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HECTOR MARTINEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

HECTOR MARTINEZ, individually and as an aggrieved employee and Private Attorney General, Plaintiff, vs. COLLEGE WORKS ISM, INC.; COLLEGE WORKS PAINTING, INC.; CWPNC, INC.; EMPAUS, INC.; EMPCC, INC.; EMPFL, LLC; EMPIE, INC. d.b.a. EMPIRE WORKS RECONSTRUCTION AND PAINTING, EMPIE, INC.; EMPJAX, LLC; EMPNC, INC.; EMPPBI, LLC; EMPSD, INC.; MJP EMPIRE, INC.; NATIONAL SERVICES GROUP, INC.; and DOES 1 through 50, inclusive Defendants.California corporation; EMPIE, INC. d.b.a. EMPIRE WORKS RECONSTRUCTION AND PAINTING, a Nevada corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 30-2021-01184079-CU-OE-CXC *Assigned for All Purposes to Hon. Randall J. Sherman, Dept. CX105* **CLASS ACTION** **DECLARATION OF HEATHER DAVIS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: June 6, 2025 Time: 10:00 a.m. Dept: CX-105 Reservation ID: 1000534147 Complaint Filed: February 16, 2021 SAC Filed: January 31, 2022 Trial Date: Not set

DECLARATION OF HEATHER DAVIS

I, Heather Davis, declare as follows:

1. I am an attorney duly admitted to the Bar of the State of California and all United States District Courts in the State of California. I am a Partner with the Protection Law Group, LLP, counsel of record for Plaintiff HECTOR MARTINEZ ("Plaintiff") in the Action entitled *Hector Martinez v. S D P, et al.,* Orange County Superior Court, Case No. 30-2021-01184079-CU-OE-CXC. I have personal knowledge of the facts stated herein and if called as a witness I could and would competently testify thereto.

CLASS COUNSEL'S BACKGROUND AND EXPERIENCE

2. I am a duly licensed attorney and have been a member of the Colorado State Bar since 1998, the California State Bar since 2005 and the Arizona State Bar since 2007. I graduated from the University of Denver School of Law in 1998, and I am licensed to practice before all courts of the State of California and Colorado as well as the State of Arizona and District Courts throughout the country.

3. Prior to opening my law firm, I developed particular expertise in the area of wage and hour litigation. For instance, between 2007 and 2013, I joined the law firm of Littler Mendelson, P.C., the largest labor and employment law firm in the United States.

4. During my employment with Littler Mendelson, P.C., I continued my practice of employment law and was responsible for and defended dozens of complex class actions, including some of the largest representative and class actions brought under the California Labor Code, including meal and rest break violations, overtime, minimum wage claims, off-the-clock work and other related wage claims. My practice included the management of dozens of class actions. My management of these cases included taking and defending hundreds of depositions and interviews of hundreds of putative class members, as well as extensive state, federal and appellate briefing on hundreds of wage and hour issues involving class actions.

5. During my employment at Littler Mendelson, I played a significant role in the class actions for which I was responsible. In particular, I was often in charge of the leading the strategy of the cases and drafting all of the briefs. I received a wide-array of wage and hour class action

experience performing the following types of tasks: drafting demurrers; motions to strike and/or dismiss; removing actions from state court to federal court; drafting and responding to written discovery; drafting and opposing discovery related motions; arguing discovery related motions; drafting motions to consolidate related matters; interviewing putative class members and obtaining declarations in connection with class certification; drafting oppositions to motions for class certification; drafting motions for decertification following class certification; conducting exposure analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification and potential damages resulting from such claims; drafting mediation briefs; serving as the primary contact to in-house counsel; deposing plaintiffs and putative class members; deposing retained expert witnesses; and defending the depositions of corporate witnesses. In short, I played an integral role in all aspects of litigation from the inception of a matter through and beyond class certification.

6. During my practice in other jurisdictions and continuing today, I have been primarily devoted to working in employment law and on complex class action and representative litigation and multi-plaintiff work.

7. Protection Law Group, LLP is a law firm specifically devoted to the representation of employees against employers in California involving claims relating to violations of the California Labor Code, including claims for failure to pay all wages owed, failure to pay overtime premiums, failure to pay meal and rest premiums and failure to provide accurate wage records. The practice of employment law is a very specific, narrow field which requires diligence in an ever-evolving field of substantive and procedural law.

8. Although not exhaustive, below is a representative list of several of the wage and hour class actions that I performed substantial work on while I was an attorney with Littler Mendelson, including, but not limited to: *Villacres v. ABM Industries, Inc.*, 189 Cal.App.4th 562 (2010); *Brizuela v. Copart, Inc.*, CIVRS11101592 (San Bernardino Superior Court class action settlement); *Augustus v. ABM Industries, Inc.*, BC336416, 2 Cal. 5th 257 (2016); *Tagaki v. United Airlines*, 2:11-CV9191 (Central District class action settlement); *Babasa v. Comerica, Inc.*, 3:11-CV00595; *Leyva v. Medline Industries, Inc.* 5:11-cv-00164 (Central District); *Blue v. Coldwell*

Banker Residential Brokerage Co., BC417335 (Los Angeles Superior Court, class action settlement); and *Acosta v. Texwood Industries, Inc.*, 2:07-cv-03237-DDP-PLA (Central District class action settlement).

9. Since opening my firm, I have served as lead counsel or co-class counsel in several wage and hour class and/or representative actions seeking wages and penalties owed on behalf of employees for which final approval of the settlement or class certification has been granted, including, but not limited to the following:

- *Holzer v. Wedbush Securities, Inc*., BC550462 (Los Angeles Superior Court wage and hour class action certifying class of independent contractors and appointing Protection Law Group, LLP as class counsel);
- *White v. Windy Pizza Plus, LLC*, BC593377 (Los Angeles Superior Court wage and hour class action certifying class of all non-exempt employees and appointing Protection Law Group, LLP as class counsel);
- *Morera v. Continental Assets Mgmt*., BC502003 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Fong et al. v. Regis Corporation*, 3:13-cv-13-04497-VC (United States District Court, Northern District of California, wage and hour class action settlement and appointment Protection Law Group, LLP as class counsel in settlement);
- *Espinoza v. Financial Partners Credit Union*, BC502165 (Los Angeles Superior Court wage and hour Class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Kesheshian, et al v. S. Cal. Logistics*, BC557981 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Sampson v. 24 HR Homecare LLC*, BC586019 (Los Angeles County Superior Court wage and hour class action);
- *Glenn v. Decron Properties Corp.*, BC578035 (Los Angeles Superior Court wage and

hour class action appointing Protection Law Group, LLP as class counsel in settlement);

- *Torres v. Auto Rescue et al.*, RIC1509900 (Riverside County Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Kashanian v. Plus Labs, Inc.*, 2016-1-CV-294231 (Santa Clara County Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Cadena v. Tetra Property Management*, 257425 (Tulare County Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Drayton v. Hollywood Park Casino*, BC593935 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Khan v. FPI Management, Inc.*, JCCP4819 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Byrd v. Masonite Corp.*, 5:16-cv-00035-JGBKK (United States District Court, Central District of California appointing Protection Law Group, LLP as class counsel in settlement);
- *Hadrick v. Woodmont Real Estate Serv., et al.*, CIV530405 (San Mateo County Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Utterbach v. Daylight Transport, LLC et al.,* BC600994 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Eiden v. Olive & June*, BC654685 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);

- *Lemus v. Slater Inc.*, CIVDS1703633 (San Bernardino Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Deluna v. Amerit Fleet Solutions et al.*, CIVDS1721564 (San Bernardino Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Stone v. Universal Protection Services*, AAA Case No. 01-15-0002-7497 (American Arbitration Association wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement on behalf of class of 75,000+ putative class members);
- *Commick v. Prometheus Real Estate Group*, CIV531264 (San Mateo Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Martinez v. AMRO Fabricating Corp.*, BC681938 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Ramirez v. Western National Properties*, BC639319 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Hernandez v. Access Dental Plan et. al*, 34-2017-00220944 (Sacramento Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Fernandez v. Sumitomo Rubber North America, Inc.*, CIVDS1803211 (San Bernardino Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Gomez v. Fairway Staffing Services, Inc.*, BC689771 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Fuentes v. Communications Test Design, Inc.*, CIVDS1802427 (San Bernardino

Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);

- *Hartline v. Senior Operations, LLC*, BC697665 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Carrozzella v. Basalite Concrete Products, LLC*, 34-2014-00220214 (Sacramento Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Howey v. Battery Systems, Inc.*, 2026114 (Stanislaus Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Correa v. Cashbak, LLC*, BC723845 (Los Angeles Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Lemus v. Cass Construction*, 37-2017-00028180 (San Diego Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Sales v. J.S. International Shipping Corp.*, 18CIV05048 (San Mateo Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- *Aparicio v. Advantage Painting,* CIVDS2013809 (San Bernardino County Superior Court approving PAGA Settlement);
- *Rodriguez v. TheRealReal, Inc.,* CGC-19-574661 (San Francisco County Superior Court approving PAGA Settlement);
- *Parm v. Think Together,* CIVDS1823659 (San Bernardino County Superior Court approving PAGA Settlement);
- *Casey-Neith v. Pacific Union Financial,* 30-2018-01014980 (Orange County Superior Court approving PAGA Settlement);
- *Wallace v. Alvarado Restaurant Group, LLC,* 20STCV26260 (Los Angeles County Superior Court approving PAGA Settlement);

- *Adams v. West Marine Products, Inc.,* 19CIV00436 (San Mateo Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement); and
- *Coronel, et al. v. CMH Manufacturing, Inc., et al.,* RIC2003070 (Riverside County Superior Court approving PAGA Settlement).

10. I am fully familiar with the legal and factual issues in this case, and have specific experience litigating complex wage and hour actions as class actions, including employment cases as set forth above.

11. Including myself, Protection Law Group includes nine attorneys, all of whom actively and continuously represent plaintiffs in employment class actions and representative actions, in Superior Courts throughout the State of California, in the Court of Appeal, and in various Federal courts. Because of the unique history and nature of our practice, all of the attorneys at Protection Law Group have a high level of knowledge and experience in labor and employment law. Besides myself, the following attorneys at Protection Law Group expended significant time in connection with this Action:

a. Amir Nayebdadash – Founding Partner of Protection Law Group, LLP. Mr. Nayebdadash received his Bachelor of Arts degree from University of California, Los Angeles and a Juris Doctor degree from Pepperdine University School of Law. He was admitted to practice law in California in November of 2004, and has been admitted to practice in all federal district courts in the State of California. Prior to founding Protection Law Group, LLP, Mr. Nayebdadash worked at Littler Mendelson, P.C., the largest labor and employment law firm in the United States. In 2013, Mr. Nayebdadash and I founded Protection Law Group LLP. Since the inception of Protection of Law Group, LLP, Mr. Nayebdadash has focused his practice on the representation of employees against employers in California. Mr. Nayebdadash has extensive experience in all aspects of employment litigation, with a focus on wage and hour class and representative action, including, but not limited to taking and defending depositions, briefing and arguing motions, preparing for class certification, negotiating complex wage and hour settlements, trial and appeal.

b. Susan R. Huerta – (Former) Senior Associate at Protection Law Group, LLP. Ms. Huerta's hourly rate of $750 per hour is supported by her previous approval history and years of Plaintiff's employment experience. Ms. Huerta graduated from California State University, Northridge in 2003 with a Bachelor of Science in Business Law and Finance. She graduated from Southwestern Law School in 2007 with a Juris Doctor degree and has been licensed to practice law before all state courts in the State of California since June 2008, before the Central and Northern Districts of California, and the Ninth Circuit Court of Appeals. Ms. Huerta's 16-year experience consists primarily of plaintiff's employment matters, namely wage and hour, including wage and hours class actions, Fair Employment and Housing Act, Title VII, ADA, ADEA, CFRA, and FMLA matters, wrongful termination, negligent hiring and supervision, civil rights, Unruh Act, Ralph Act, Bane Act, harassment, sexual assaults, battery, gender violence, use of force, police brutality, and child pornography. Ms. Huerta has extensive experience in briefing and arguing motions, managing discovery and depositions, trial preparation and trial, preparing for class certification, drafting mediation briefs and mediating cases, complex settlements, and employment appeals.

c. Brendan Burton – Senior Associate at Protection Law Group, LLP. Mr. Burton received his Bachelors of Arts degree from the University of San Diego and a Juris Doctor degree from California Western School of Law. Mr. Burton was admitted to practice in California in December 2018 and is admitted to practice law in the Central District of California. Prior to joining Protection Law Group, LLP, Mr. Burton's practice focused on recovering damages for injured victims. Since joining Protection Law Group, LLP, Mr. Burton's practice has focused solely on the representation of employee plaintiffs in complex wage and hour class and representative actions. Mr. Burton has extensive experience briefing and arguing motions, and managing written discovery.

d. Shadi Sahebghalam – Associate Attorney at Protection Law Group, LLP. Ms. Sahebghalam received her Bachelor of Liberal Arts degree from University of California, Los Angeles and a Juris Doctor degree from Pacific Coast University, School of Law. Ms. Sahebghalam was admitted to practice in California in April 2022 and is admitted to practice law in Eastern and Southern Districts of California Federal Courts. Prior to joining Protection Law Group, LLP, Ms. Sahebghalam's practice focused on representing plaintiffs in individual employment discrimination cases and wage and hour disputes in state and federal court as well as arbitration. After joining Protection Law Group, LLP, Ms. Sahebghalam's practice has focused solely on the representation of employee plaintiffs in complex wage and hour class and representative actions.

12. The Settlement presented here only resulted after having engaged in extensive formal and informal discovery and investigation and is the product of hard-fought litigation and extensive arms' length negotiations. In my opinion as an experienced class counsel, the Settlement is fair, reasonable, adequate, and in the best interests of the Class, PAGA Members, and State of California.

PROCEDURAL AND FACTUAL BACKGROUND

13. Defendants SDP, College Works ISM, Inc., College Works Painting, Inc., CWPNC, Inc., Empaus, Inc., EMPCC, Inc., EMPFL, LLC, EMPIE, Inc. dba Empire Works Reconstruction and Painting Empire, Inc., EMPJAX, LLC, EMPNC, Inc., EMPPBI, LLC, EMPSD, Inc., MJP Empire, Inc., and National Services Group, Inc. (collectively, "Defendants") are a large commercial painting and decorating conglomerate. Plaintiff was employed by Defendants as a Painter from approximately May 2020 to approximately August 2020.

14. On February 9, 2021, Plaintiff served his Letter providing notice to Defendants and the California Labor and Workforce Development Agency ("LWDA") of the alleged wage and hour violations and his intent to seek civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA").

15. On February 16, 2021, Plaintiff filed a class action complaint with the Orange County Superior Court, Case No. 30-2021-01184079-CU-OE-CXC, against Defendants, alleging the following causes of action: (1) failed to pay overtime wages; (2) failed to provide meal periods and pay meal period premiums; (3) failed to provide rest periods and pay rest period premiums; (4) Failed to pay minimum wages; (5) failed to timely pay wages during employment; (6) failed to pay all wages upon termination of employment; (7) failed to provide accurate itemized wage statements; (8) failed to reimburse necessary business expenses; and (9) violated California Business and Professions Code § 17200. Plaintiff seeks to represent a class of current and former non-exempt employees employed by Defendants in California for, *inter alia*, alleged violations of the California Labor Code and the California Business and Professions Code §17200, *et seq*.

16. After having exhausted Plaintiff's administrative remedies pursuant to Labor Code § 2699.3, and more than sixty-five (65) days having lapsed since the mailing of Plaintiff's notice, and the LWDA not having indicated that it intended to investigate the violations discussed in the notice, on April 16, 2021, pursuant to the Private Attorneys General Act of 2004, California Labor Code 2698, *et seq.*, my office filed Plaintiff's First Amended Complaint ("FAC"), adding one cause of action under PAGA.

17. On May 18, 2021, Defendants filed their Answer to Plaintiff's FAC.

18. On June 2, 2021, Plaintiff propounded (i) Form Interrogatories – General, Set One, (ii) Special Interrogatories, Set One, (iii) Requests for Production of Documents, Set One, and (iv) Notice of Deposition of Defendants' Person(s) Most Qualified ("PMQ"). My office served extensive discovery and exhaustively met and conferred with Defendants regarding the propounded written discovery. Because of my office's extensive efforts, Defendants responded and provided supplemental responses to interrogatories and produced various documents for the putative class/aggrieved employees.

19. After meeting and conferring, Plaintiff was informed of the identity of necessary parties to the Action, namely EMPSD, INC., EMPCC, INC.; COLLEGE WORKS ISM, INC.; COLLEGE WORKS PAINTING, INC.; CWPNC, INC.; EMPAUS, INC.; EMPJAX, LLC; EMPNC, INC.; EMPPBI, LLC; MJP EMPIRE, INC.; EMPIE, INC.; EMPFL, LLC; NATIONAL

SERVICES GROUP, INC.; and EMPIE, INC. d.b.a. EMPIRE WORKS RECONSTRUCTION AND PAINTING. On September 9, 2021, Plaintiff served his Amended Letter providing notice to the LWDA and new Defendants. Attached as **Exhibit 1** is a true and correct copy of Plaintiff's Amended PAGA Letter.

20. On January 28, 2022, the Parties filed a Joint Stipulation re: Filing of Second Amended Complaint ("SAC").

21. On January 31, 2022, Plaintiff filed his SAC, adding the new Defendants to the Action.

22. Additionally, after extensively meeting and conferring with Defendants' counsel on discovery issues, in or about June 2022, the Parties met and conferred and agreed to attend private mediation and continue their formal discovery discussions and their respective motions to compel discovery, if any, until a date after mediation. The Parties agreed to exchange informal discovery and attend private mediation in the Action with the Hon. Jay C. Gandhi, a mediator with substantial experience handling wage and hour matters, to be held on September 30, 2022.

23. In advance of the September 30, 2022 Mediation, Defendants provided Plaintiff with extensive informal discovery including all relevant policies and handbooks in place during the Class Period, which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation; Plaintiff's personnel file; time and payroll data for all putative class members; and figures and information regarding the class size and composition. With this data for the Class, Class Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendants' potential violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, potential unpaid and rest period premiums, rounding, overtime and premium payments, etc. This discovery and investigation allowed Class Counsel to perform a comprehensive damages analysis and estimate Defendants' potential liability.

24. After extensive review of these documents and investigations, on September 30, 2022, the Parties attended a full day mediation. At the mediation, the Parties engaged in intensive

settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. Unfortunately, the Parties were not able to reach an agreement with the help of the mediator.

25. Following mediation, Defendants informed Plaintiff of their intent to file a Motion to Compel Arbitration. However, after meeting and conferring, the Parties decided to stay the Action pending the outcome of critical Supreme Court and California Supreme Court precedent.

26. On October 28, 2022, the Parties stipulated to stay the Action until April 26, 2023, to allow the Courts determine the outcome of the Supreme Court's decisions in *Viking River Cruises, Inc. v. Moriana,* 142 S. Ct. 1906, and the California Supreme Court's decision in *Adolph v. Uber,* Supreme Court Case No. S274671.

27. On April 25, 2023, the Parties again stipulated to stay the Action until September 26, 2023, with Defendants reserving their right to file a Motion to Compel Arbitration after the stay is lifted.

28. Following the *Viking River Cruises* and *Adolph* decisions in 2023, the Parties extensively met and conferred on the impact of these decisions on the instant Action, and agreed to attend a second mediation and stay the Action. On October 24, 2023, the Parties stipulated to stay the Action until November 23, 2023.

29. On March 1, 2024, the Parties filed a Joint Stipulation regarding Discovery and mediation, and agreed to attempt to settle the Action through a second private mediation with Jeff Ross, Esq., a mediator with substantial experience handling wage and hour matters, to be held on May 15, 2024.

30. In advance of the May 15, 2024, Mediation, Defendants provided Plaintiff with extensive updated informal discovery including all relevant policies and handbooks in place during the Class Period, which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation; Plaintiff's personnel file; time and payroll data for all putative class members; and figures and information regarding the class size and composition. With this data for the Class, Class Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendants' potential

violations, liability, and exposure, including, and not limited to, analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, potential unpaid and rest period premiums, rounding, overtime and premium payments, etc. This discovery and investigation allowed Class Counsel to perform a comprehensive damages analysis and estimate Defendants' potential liability.

31. After extensive review of these documents and investigations, on May 15, 2024, the Parties attended a full day mediation. At the mediation, the Parties engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. However, after a full-day of mediation, the Parties were very close, but again unable to come to an agreement. The Parties agreed to continue negotiations while pushing the Action forward.

32. On July 26, 2024, Defendants filed their Notice of Motion and Motion to Compel Arbitration, Strike Putative Class Claims, and Stay Proceedings, which was set for December 6, 2024, at 10:00 a.m.

33. On October 14, 2024, after meeting and conferring extensively, the Parties stipulated to continue the briefing schedule and hearing date on Defendants' Motion to Compel Arbitration to December 13, 2024, to allow the Parties time to further meet and confer regarding settlement.

34. On December 2, 2024, Plaintiff filed his Opposition to Defendants' Motion to Compel Arbitration.

35. On December 5, 2024, the Parties stipulated once more to extend the briefing of Defendants' Reply brief, as well as the hearing date on Defendants' Motion to Compel Arbitration, to February 12, 2025.

36. On December 11, 2024, after extensive meeting and conferring, the Parties reached an agreement to settle this matter.

37. The Parties worked diligently to negotiate and memorialize the terms of a long form settlement agreement. On January 30, 2025, after extensive discussions and multiple revisions to the agreement, the Parties entered into a fully executed Joint Stipulation of Class Action and PAGA

Settlement. Attached hereto as **Exhibit 2** is a true and correct copy of the Parties' Joint Stipulation of Class Action and Release (hereinafter "Settlement Agreement" or "Settlement"). A true and correct copy of the proposed Class Settlement Notice, Request for Exclusion Form, and Objection Form are attached to the Settlement Agreement as **Exhibits A-C**.

38. Pursuant to California Labor Code § 2699(l)(2), a copy of the proposed Class Action and PAGA Settlement Agreement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the LWDA via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on February 18, 2025.

39. Now, following substantial investigation and extensive settlement negotiations, Plaintiff moves for a preliminary approval of this Settlement and has provided notice of the proposed settlement to the LWDA.

SUMMARY OF THE TERMS OF SETTLEMENT

40. Plaintiff seeks preliminary approval of the proposed Class Action and PAGA Settlement Agreement, attached hereto as **Exhibit 2**.

41. Plaintiff seeks to provisionally certify the following class for settlement purposes: all current and former hourly-paid, non-exempt employees employed by Defendants withing the State of California at anytime between February 16, 2017, through the date the Court grants preliminary approval of settlement. *See* Settlement Agreement ¶¶3, 7. The Class Period and release of claims covers the time period from February 16, 2017, through the date Court grants preliminary approval. *See* Settlement Agreement ¶¶3, 7, 28, 67.

42. The Parties have agreed that PAGA Members shall be defined as: all current and former hourly-paid, non-exempt employees of Defendants who were employed by Defendants in the State of California at any time from February 9, 2020, through the date the Court grants preliminary approval of settlement. *See* Settlement Agreement ¶¶20, 22. The PAGA Period and release of PAGA claims covers the time period from February 9, 2020, and ending on the date the Court grants preliminary approval. *See* Settlement Agreement ¶¶20, 22, 29, 68.

43. According to information provided to Class Counsel by Defendants' Counsel, there

are 2,627 Class Members and 1,250 PAGA Members.

44. Defendants shall fund the Gross Settlement Amount in two installments: (i) the first installment of $1,000,000.00 shall be paid on October 30, 2025, ("First Installment"), and (ii) the second installment of $1,000,000.00 shall be paid on November 3, 2025 ("Second Installment"). The Gross Settlement Amount shall include all applicable employer-side payroll taxes following Final Approval by the Court and the Effective Date, and at s which time such Order becomes final and is no longer appealable. The following will be paid out of the Gross Settlement Amount: the sum of the Individual Settlement Payments, the Class Representative Incentive Payment, Class Counsel's Fees and Costs, the PAGA Penalties, and the s Settlement Administration Costs, as specified in this Agreement. Except for any employer-side taxes due on the Individual Settlement Payments, or as a result of an increase in the number of Workweeks set forth below, Defendants shall not be required to pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will revert to Defendant. Settlement Agreement ¶40.

45. Subject to Court approval, the Parties have agreed to settle the Class and PAGA claims at issue for a non-reversionary Gross Settlement Amount of $2,000,000.00, exclusive of any employer-side payroll taxes. Settlement Agreement ¶¶14, 40, 41, 47.

46. The Gross Settlement Amount will initially be allocated as follows:

a. Class Counsel’s Fees in the amount of thirty-five percent (35%) of the Gross Settlement Amount, amounting to $700,000.00.

b. Class Counsel’s Costs, not to exceed $35,000.00.

c. Settlement Administration Costs for services performed by the Settlement Administrator, ILYM Group, Inc., not to exceed $20,000.00.

d. Class Representative Enhancement Payment to named Plaintiff in the amount of $10,000.00.

e. PAGA Payment of $100,000.00, including the distribution of $75,000.00 to the LWDA, which constitutes 75% of the settlement amount allocated to PAGA claims, and $25,000.00 of which will be distributed to PAGA

Members.

Settlement Agreement ¶¶5, 9, 14, 21, 35, 43-47.

47. After deducting these amounts, the Net Settlement Amount of approximately $1,135,000.00 shall be distributed to the Participating Class Members. The Net Settlement Amount will be distributed and paid to Participating Class Members on a *pro-rata* basis based on the number of weeks worked during the Class Period. Settlement Agreement ¶¶16, 47-48.

48. In addition, as stated above, PAGA Members shall receive a *pro-rata* share of the 25% portion of the PAGA Payment allocated for aggrieved employees. Settlement Agreement ¶47(c).

49. The payment to each Class Member will vary based on the number of Workweeks the Class Member worked, and whether they are entitled to a share of the PAGA Payment, but will provide an average estimated payment of $432.05 ($1,135,000.00 divided by 2,627 Class Members).

50. PAGA Members shall receive their portion of the PAGA Payment regardless of their decision to opt-out of the Class Settlement. Settlement Agreement ¶¶46, 48(c).

51. Each Class Member's settlement allocation will be allocated between wage and nonwage payments as follows: twenty percent (20%) wages, forty percent (40%) as interest, and forty percent (40%) as penalties. Settlement Agreement ¶¶15, 48(c).

52. Employer-side payroll taxes shall be paid by Defendants separately from and in addition to the Gross Settlement Amount. Settlement Agreement ¶¶14, 67.

53. The proposed Settlement Agreement is a non-reversionary and non-claims made settlement. All money from the Net Settlement Amount will be distributed to the Class Members. No money from the Settlement will revert to Defendants. Settlement Agreement ¶¶14, 40.

54. Any checks issued by the Settlement Administrator to Participating Class Members and PAGA Members will be negotiable for at least one hundred eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his or her Settlement Check or PAGA payment check within one hundred eighty (180) days, the uncashed funds, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant

to the Unclaimed Property Law, California Civil Code§ 1500, *et. seq.* for the benefit of those Participating Class Members and PAGA Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members and PAGA Members, whether or not they all cash their Settlement Checks or PAGA payment checks. Therefore, Defendant will not be required to pay any interest on such amounts. The Individual Settlement Payments provided to Participating Class Members and to PAGA Members shall prominently state the expiration date or a statement that the Settlement Check will expire in one hundred eighty (180) days, or alternatively, such a statement may be made in a letter accompanying the Individual Settlement Payment. Expired Individual Settlement Payments will not be reissued, except for good cause and as mutually agreed by the Parties in writing. The Parties agree no unclaimed funds will result from the Settlement, and therefore Defendants will not be required to pay any interest on such amounts. Settlement Agreement ¶62.

55. This proposed Settlement resolves all of the Participating Class Members' claims against Defendants SDP, College Works ISM, Inc., College Works Painting, Inc., CWPNC, Inc., Empaus, Inc., EMPCC, Inc., EMPFL, LLC, EMPIE, Inc. dba Empire Works Reconstruction and Painting Empire, Inc., EMPJAX, LLC, EMPNC, Inc., EMPPBI, LLC, EMPSD, Inc., MJP Empire, Inc., and National Services Group, Inc., and any and all of their past, present and future direct or indirect parents, sister or related entities, expressly including acquired companies, subsidiaries, predecessors, successors and affiliates as well as each of its or their past, present and future owners, officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, heir, representatives, accountants, auditors, consultants, and any individual or entity which could be jointly liable with Defendants (the "Released Parties") as to the facts alleged in Plaintiff Hector Martinez's February 9, 2021, Letter to the LWDA, or the operative Second Amended Complaint ("SAC") and any and all claims and remedies asserted or that could have been asserted in the actions arising out of the factual allegations in the in the operative SAC during the Class Period, including but not limited to statutory, constitutional, tort, common law,

and/or contract claims and associated relief related to the alleged failure to pay contractual/agreed upon and/or minimum wages for all hours worked or split shift pay, failure to properly calculate the regular rate of pay and/or to pay overtime compensation for overtime hours worked, failure to provide meal and/or rest break premium compensation and/or properly calculate the regular rate for such payments, failure to timely pay all wages owed (including but not limited to accrued vacation wages) on termination of employment, failure to reimburse business expenses (including but not limited to expenses for alleged uniforms and/or equipment purchases and/or maintenance, personal device usage, personal vehicle usage), failure to provide accurate itemized wage statements, failure to keep accurate records of hours worked, and failure to timely pay all wages owed during employment. This release includes all such claims arising under Labor Code §§ 200-204, 206, 206.5, 210, 212, 215, 216, 218, 218.5, 218.6, 221-225, 225.5, 226, 226.2, 226.3, 226.6, 226.7, 227.3, 229, 238.5, 245-249, 256, 432.5, 432.6, 510-512, 514, 558, 558.1, 1174, 1174.5, 1175, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1199.5, 1421, 1434, 2698 et seq., 2800, 2802, 2810, 2810.3, and Business & Professions Code §§ 17200 *et seq*., California Code of Regulations Title 8, § 11000 *et seq*., Industrial Welfare Commission Wage Order 5, the Industrial Welfare Commission's Minimum Wage Order, and all other state and local wage/hour and wage payment laws, including wage orders, and common law theories (the "Released Claims"). Settlement Agreement ¶¶28-30, 67.

56. The proposed Settlement also resolves all PAGA Members' claims that are asserted in the Operative SAC or could have been asserted under the California Labor Code Private Attorneys General Act of 2004 based on the legal and factual allegations contained in Plaintiff's February 9, 2021, Letter to the LWDA, for the PAGA Period. Settlement Agreement ¶68.

THE SETTLEMENT IS REASONABLE

Method of Distribution

57. The proposed settlement is based on the number of Workweeks worked by each Class Member. This method is commonly used in wage and hour class actions because it relies upon objective evidence of the total days of employment, which Class Members can easily review and confirm for themselves. This information is readily available from Defendants' records, and

the Settlement Administrator can apply the formula in a fair and transparent manner.

58. Additionally, this method of distribution is commonly used in wage and hour class actions because it allows for a distribution that corresponds closely to the alleged damages since employees experience the same working conditions, so their damages are directly related to the amount of time they were employed.

59. The effectiveness of Class Counsel in prosecuting this case has translated into monetary benefits for the Class, PAGA Members, and State of California in the following respects: (1) the Class, PAGA Members, and State of California will recover over a reasonably short period of time as opposed to waiting additional years for the same, or possibly, a worse, result; (2) a guaranteed result that compares favorably with other similar class action settlements of this type, (3) significant savings in Class Counsel's fees and costs which would have only increased significantly had the case progressed through trial, appeals, and continued litigation.

Discovery and Informed Arms-Length Negotiations

60. Settlement was reached in this matter only after engaging in formal and informal discovery and investigations. Prior to both mediations, Defendants informally produced updated time and payroll records for all Class Members, written policies including the employee handbooks in effect during the Class Period, stand-alone wage and hour policies, and other relevant documents. Defendants also provided information regarding the number of putative class members, the number of current versus former employees, the total workweeks and pay periods worked by the Class; and the Class Members' average rate of pay. With the time and pay records, Class Counsel and our retained expert were able to perform a comprehensive damage analysis and estimate Defendants' potential violations, liability, and exposure, including, and not limited to analyzing time and pay data, considering potential meal period violations, potential rest period violations, potential synthetic meal period recordings, rounding, overtime and premium payments, etc. The Parties extensively briefed issues regarding class certification and liability and provided their analyses to the mediators for their consideration. The Parties also met and conferred extensively regarding the mediators' findings.

61. Thereafter, the Parties engaged in two full days of mediation with separate

mediators, Jeff Ross, Esq., and the Hon. Jay C. Gandhi, both highly-respected mediators with substantial experience mediating wage and hour class actions, during which the Parties engaged in extensive settlement negotiations. The settlement negotiations were at arm's length and, although conducted in a professional manner, were quite adversarial. Defendants at all times maintained that they had complied with California wage and hour laws. Likewise, if this matter had not been resolved, Plaintiff was willing and prepared to vigorously litigate this dispute. The proposed settlement was reached at the end of a process that was neither fraudulent nor collusive and was reached only after a full day of mediation that allowed the Parties to reach a compromise of the hotly disputed claims with the help of the mediator.

Estimate of Potential Value

62. Class Counsel analyzed all available data and estimated Defendants' maximum potential exposure at approximately $29,881,928.43 assuming the litigation was successful at trial on the principal claims at issue, and then reduced this exposure analysis based on the likelihood of obtaining class certification, prevailing at trial, and other attendant risks. This amount is based on the total estimated maximum liability for all the workweeks at the time of mediation. At mediation, there were approximately 169,000 workweeks at issue. Based on the average rate of pay during the Class Period of $20.89 and finding a presumptive meal period violation rate of 75%, Class Counsel estimated the total meal break damages owed at $7,356,950.80. Rest breaks were unrecorded, and were thus difficult to gauge. However, based on the same types of practices that were leading to employees missing meal breaks, or receiving short and late meal periods, coupled with synthetic handwritten records, Class Counsel estimated there was at least a 75% violation rate with respect to rest periods, which resulted in approximately $8,978,572.80 in potential damages. Plaintiff's claims for overtime and minimum wage were based on off-the-clock work performed including off-the-clock work as a result of Defendants' meal period practices. Based on these practices Class Counsel estimated that Defendants owed the Class approximately $1,795,428.03 in unpaid wages. Waiting time penalties amounted to $8,212,276.80. Penalties for inaccurate wage statements amounted to $3,538,700.00, and Plaintiff estimated there was approximately $85,000.00 in unreimbursed business expenses. Finally, Class Counsel estimated non-duplicative

penalties arising under PAGA, including violations of Labor Code §§ 204 and 1174(d) could amount to as much as $27,725,204.00. However, during the mediation, Defendants raised several issues which impacted the risks attendant with the continued litigation of these claims.

63. Class Counsel did not separately value Plaintiff's claim for violation of California Business and Professions Code §17200. California Business and Professions Code §17200 extends the statute of limitations on Plaintiff's other allegations, which qualify as unfair business practices, to four (4) years and Plaintiff has incorporated this expanded statute of limitations in considering the potential damages associated with Plaintiff's other claims. Plaintiff did not separately value the injunctive relief associated with this claim or potential equitable relief that was more directly sought through other claims.

Analysis of Specific Claims and Risks Considered

64. Although the investigation and information discovered supports Plaintiff's contentions, the strengths of these claims varied and Defendants raised potential defenses and other circumstances that impacted the risk of proceeding on a class-wide basis. Defendants proffered defenses to both certification and the merits of Plaintiff's claims. Defendants contended that Plaintiff's claims are not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. As with all class actions, these complex cases raise difficult management and proof issues and, accordingly, there is a significant risk that the Court may deny class certification.

Meal Period Analysis

65. A large portion of Defendants' estimated liability lies in Plaintiff's meal period claims. Plaintiff's theory of liability was based upon Defendants' failure to provide timely, full, and/or uninterrupted meal periods. Plaintiff contended that Defendants' practices throughout the Class Period were unlawful, required employees to perform work during their meal periods and interfered with employees' rights to take meal breaks where they were completely relieved of their duties. Plaintiff contended that Defendants failed to pay meal period premiums for missed, late, short, or interrupted meal periods that arose as a result of these practices. Based on a review and analysis of the time and payroll data, my office found a meal period violation rate of approximately

75%. Accordingly, based upon information regarding the Class workweeks and average rate of pay, Class Counsel estimated potential meal period damages of $7,356,950.80.

66. However, meal period claims have been increasingly difficult to certify in recent years and Defendants argued that their meal period policies and practices throughout the Class Period were lawful. Defendants contended that to the extent that putative Class Members failed to take their meal periods or took a short or late meal period, they did so voluntarily. As such, Defendants contended the records that indicated non-compliant meal periods had been waived. Defendants argued that investigation into these meal periods would raise multiple individual issues that would pose challenges to certification, including and whether meal periods were non-compliant, why they were non-compliant, and whether they had been waived. Defendants contended that these highly individualized questions of fact would prevent class certification.

67. While Class Counsel disagreed with Defendants' arguments and factual contentions, Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, costs and expenses of further litigation and certification, and risks to recovery, associated with this claim. Accordingly, Plaintiff applied a 80% discount for risks associated with certification of this claim and a 80% discount associated with the risks of succeeding on the merits, establishing liability, and proving damages, leaving a resulting value of $294,278.03.

Rest Period Analysis

68. Similarly, Plaintiff would likely face difficulties proving the alleged rest period violations, as Defendants were not required to record these breaks. Plaintiff contended that Defendants failed to provide Class Members with timely, full, and uninterrupted rest periods and also failed to implement a compliant rest period policy during the class period. Plaintiff believed that Defendants' written policy requiring employees remain on premises during their rest breaks was unlawful and violated California law. Plaintiff estimated that putative class members received a non-compliant a rest period at least 75% of the time throughout the Class Period and estimated damages of approximately $8,978,572.80.

69. In contrast, Defendants argued that their written policies were lawful and that all employees were provided an opportunity to take a rest period for every four hours worked or major

fraction thereof. Defendants argued that whether employees had received a compliant rest period, the reasons why a putative class member failed to receive a compliant rest period, and whether such rest period was waived raised individual issues that could not be certified and that even if such a claim could be certified, Plaintiff would be unable to adequately prove the alleged damages given the lack of records.

70. Litigating rest period claims is inherently difficult as an employer's records, as is the case here, do not usually indicate when a rest period is short, late, interrupted or missed entirely. While Class Counsel disagree with Defendants' arguments and factual contentions, there were significant risks associated with this claim. Accordingly, a discount of 80% was applied to account for the risks associated with obtaining and maintaining certification and a discount of 80% was applied to account for the risks associated with succeeding on the merits, establishing liability, proving the extent of damages and ultimately obtaining this award. This resulted in a risk-based estimate of approximately $359,142.91.

Unpaid Wages - Minimum Wage and Overtime Claims

71. Plaintiff alleges that Defendants failed to pay putative Class Members overtime and minimum wages as a result of uniform policies, practices, and procedures, that required putative class members to perform work during meal periods and before clocking-in and after clocking-out in order to complete heavy workloads. This off-the-clock work was work for which Plaintiff alleges she and other putative class members failed to receive payment at all and additionally regularly caused Plaintiff and other putative class members to work more than eight hours in a day or 40 hours a week thereby incurring additional overtime compensation. Plaintiff estimated as a result of these violations, Class Members incurred at least 30 minutes (0.5/hour) of unpaid wages combination of unpaid straight time as well as the additional overtime premium) per week amounting to $1,795,428.03 in damages. This estimated 30 minutes of off-the-clock work/overtime for each workweek includes Plaintiff's estimate of $1,184,982.50 in unpaid wages and $610,445.53 in unpaid overtime premiums.

72. Defendants contended that their overtime policies and practices comply with the law and that they paid putative class members over the minimum wage for all hours worked.

Defendants also produced wage records reflecting overtime compensation paid to many of the putative class members. Defendants further contended that all employees were required to record all time worked and that Defendants were not aware that any work had been performed off-the-clock as the worksites shut down during non-working hours. Defendants also argued that individual liability issues predominate, including: (1) whether each employee worked off-the-clock; (2) whether Defendants knew or should have known about each employee's off-the-clock work; (3) whether each employee received non-discretionary bonuses and commissions; (4) whether each employee worked overtime; and (5) whether Defendants knew or should have known that each putative class member performed overtime work. Moreover, given that the bulk of these claims were based on off-the-clock work not reflected in Defendants' time records, Defendants argued that proving damages at trial would not be manageable.

73. Plaintiff disagrees with Defendants' contentions but acknowledges that claims regarding off-the-clock work involve substantial challenges in obtaining and maintaining class certification, establishing liability and providing damages, in light of potential individualized issues and the lack of records. Accordingly, Class Counsel discounted their initial valuation of this claim by 80% to account for risks regarding certification and 80% for the risks associated with succeeding on the merits, establishing liability, proving the extent of damages and ultimately obtaining this award. This resulted in a risk-based estimate of approximately $71,817.12 with respect to these claims.

Waiting Time Penalties

74. Plaintiff alleges that Defendants intentionally and willfully failed to pay Plaintiff and other putative class members all wages due to them upon termination, within the time period permissible under California law as a result of Defendants' failure to pay employees all wages due from off-the-clock work, as well as unpaid meal and rest period premiums. Based on the information provided by Defendants at mediation there were approximately 1,638 former employees within the three-year statute of limitations who Plaintiff believes were entitled to waiting time penalties of approximately $2,760.00 per class member or $8,212,276.80 total.

75. However, there were substantial risks associated with Plaintiff's waiting time penalties claims. First, these claims were derivative of Plaintiff's previous claims and if certification was denied on those underlying claims, these claims would also likely fail. Even if Plaintiff prevailed on his underlying off-the-clock claims, she would still be required to demonstrate that Defendants' violations of Labor Code § 203 were <u>willful</u> violations, a difficult prospect. Accordingly, Class Counsel discounted their initial valuation of this claim by 75% to account for risks regarding certification and 75% for the risks associated with succeeding on the merits, establishing liability, proving the extent of damages, and ultimately obtaining this award. This resulted in a risk-based estimate of approximately $513,267.30 with respect to these claims.

Wage Statement Claims

76. Plaintiff contended that throughout the Class Period there were derivative violations arising from the claims alleged above such that the wage statements failed to list the total number of hours worked, the actual gross wages earned, and the correct rates of pay. Based on these claims and assuming a violation could be proven once per pay period for each of the 1,250 employees employed during the 1-year time period employees were eligible for penalties, Plaintiff estimated potential penalties for wage statement violations of approximately $3,538,700.00.

77. Defendants contended that Plaintiff and putative class members suffered no actual injury from the alleged facial wage statement violations. Defendants also contended that derivative violations would rise or fall based on the prior claims and that it could not be demonstrated that these violations for items such as off-the-clock work were knowing and intentional. Wage statement claims have also seen varying treatment at the appellate level because such claims have an element of discretion attached to them rather than a pure calculation of damages after liability is proven. *Cf., Jaimez v. DAIOHS USA, Inc*., 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp*., 192 Cal.App.4th 1136 (2011). While Class Counsel does not agree with this assessment, in light of the risks raised by Defendants, Class Counsel discounted their initial valuation 80% for risks pertaining to certification and 80% for risks pertaining to the merits, establishing liability, proving the extent of damages, and obtaining this award. This resulted in a risk-based adjustment of $141,548.00 for this claim.

Business Expense Claims

78. Plaintiff contends that Defendants failed to reimburse Plaintiff and other putative class members for necessary business expenses such as the costs associated with the use of their personal cell phone, and costs for buying protective gear and tools for which they were never reimbursed. Defendants disputed that Plaintiff and any putative class member were required to incur these expenses. Defendants further contended that the reason for why a putative class member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses, while not others, would raise individual issues that could not be certified. Plaintiff estimated that if it could be established that employees were required to undertake these unreimbursed business expenses would amount to approximately $85,500.00. Plaintiff's Counsel then discounted this amount by 75% for issues relating to certification of this claim and 75% for issues pertaining to the merits, establishing liability, proving damages, and obtaining an award. This resulted in a risk-based adjustment of $5,343.75 for this claim.

PAGA Claims

79. Class Counsel also separately contemplated the risks of proceeding with the PAGA cause of action and potential liability Defendants could face from this cause of action.

80. As part of the valuation of the potential PAGA claims, Class Counsel included claims under Labor Code §§ 204 and 1174(d). My office did not assign independent value for Plaintiff's Claims arising under Labor Code § 204, Labor Code § 1174(d), or Violation of California Business and Professions Code § 17200 *et. seq*. Plaintiff's claims were violations of Labor Code § 204 and Labor Code § 1174(d) were included in my office's evaluation of Plaintiff's PAGA claims. Labor Code § 210 authorizes the recovery of penalties arising from violations of Labor Code § 204, but explicitly states that such penalties may be recovered either through section § 210 or PAGA, but not both. *See* Labor Code §210(c) (permitting recovery of penalties through section 210 or PAGA but prohibiting duplicative recovery). Penalties under 1174(d) may arguably only be recovered by the Labor Commissioner, *see Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal.App.4th 365, 383 (2005), and accordingly my office included this recovery when evaluating Plaintiff's PAGA claims, but again would not appear to be entitled to a duplicative

recovery even if Plaintiff successfully persuaded the Court that an independent right to such recovery exists.

81. The Parties agreed during settlement negotiations to allocate $100,000.00 of the Settlement towards the PAGA claims, which represents 5% of the Gross Settlement Amount. This percentage of the settlement is well above the range of PAGA settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. Settlements that allocate only 1% of the total settlement value to resolve PAGA claims is typical of wage and hour settlements and PAGA amounts as little as 0.27% of the Gross Settlement Amount have been approved as reasonable by courts. *See, e.g.*,

- *Davis v. Brown Shoe Co*., 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of $5,000 in a $1.5 million class settlement);
- *Zamora v. Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) ($7,500 payment to LWDA for PAGA on a $1.5 million class settlement);
- *Lusby v. Gamestop Inc*., 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (PAGA Payment of $5,000 in a $500,000 class settlement);
- *Cruz v. Sky Chefs, Inc.*, 2014 U.S. Dist. Lexis 17693 (N.D. Cal. 2014) (approving payment of $10,000 to the LWDA for PAGA out of $1,750,000 class settlement);
- *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA payment of $7,500 to the LWDA out of $6.9 million common-fund settlement);
- *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) ($100,000 allotted as PAGA penalties or 0.48% of $21,000,000 settlement amount);
- *East v. Comprehensive Educational Services Inc.*, Case No. 11-CECG-04226 (2015) ($10,000 allotted as PAGA penalties or 0.13% of $7,595,846 settlement amount);
- *Bararsani v. Coldwell Banker Residential Brokerage Company*, Case No. BC495767 (2016) ($10,000 allotted as PAGA penalties or 0.22% of $4,500,000 settlement amount);
- *Rico v. Cardinal Health 200 Inc.*, No. CIVRS-14-01451 (2017) ($5,000 allotted as

PAGA penalties or 0.14% of $3,500,000 settlement amount);

- *Moppin v. Los Robles Medical Center*, No. 5:15CV01551 (C.D. Cal. 2017) ($15,000 allotted as PAGA penalties or 0.40% of $3,775,000 settlement amount);
- *Scott-George v. PVH Corporation. No.*, 2:13CV00441 (E.D. Cal. 2017) ($15,000 allotted as PAGA penalties or 0.46% of $3,250,000 settlement amount);
- *Hart v. Parkview Community Hospital Medical Center*, No. RIC-14-06044 (2016) ($10,000 allotted as PAGA penalties or 0.39% of $2,550,000 settlement amount);
- *Nehrlich v. RPM Mortgage Inc.*, No. 30-2013-00666783-CU-OE-CXC (2017) ($10,000 allotted as PAGA penalties or 0.40% of $2,500,000 settlement amount);
- *Kelley v. The Related Companies of California L.L.C.*, No. CIVDS-13-07167 (2016) ($10,000 allotted as PAGA penalties or 0.50% of $2,000,000 settlement amount); and
- *Castrejon v. O'Connell Landscape Maintenance Inc.*, No. RIC-12-12798 (2015) ($5,000 allotted as PAGA penalties or 0.33% of $1,500,000 settlement amount.

82. In allocating $100,000.00 to Plaintiff's PAGA claims, Class Counsel considered that PAGA penalties would be subject to the same defenses and risks as Plaintiff's class claims, as well as defenses unique to PAGA.

83. For instance, Defendants contended that penalties could not be stacked, that Plaintiff would be unable to obtain penalties for derivative labor code violations based on underlying wage violations.

84. Moreover, since Defendants denied and continued to deny that they ever violated any provision of the California Labor Code, Defendants would likely have argued, that, even if, *arguendo*, such violations occurred, heightened penalties should not apply because Defendants had not received notice from a labor agency or Court that they were violating the law. *See, e.g., Amaral v. Cintas Corp. No. 2*, 163 Cal.4th 1157, 1209 (2008).

85. Defendants also contended that when determining whether or not to assess a penalty, the court exercises the same discretion as the Labor Commissioner and may reduce the penalties to be assessed against the employer pursuant to California Labor Code section 2699(e)(1)-(2). As such, Defendants contended that, with respect to a PAGA claim, the Court was

unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be governed by multiple provisions of the California Labor Code that are interrelated and work in tandem.

86. Defendants also contended that adjudication of claims arising under PAGA would not be manageable and that the individualized inquiries Defendants argued would defeat certification of the alleged claims would also prevent Plaintiff from demonstrating that the PAGA claim could be successfully managed and adjudicated without abridging Defendants' due process rights.

87. Defendants maintained that, in addition to their strong arguments against the underlying claims, taking the current unsettled state of law, it would be unjust to award the maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials and/or assessment of penalties under the PAGA statute, and there is no clearly-established methodology for the valuation and/or assessment of PAGA penalties.

88. Based upon the violations alleged above Class Counsel estimated PAGA penalties in this matter could exceed $27,725,204.00. However, a discount of 75% was applied to account for the risks associated with establishing manageability, a discount of 75% was applied to account for the risks associated with succeeding on the merits, establishing liability, and proving the extent of penalties that are warranted, and a discount of 65% was applied in light of the unique risks to PAGA including the likely discretionary reduction of penalties by the Court given the circumstances of the Action and outside considerations. This brought the relative value of the PAGA claim to approximately $606,488.84.

General Considerations

89. For all claims and when considering the settlement generally, Class Counsel recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, contact Class Members and obtain numerous declarations at

great expense. Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendants would likely be able to obtain the cooperation of their employees. Moreover, even if Plaintiff prevails at class certification and trial, possible appeals would substantially delay any recovery by the Class.

90. Therefore, taking into account the strengths and weaknesses of each claim, the unique risks associated therewith, the general risks associated with litigating the case and the significant additional costs and expenses that would be incurred by both sides in litigating the Action through class certification, trial, and appeals, and the unique risks of this particular Action, resulted in an adjusted risk-based estimated liability of approximately $1,991,885.95. The slightly higher figure achieved on behalf of the Settlement Class is warranted not only because it benefits the Class, but it may address any conservative calculations that cannot be accounted for from off-the-clock work as this time was unrecorded.

91. Based on these factors, I therefore submit that the Settlement is fair, reasonable, and adequate. The Settlement is in the best interest of the Class Members, PAGA Members, and State of California and is within the accepted range of recoveries for this type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further litigation.

REQUESTED ENHANCEMENT PAYMENT

92. As part of the settlement agreement, Plaintiff is requesting a reasonable Enhancement Payment of $10,000.00. Settlement Agreement ¶¶9, 44, 47. This Enhancement Payment is imminently reasonable given the time and effort Plaintiff spent on this case, and the benefit to the other putative class members as a result of Plaintiff's actions. *See also* Declaration of Hector Martinez ("Martinez Decl.") ¶¶3-11, 13. Moreover, notice of the requested Class Representative Enhancement Payment is disclosed to the Class Members in the Class Notice and should be preliminarily approved by the Court. *See* Settlement Agreement, Ex. A.

ATTORNEYS' FEES AND COSTS

93. The attorneys' fees incurred by Class Counsel are in line with the common fund

requested. Class Counsel is seeking thirty-five percent (35%) of the Gross Settlement Amount or $700,000.00. Settlement Agreement ¶¶5, 43, 47. Class Counsel have achieved an excellent result for the Class during hard fought negotiations. Class Counsel have extensive experience in wage and hour disputes, and we were able to use our extensive experience and skills to achieve this result. The Motion for Final Approval will elaborate on the nature of the legal services provided, the time incurred in performing those services, and Class Counsel's hourly rates. The Motion for Final Approval will also elaborate on the reimbursement for costs sought by Class Counsel, which are estimated not to exceed $35,000.00. Settlement Agreement ¶¶5, 43, 47. Notice of Class Counsel's requested fees and costs are disclosed to the Class in the Notice. *See* Settlement Agreement, Ex. A.

THE METHOD OF NOTICE IS VERY LIKELY TO GIVE ACTUAL NOTICE

94. Subject to the Court's Approval, the Parties have agreed to having ILYM Group, Inc. administer the Settlement. The Parties do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. Settlement Agreement ¶34.

95. No later than twenty-one (21) calendar days after the Court grants preliminary approval of the Settlement, Defendants will provide the Class List and Tax Rate Information to the Settlement Administrator. Settlement Agreement ¶51. Defendants shall provide the Settlement Administrator with a Microsoft Excel spreadsheet containing the following information for each Class Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendants in the State of California; (6) total Workweeks during the Class Period; (7) total Workweeks during the PAGA Period; and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement. Settlement Agreement ¶54. Within fourteen (14) calendar days after receiving the Class List from Defendants, the Settlement Administrator will mail the Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. Settlement Agreement ¶52.

96. Prior to mailing, the Settlement Administrator will perform a search based on

the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved and will then perform a single re-mailing. If any Notice sent to a Class Member by the Settlement Administrator is returned as undeliverable to a current employee, then Defendants shall make all reasonable efforts to obtain the current s address from the Class Member and provide the same within seven (7) calendar days of notice from the Settlement Administrator. Those Class Members who receive a re-mailed Notice, whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark a Request for Exclusion, an Objection, or Workweek dispute to the Settlement. Settlement Agreement ¶53.

97. I am not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice.

OTHER PENDING ACTIONS

98. As the Court is aware, there is another similar Action that was only recently filed in the same courtroom, with the case of *Michael Maynor v. S D P, Inc.,* Orange County Superior Court, Case No. 30-2024-01423682-CU-OE-CXC. The settlement reached between Plaintiff Martinez and Defendants completely subsumes the class and PAGA claims alleged by Plaintiff Maynor.

99. I am not aware of any other currently pending individual, class or PAGA actions that would be affected by the proposed settlement.

INFORMATION TO BE SUPPLIED AT FINAL APPROVAL

100. At final approval, my office will submit billing records for Class Counsel’s fees and costs.

101. At final approval, my office will submit a declaration from the Settlement Administrator regarding the services it has performed, and costs associated therewith. The declaration from the Settlement Administrator shall also include the high, low, and average payments to the Class Members.

PROPOSED HEARING DATE FOR THE MOTION FOR FINAL APPROVAL

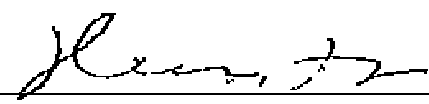
102. Should the Court preliminary approve the settlement at the hearing on June 6, 2025, Plaintiff proposes that the Hearing on Motion for Final Approval of Settlement be scheduled for on or near September 20, 2025, which would allow sufficient time for notice to the Class, the administration of the Notice process, and the filing of the motion for final approval per Code.

NOTICE TO THE LWDA

103. Pursuant to California Labor Code § 2699(1)(2), my office submitted a copy of the fully executed Settlement Agreement, as well as information regarding the preliminary approval hearing on this matter, to the California Labor Workforce Development Agency via online filing at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html on February 18, 2025. A true and correct copy of an email confirming submission of the Settlement to the LWDA on February 18, 2025, is attached hereto as **Exhibit 3**.

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

Executed on February 18, 2025.



Heather Davis, Esq.