend that a representative action is not appropriate.

16 **WHEREAS**, the Parties to this PAGA Settlement are represented by competent counsel, and
17 they have had an opportunity to consult with counsel. The Parties to this PAGA Settlement agree that
18 it reflects their good faith compromise of the claims raised in the Action, based upon their assessment
19 of the mutual risks and costs of further litigation and the assessments of their respective counsel.

20 **WHEREAS**, the Parties agree that this PAGA Settlement is confidential (except for purposes
21 of enforcement) and that no Party will communicate with or to anyone the settlement or anything to
22 do with the settlement, including, but not limited, to the issuance of any press release nor other public
23 or non-public representation regarding the settlement other than as necessary to obtain Court approval
24 and effectuate the terms of the settlement. The Parties and their counsel agree that they will not initiate
25 or have any contact with the press, respond to any press inquiry, or have any communication with the
26 press about this case. Any breach of the confidentiality provision will result in a payment of liquidated
27 damages in the amount of 2% of the settlement payment by the breaching party. The Parties may file
28 this Agreement with the Court to obtain Court approval, and such filing shall not constitute a breach

1 of this Agreement.

2 **WHEREAS**, the Parties agree that mediator Barry Appell, Esq. may, at her discretion, execute
3 a Declaration supporting the settlement and the Court may, in its discretion, contact Barry Appell to
4 discuss the settlement.

5 **WHEREAS**, the Parties agree that the subsequent filing of a Joint Stipulation of Settlement
6 (or similar Settlement Agreement) is for settlement purposes only and if, for any reason, the settlement
7 is not approved, the Joint Stipulation of Settlement and this PAGA Settlement will be of no force or
8 effect.

9 **WHEREAS**, the CTR shall not authorize or knowingly permit any disparaging or critical
10 statements in reference to Plaintiff's employment with CTR. In response to requests for employment
11 verification, CTR will only provide (i) dates of Plaintiff's employment and (ii) position.

12 The Parties shall not make any disparaging or critical statement about, relating or pertaining
13 to, or otherwise involving each other.

14 **WHEREAS**, the Parties to this PAGA Settlement agree that the long-form Settlement
15 Agreement will contain an integration clause.

16 **WHEREAS**, the Parties intend that this PAGA Settlement shall be fully enforceable and
17 binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to
18 enforce its terms under Code of Civil Procedure section 664.6 and any other applicable statute or law,
19 notwithstanding the mediation confidentiality provisions that otherwise might apply under local,
20 federal and state law.

21 This Court shall retain jurisdiction to enforce the terms of the PAGA Settlement Agreement
22 pursuant to California Code of Civil Procedure Section 664.6; and

23
24
25
26 **NOW THEREFORE**, the Parties jointly request that the Court approve the PAGA Settlement
27 set forth in the PAGA Settlement Agreement and enter judgment accordingly to its terms.
28

1 DATED: August 22, 2022

OLSON LAW FIRM

2
3 By:



SHAWN M. OLSON

Attorney for Defendants

4
5
6
7 DATED: August 31, 2022

SIRMABEKIAN LAW FIRM PC

8
9
10 By:



SARKIS SIRMABEKIAN

Attorney for Plaintiff

EXHIBIT 4

Re: NOTICE OF SETTLEMENT

**GILBERTO MORALES vs. CALIFORNIA TEAM REALTY, et al.
Superior Court of California for the County of Orange
Case Number: 30-2021-01198968-CU-OE-CXC**

Date: [REDACTED]

SIMID
Name
Address

Dear **Name:**

A settlement was reached between Plaintiff Gilberto Morales (“Plaintiff”) and Defendants California Team Realty, Cedelco Construction Inc, Saul Rene Delgado, and Cesar Delgado (“Defendants”) (collectively the “Parties”) in *Gilberto Morales v. California Team Realty, et al.*, filed in the Superior Court of California for the County of Orange (Case Number: 30-2021-01198968-CU-OE-CXC) (the “Action”). On [REDACTED], the Superior Court of California for the County of Orange issued an Order approving the Settlement, which was brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”). An action under PAGA is an enforcement action in which an aggrieved employee acts as a private attorney general to collect penalties from employers. In reaching this settlement, Defendants made no admission of liability and denied the truth of the allegations in the Action. However, to avoid additional expense, inconvenience, and interference with Defendants’ business operations, the Parties have concluded that it is in the best interests of the Parties to settle.

This settlement affects certain employees and former employees of Defendants. You are receiving this Notice of Settlement because you worked for Defendants at some point from September 5, 2019 through [REDACTED] (the date the Court approved the PAGA Settlement and entered a final order and/or Judgment) (“Claims Period”). Pursuant to the Settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in your name. If you are still employed by Defendants, your decision to cash the check will not affect your employment.

Payment of this settlement includes a release of any and all claims pursuant to the *California Labor Code § 2698*, which were alleged based on the facts in the operative Complaint or notice for the California Labor Workforce Development Agency (“LWDA”) on behalf of Plaintiff and all aggrieved employees during the Claims Period. The release includes all claims, rights, demands, liabilities and causes of action that arose during the period from September 5, 2019 through the date of the final order (the “PAGA Period”), for civil penalties under the PAGA, based on the allegations pled by Plaintiff in the Action: (a) failure to pay minimum wage (*Labor*

Code section 1197); (b) failure to compensate for all hours worked (*Labor Code section 1198*); (c) failure to pay overtime compensation (*Labor Code section 1198*); (d) failure to pay rest period compensation (*Labor Code section 226.7*); (e) failure to pay meal period compensation (*Labor Code section 226.7*); (f) failure to furnish accurate wage and hour statements (*Labor Code section 226*); (g) failure to pay wages upon discharge (*Labor Code section 201*); (h) statutory penalties (*Labor Code section 203 and 558*); (i) failure to indemnify and illegal deductions from wages (*Labor Code section 2802*); (j) violation of the California Private Attorneys' General Act of 2004 (*Labor Code section 2698, et. seq.*); and (k) unfair competition (*Business and Professions Code sections 17200*); including any related claims for attorneys' fees, costs, penalties or interest resulting there from, during the PAGA Period). This release only waives, and is limited to, the aggrieved employee's rights to collect civil penalties under PAGA (*2698 et seq.*).

If you have any questions, you can contact Phoenix Settlement Administrators, the Settlement Administrator, at 1. XXX.XXX.XXXX.

PROOF OF SERVICE
(§ 1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States of America; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 3435 Wilshire Boulevard, Suite 1710, Los Angeles, California 90010.

On the below-indicated date, I served the following document:

PLAINTIFF GILBERTO MORALES' NOTICE OF MOTION AND UNOPPOSED MOTION FOR COURT APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES;

DECLARATION OF SARKIS SIRMABEKIAN, ESQ. IN SUPPORT;

on the interested parties in said action by placing:

___X___ a true and correct copy,

and addressed as set forth on the attached Service List and delivered by one or more of the means set forth below:

☒ **BY ELECTRONIC SERVICE IN LIEU OF SERVICE BY MAIL, EXPRESS MAIL, OVERNIGHT DELIVERY, OR FACSIMILE TRANSMISSION:** In accordance with California Code of Civil Procedure section 1010.6, I caused the document to be sent to the person(s) below at the e-mail address(es) listed below.

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

EXECUTED: August 31, 2022
At Los Angeles, California

Grigor Gregg Sirmabekian
Grigor Gregg Sirmabekian

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SERVICE LIST

Shawn M. Olson, Esq. [SBN 245688] OLSON LAW FIRM 7372 Prince Drive, Suite 104 Huntington Beach, California 92647 Email: <i>shawn@shawnolsonlaw.com</i> Email: <i>christin@shawnolsonlaw.com</i>	<i>Attorney for Defendants CALIFORNIA TEAM REALTY, CEDELCO CONSTRUCTION INC., SAUL RENE DELGADO, and CESAR DELGADO</i>
Labor and Workforce Development Agency ("LWDA") Department of Industrial Relations Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, California 94612	<i>Labor and Workforce Development Agency: filed/served online at:</i> <i><u>https://www.dir.ca.gov/Private-Attorneys- General-Act/Private-Attorneys-General- Act.html</u></i>