

ADDENDUM TO JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

Argueta v. SMM Facilities, Inc., Alameda County Superior Court Case No. RG21100765

Subject to Court approval, Plaintiff Sara Argueta (“Plaintiff”) and Defendant SMM Facilities, Inc. (“Defendant”) (Plaintiff and Defendant together the “Parties”), by and through their counsel of record, enter into the following Addendum to the Joint Stipulation of Class Action and PAGA Settlement and Release (the “Addendum”). The terms of this Addendum will serve as an addendum to the terms and conditions of the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement” or “Agreement”) in *Argueta v. SMM Facilities, Inc.*, Alameda County Superior Court Case No. RG21100765 (the “Action”).

RECITALS

On April 12, 2024, after the Parties reached a settlement in the Action, Plaintiff filed a Motion for Preliminary Approval of Class Action and PAGA Settlement (the “Motion”), which was set for hearing on May 7, 2024.

On April 29, 2024, Defendant filed a statement of non-opposition to the Motion.

On May 7, 2024, the Court issued an “Order re Hearing on Motion – Other Motion for Preliminary Approval of Class Action and PAGA Settlement” (the “Order”). The Court stated, among other things, that: “The PAGA release is overbroad insofar as it extends to claims that were asserted ‘in the original Complaint’ and ‘First Amended Class Action and PAGA Complaint.’ (SA, ¶ 36.)” (Order, p. 1.)

The Court also stated that: “Similarly, the class release is overbroad insofar as it extends to claims that were asserted in the ‘PAGA Notice Letter.’ (SA, ¶ 35.)” (Order, p. 2.)

The Court directed the Parties as follows: “The releases should be revised in the settlement agreement and the proposed class notice.” (Order, p. 2.)

Accordingly, pursuant to Paragraph 63 of the Settlement Agreement, the Parties, through their counsel of record, hereby agree and enter into this Addendum as follow:

TERMS OF ADDENDUM

1. All terms and conditions of the Settlement Agreement are the same except as provided for in this Addendum.

2. This Addendum adopts and incorporates by reference the terms and conditions of the Settlement Agreement, together with the definitions used and contained in the Settlement Agreement. Capitalized terms used in this Addendum without definition have the meanings assigned to them in the Settlement Agreement. The terms defined in this Addendum have their assigned meanings.

3. The Parties modify Paragraphs 35, 36, and 55 of the Settlement Agreement as follows:

¶ 35: “Released Class Claims” means the claims released by Class Members, other than those who submit valid requests for exclusion, and are all causes of action that were or could have been asserted based on the facts alleged in the original Complaint and First Amended Class Action and PAGA Complaint arising during the Class Period. The Released Class Claims specifically include alleged violations of California Labor Code sections: (a) 510 and 1198 (failure to pay overtime wages); (b) 1182.12, 1194, 1197, 1197.1, and 1198 (failure to pay minimum wages); (c) 226.7, 512(a), and 1198 (failure to provide meal periods); (d) 226.7 and 1198 (failure to provide rest periods); (e) 226(a), 226(e), 1174(d), and 1198 (failure to provide accurate wage statements, accurate and complete payroll records, and accurate and complete timekeeping records); (f) 204 and 210 (failure to timely pay wages during employment); (g) 201, 202 and 203 (failure to timely pay wages upon termination); (h) 223 (secret underpayment of wages); (i) 2810.5 (failure to provide written notice of material information); (j) 2800 and 2802 (failure to reimburse necessary business expenses); and (k) California Business & Professions Code sections 17200, et seq. (unfair business practices) premised on the facts, claims, or legal theories described herein or in the Action.

¶ 36: “Released PAGA Claims” means all claims for PAGA civil penalties that were or could have been asserted based on the facts alleged in the PAGA Notice Letter, arising during the PAGA Period, including the following: (a) all claims for civil penalties stated in the Action alleging violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802 and 2810.5 and California Code of Regulations Title 8, Section 11040; (b) all claims for civil penalties for alleged failure to pay overtime wages; (c) all claims for civil penalties for alleged failure to pay minimum wages; (d) all claims for civil penalties for alleged failure to provide meal periods; (e) all claims for civil penalties for alleged failure to provide rest periods; (f) all claims for civil penalties for alleged failure to provide accurate wage statements; (g) all claims for civil penalties for alleged failure to provide accurate and complete payroll records; (h) all claims for civil penalties for alleged failure to provide accurate and complete timekeeping records; (i) all claims for civil penalties for

alleged failure to timely pay wages during employment; (j) all claims for civil penalties for alleged failure to timely pay wages upon termination; (k) all claims for civil penalties for alleged secret underpayment of wages; (l) all claims for civil penalties for alleged failure to provide written notice of material information; and (m) all claims for civil penalties for alleged failure to reimburse necessary business expenses. The Released PAGA Claims do not include individual claims.

¶ 55: **Release by PAGA Members:** Upon the Funding Date, and except as to such rights or claims as may be created by this Settlement Agreement, the State of California and each and every PAGA Member, shall be deemed to have fully and finally released and forever discharged the Released Parties, to the fullest extent permitted by law, of and from any and all applicable Released PAGA Claims. Each PAGA Member will be deemed to have made the foregoing release as if by manually signing it. In light of the method of notice set forth by this Settlement Agreement, and subject to final Court approval, all PAGA Members will release the Released Parties from the Released PAGA Claims, even if they never received mailed notice of the Action or this Settlement. The Released PAGA Claims do not release any non-PAGA (i.e., statutory) right of action and/or wage and hour claim(s) held by individual Allegedly Aggrieved Employees.

4. The Parties modify the proposed Class Notice to reflect the above modifications. The modified proposed Class Notice is attached (in both redline and non-redline) as Exhibit A.

5. Plaintiff's Counsel will file the Addendum with the Court and submit the Addendum to the LWDA at the same time.

6. Any inconsistencies or differences between this Addendum and the Settlement Agreement will be interpreted in favor of this Addendum.

7. This Addendum to the Settlement Agreement is subject only to the execution of the undersigned. This Addendum may, and is expected to, be executed in counterparts, and a fully executed photocopy, facsimile, .pdf, or DocuSign shall be as binding and valid as a fully executed original.

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8. The undersigned have caused this Agreement to be executed.

Dated: May 17, 2024

LAW OFFICES OF MARK YABLONOVICH

By: 

Mark Yablonovich
Monica Balderrama
Tony Roberts
Attorneys for Plaintiff Sara Argueta

Dated: May 17, 2024

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

By: 

Douglas J. Farmer
Charles L. Thompson
Attorneys for Defendant SMM Facilities, Inc.

EXHIBIT A

Sara Argueta v. SMM Facilities, Inc., Case No. RG21100765

Argueta v. SMM Facilities, Inc., No. RG21100765
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ALAMEDA
NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully



<<PSA ID>>

<<First Last>>

<<Address>>

<<City, State, Zip, Country>>

Name/Address Changes (if any):

To: All persons who were employed by Defendant SMM Facilities (“Defendant”) as non-exempt hourly-paid employees within the State of California at any time from March 26, 2019 through March 31, 2023 (“Class Members”).

All persons who were employed by Defendant as non-exempt hourly-paid employees within the State of California at any time from March 26, 2020 through March 31, 2023 (“PAGA Members”).

On _____, the Honorable Brad Seligman of the Alameda County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Approval/Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at __:00 __.m. on _____, 2024 in Department 22 of the Alameda County Superior Court, Rene C. Davidson Courthouse, located at 1225 Fallon Street, Oakland, California 94612.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit <https://eportal.alameda.courts.ca.gov> for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be deemed a “Participating Class Member,” and will be eligible for a payment from the Net Settlement Fund and, if you are also a PAGA Member, the PAGA Net Fund. In exchange, you will be bound by the terms of the proposed Settlement and give up your right to assert wage and hour claims that were or could have been asserted against Defendant based on the same facts alleged in the Action during the Class Period.
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You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [DATE]	If you don't want to participate in the proposed class settlement, you can opt-out by sending the Settlement Administrator a written Request for Exclusion. Once excluded, you will no longer be eligible for a payment from the Net Settlement Fund and will not be bound by the terms of the proposed class settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. PAGA Members remain eligible to receive a payment from the PAGA Net Fund and must give up their rights to pursue PAGA penalty claims against Defendant based on the facts alleged in the PAGA Notice Letter during the PAGA Period.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [DATE]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed class settlement, but not the PAGA settlement.
You Can Participate in the [DATE] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [DATE] in Department 22 of the Alameda County Superior Court, Rene C. Davidson Courthouse, located at 1225 Fallon Street, Oakland, California 94612. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. If the Court grants final approval of the Settlement despite your objection, you will receive a payment from the Net Settlement Fund and you will be bound by the terms of the Settlement and Release.

Summary of the Litigation

Plaintiff Sara Argueta ("Plaintiff") (Plaintiff and Defendant are collectively, the "Parties"), on her behalf and on behalf of other current and former non-exempt employees, alleges that Defendant violated California state labor laws as a result of its alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) reimburse employees for necessary business expenses; and (5) provide employees with accurate, itemized wage statements, time records, and payroll records ("Action").

After the exchange of relevant information and evidence, the Parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. The Parties participated in a mediation with Joel Grossman, an experienced and well-respected class action mediator and with Mr. Grossman's guidance over several months following the mediation were able to negotiate a Settlement.

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a Settlement. This allows the Parties to avoid the risk and uncertainty of trial and any subsequent appeal, and all affected employees who have not opted out of the Settlement will receive compensation.

The Settlement is not an admission of liability by Defendant. Defendant has denied, and continues to deny, the factual and legal allegations in the case and believes that it has valid defenses to Plaintiff's claims. Defendant strongly denies violating any laws or failing to pay wages and contends it complied with all applicable laws. The Settlement represents a compromise

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that Defendant has any liability to Plaintiff or the proposed class on those claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, the Law Offices of Mark Yablonovich ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Consistent with Defendant's policies, there will be no retaliation or adverse action taken against any Class Member who participates in the Settlement or opt out of the Settlement.

Summary of The Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for a Gross Settlement Amount of \$750,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class and PAGA Representative Enhancement Payment of \$10,000 to Plaintiff for her services on behalf of the class, and for a release of all claims arising out of her employment with Defendant; (3) \$250,000 in attorneys' fees and up to \$20,000 in litigation costs and expenses; (4) a \$75,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$56,250 payment to the California Labor and Workforce Development Agency ("LWDA") in connection with the PAGA, and a \$18,750 payment ("PAGA Net Fund") to all PAGA Members; and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$20,000. After deducting the above payments, a total of approximately \$375,000 will be allocated to Class Members who do not opt out of the Settlement Class ("Net Settlement Fund"). Additionally, all PAGA Members will receive a proportional share of the \$18,750 PAGA Net Fund, regardless of whether they opt out of the Settlement Class. This allocation of the payment to the LWDA is required by California law.

The foregoing amounts have only been preliminarily approved by the Court and the final amounts of these various payments are all subject to Court approval.

No portion of the Gross Settlement Amount will be returned to the Defendant.

Payments from Net Settlement Fund. Defendant will calculate the total number of Workweeks worked by each Class Member from March 26, 2019 through March 31, 2023 ("Class Period") and the aggregate total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member's estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Workweeks during the Class Period, resulting in the "Workweek Value." Each Class Member's share of the Net Settlement Fund will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value. Any workweek in which a Class Member worked at least one day shall be counted as a Workweek.

All settlement payments are subject to taxation. Each Class Member Payment will be allocated as follows: (a) 20% as wages that will be subject to deductions and withholdings for the employee's share of state and federal payroll taxes; and (b) 80% as penalties and interest that will not be subject to deductions and withholdings. Each Participating Class Member will receive an IRS Form W-2 with respect to the portion of the Settlement Payment allocated to wages and an IRS Form-1099 with respect to the portion of the Settlement Payment allocated to penalties and interest, unless said payment is less than or

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

equal to \$600. Prior to mailing Settlement checks, the Settlement Administrator will calculate and deduct the employee's required withholdings and payroll taxes from the "wage" portion of the Settlement payment. Defendant will separately pay the employer's share of payroll taxes with respect to the "wage" portion of each Settlement payment.

Please note that each Participating Class Member will be responsible for his/her/their share of taxes attributable to the receipt of a Class Member Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Net Settlement Fund according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendant's records, you worked during the Class Period in a non-exempt position for a total of ____ Workweeks. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$ ____.

Payments from PAGA Net Fund. Defendant will calculate the total number of Pay Periods worked by each PAGA Member from March 26, 2020 through March 31, 2023 ("PAGA Period") and the aggregate total number of Pay Periods worked by all PAGA Members during the PAGA Period. To determine each PAGA Member's estimated share of the PAGA Net Fund, the Settlement Administrator will use the following formula: The PAGA Net Fund will be divided by the aggregate total number of Pay Periods during the PAGA Period, resulting in the "PAGA Pay Period Value." Each PAGA Member's share of the PAGA Net Fund will be calculated by multiplying each individual PAGA Member's total number of Pay Periods in the PAGA Period by the PAGA Pay Period Value. Any pay period in which a PAGA Member worked at least one day shall be counted as a Pay Period.

All settlement payments are subject to taxation. Each individual PAGA Member Payment will be allocated as follows: 100% as penalties that will not be subject to deductions and withholdings. Each PAGA Member will receive an IRS Form-1099 for his/her/their individual PAGA Member Payment, unless said payment is less than or equal to \$600.

The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. PAGA Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

According to Defendant's records, you worked during the PAGA Period in a non-exempt position for a total of ____ Pay Periods. Accordingly, your estimated payment from the PAGA Net Fund is approximately \$ ____.

A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code sections 2698, et seq. and the PAGA Member will receive their portion of the PAGA Net Fund even if he/she/they submits a valid Request for Exclusion.

Disputes: If you believe the Workweek and/or Pay Period information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. To be valid, your written dispute of Workweeks and/or Pay Periods worked must: (1) include your full name and address and (2) be accompanied by satisfactory evidence of the workweeks and/or pay periods you contend you worked as an hourly, non-exempt employee for Defendant during the Class Period and/or PAGA Period, including any supporting documentation (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator

c/o _____

Fax No. _____

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court. If you move, you must provide the Settlement Administrator with your current mailing address or you may not receive your portion of the Net Settlement Fund and/or PAGA Net Fund.

If you choose **Option 1**, and if the Court grants final approval of the Settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims, and if you are also a PAGA Member, the Released PAGA Claims.

Released Class Claims: "Released Class Claims" means the claims released by Class Members, other than those who submit valid requests for exclusion, and are all causes of action that were or could have been asserted based on the facts alleged in the original Complaint and First Amended Class Action and PAGA Complaint arising during the Class Period. The Released Class Claims specifically include alleged violations of California Labor Code sections: (a) 510 and 1198 (failure to pay overtime wages); (b) 1182.12, 1194, 1197, 1197.1, and 1198 (failure to pay minimum wages); (c) 226.7, 512(a), and 1198 (failure to provide meal periods); (d) 226.7 and 1198 (failure to provide rest periods); (e) 226(a), 226(e), 1174(d), and 1198 (failure to provide accurate wage statements, accurate and complete payroll records, and accurate and complete timekeeping records); (f) 204 and 210 (failure to timely pay wages during employment); (g) 201, 202 and 203 (failure to timely pay wages upon termination); (h) 223 (secret underpayment of wages); (i) 2810.5 (failure to provide written notice of material information); (j) 2800 and 2802 (failure to reimburse necessary business expenses); and (k) California Business & Professions Code sections 17200, et seq. (unfair business practices) premised on the facts, claims, or legal theories described herein or in the Action.

Released PAGA Claims: "Released PAGA Claims" means all claims for PAGA civil penalties that were or could have been asserted based on the facts alleged in the PAGA Notice Letter, arising during the PAGA Period, including the following: (a) all claims for civil penalties stated in the Action alleging violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802 and 2810.5 and California Code of Regulations Title 8, Section 11040; (b) all claims for civil penalties for alleged failure to pay overtime wages; (c) all claims for civil penalties for alleged failure to pay minimum wages; (d) all claims for civil penalties for alleged failure to provide meal periods; (e) all claims for civil penalties for alleged failure to provide rest periods; (f) all claims for civil penalties for alleged failure to provide accurate wage statements; (g) all claims for civil penalties for alleged failure to provide accurate and complete payroll records; (h) all claims for civil penalties for alleged failure to provide accurate and complete timekeeping records; (i) all claims for civil penalties for alleged failure to timely pay wages during employment; (j) all claims for civil penalties for alleged failure to timely pay wages upon termination; (k) all claims for civil penalties for alleged secret underpayment of wages; (l) all claims for civil penalties for alleged failure to provide written notice of material information; and (m) all claims for civil penalties for alleged failure to reimburse necessary business expenses. The Released PAGA Claims do not include individual claims.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

and PAGA Settlement, decided not to participate in the settlement, and desire to be excluded from the class portion of the settlement. To be valid, the Request for Exclusion must: (a) set forth your full name, telephone number; (b) be returned to the Settlement Administrator, as outlined below; (c) include the following statement or a similar statement: "I wish to exclude myself from the class settlement reached in the matter of *Argueta v. SMM Facilities, Inc.* I understand that by excluding myself, I will not receive any money from the class settlement reached in this matter"; and (d) be postmarked on or before the deadline outlined below.

Settlement Administrator
c/o _____

The Request for Exclusion must be postmarked or faxed not later than _____, 2024. If you submit a Request for Exclusion which is not postmarked or faxed by _____, 2024, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, you will not receive a Payment from the Net Settlement Fund, and you will not have released the Released Class Claims. Please note that if you are also a PAGA Member, you cannot request exclusion as a PAGA Member and you will still release the Released PAGA Claims and will still receive a payment from the PAGA Net Fund.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Approval/Fairness Hearing to object to the Settlement. For the Notice of Objection to be valid, it must include: (a) your full name, signature, address, and last four digits of your Social Security Number; (b) the dates of your employment with Defendant; (c) telephone number, (d) a written statement of all grounds for the objection accompanied by any legal support for such objection; (e) copies of any papers, briefs, or other documents upon which the objection is based; (f) the full name, address, and telephone number of your legal representative, if any; and (g) a statement whether you intend to appear at the final fairness hearing. Your objection must be submitted to the administrator at:

Settlement Administrator
c/o _____

All written objections must be postmarked not later than _____, 2024. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only. Only Participating Class Members have the right to object to the Settlement.

You may also, if you wish, appear at the Final Approval/Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Alameda and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney at your own expense to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

Please note that Defendant approves the Settlement and will not retaliate in any way against any Class Member for participating in the Settlement. Your decision to participate, not participate, or object to this Settlement will not affect your

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

employment with Defendant or Defendant's treatment of you as a former employee.

Additional Information

It is recommended that Class Members and PAGA Member seek his/her/their own personal tax advice prior to acting in response to the Notice.

This Notice of Class Action and PAGA Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. Please visit the Settlement Administrator's website at [_____].

The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website, known as "eCourt Public Portal," at <https://eportal.alameda.courts.ca.gov>. After arriving at the website, click the "Search" tab at the top of the page, then select the Document Downloads link, enter the case number and click "Submit." Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

To view the Register of Actions, go to the "Search" tab at the top of the page, then select the "Search by Case Number" enter the case number RG21 100765, select "Search" and click the link to the case name. You will see the Register of Actions and more.

All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Mark Yablonovich
Monica Balderrama
Tony Roberts
Law Offices of Mark Yablonovich
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212
Phone: *Case-Specific Number*

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANT'S ATTORNEYS
WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Argueta v. SMM Facilities, Inc., No. RG21100765
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ALAMEDA
NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully



<<PSA ID>>

<<First Last>>

<<Address>>

<<City, State, Zip, Country>>

Name/Address Changes (if any):

To: All persons who were employed by Defendant SMM Facilities (“Defendant”) as non-exempt hourly-paid employees within the State of California at any time from March 26, 2019 through March 31, 2023 (“Class Members”).

All persons who were employed by Defendant as non-exempt hourly-paid employees within the State of California at any time from March 26, 2020 through March 31, 2023 (“PAGA Members”).

On _____, the Honorable Brad Seligman of the Alameda County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Approval/Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at __:00 __.m. on _____, 2024 in Department 22 of the Alameda County Superior Court, Rene C. Davidson Courthouse, located at 1225 Fallon Street, Oakland, California 94612.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit <https://eportal.alameda.courts.ca.gov> for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don’t Have to Do Anything to Participate in the Settlement

If you do nothing, you will be deemed a “Participating Class Member,” and will be eligible for a payment from the Net Settlement Fund and, if you are also a PAGA Member, the PAGA Net Fund. In exchange, you will be bound by the terms of the proposed Settlement and give up your right to assert wage and hour claims that were or could have been asserted against Defendant based on the same facts alleged in the Action and/or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the operative complaint during the Class Period.

You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [DATE]	If you don't want to participate in the proposed class settlement, you can opt-out by sending the Settlement Administrator a written Request for Exclusion. Once excluded, you will no longer be eligible for a payment from the Net Settlement Fund and will not be bound by the terms of the proposed class settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. PAGA Members remain eligible to receive a payment from the PAGA Net Fund and must give up their rights to pursue PAGA penalty claims against Defendant based on the facts alleged in the PAGA Notice Letter Action or reasonably could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the operative complaint during the PAGA Period.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [DATE]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed class settlement, but not the PAGA settlement.
You Can Participate in the [DATE] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [DATE] in Department 22 of the Alameda County Superior Court, Rene C. Davidson Courthouse, located at 1225 Fallon Street, Oakland, California 94612. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. If the Court grants final approval of the Settlement despite your objection, you will receive a payment from the Net Settlement Fund and you will be bound by the terms of the Settlement and Release.

Summary of the Litigation

Plaintiff Sara Argueta ("Plaintiff") (Plaintiff and Defendant are collectively, the "Parties"), on her behalf and on behalf of other current and former non-exempt employees, alleges that Defendant violated California state labor laws as a result of its alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) reimburse employees for necessary business expenses; and (5) provide employees with accurate, itemized wage statements, time records, and payroll records ("Action").

After the exchange of relevant information and evidence, the Parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. The Parties participated in a mediation with Joel Grossman, an experienced and well-respected class action mediator and with Mr. Grossman's guidance over several months following the mediation were able to negotiate a Settlement.

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a Settlement. This allows the Parties to avoid the risk and uncertainty of trial and any subsequent appeal, and all affected employees who have not opted out of the Settlement will receive compensation.

The Settlement is not an admission of liability by Defendant. Defendant has denied, and continues to deny, the factual and

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

legal allegations in the case and believes that it has valid defenses to Plaintiff's claims. Defendant strongly denies violating any laws or failing to pay wages and contends it complied with all applicable laws. The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that Defendant has any liability to Plaintiff or the proposed class on those claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, the Law Offices of Mark Yablonovich ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Consistent with Defendant's policies, there will be no retaliation or adverse action taken against any Class Member who participates in the Settlement or opt out of the Settlement.

Summary of The Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for a Gross Settlement Amount of \$750,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class and PAGA Representative Enhancement Payment of \$10,000 to Plaintiff for her services on behalf of the class, and for a release of all claims arising out of her employment with Defendant; (3) \$250,000 in attorneys' fees and up to \$20,000 in litigation costs and expenses; (4) a \$75,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$56,250 payment to the California Labor and Workforce Development Agency ("LWDA") in connection with the PAGA, and a \$18,750 payment ("PAGA Net Fund") to all PAGA Members; and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$20,000. After deducting the above payments, a total of approximately \$375,000 will be allocated to Class Members who do not opt out of the Settlement Class ("Net Settlement Fund"). Additionally, all PAGA Members will receive a proportional share of the \$18,750 PAGA Net Fund, regardless of whether they opt out of the Settlement Class. This allocation of the payment to the LWDA is required by California law.

The foregoing amounts have only been preliminarily approved by the Court and the final amounts of these various payments are all subject to Court approval.

No portion of the Gross Settlement Amount will be returned to the Defendant.

Payments from Net Settlement Fund. Defendant will calculate the total number of Workweeks worked by each Class Member from March 26, 2019 through March 31, 2023 ("Class Period") and the aggregate total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member's estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of Workweeks during the Class Period, resulting in the "Workweek Value." Each Class Member's share of the Net Settlement Fund will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value. Any workweek in which a Class Member worked at least one day shall be counted as a Workweek.

All settlement payments are subject to taxation. Each Class Member Payment will be allocated as follows: (a) 20% as wages that will be subject to deductions and withholdings for the employee's share of state and federal payroll taxes; and (b) 80% as penalties and interest that will not be subject to deductions and withholdings. Each Participating Class Member will

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

receive an IRS Form W-2 with respect to the portion of the Settlement Payment allocated to wages and an IRS Form-1099 with respect to the portion of the Settlement Payment allocated to penalties and interest, unless said payment is less than or equal to \$600. Prior to mailing Settlement checks, the Settlement Administrator will calculate and deduct the employee's required withholdings and payroll taxes from the "wage" portion of the Settlement payment. Defendant will separately pay the employer's share of payroll taxes with respect to the "wage" portion of each Settlement payment.

Please note that each Participating Class Member will be responsible for his/her/their share of taxes attributable to the receipt of a Class Member Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Net Settlement Fund according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendant's records, you worked during the Class Period in a non-exempt position for a total of ____ Workweeks. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$ ____.

Payments from PAGA Net Fund. Defendant will calculate the total number of Pay Periods worked by each PAGA Member from March 26, 2020 through March 31, 2023 ("PAGA Period") and the aggregate total number of Pay Periods worked by all PAGA Members during the PAGA Period. To determine each PAGA Member's estimated share of the PAGA Net Fund, the Settlement Administrator will use the following formula: The PAGA Net Fund will be divided by the aggregate total number of Pay Periods during the PAGA Period, resulting in the "PAGA Pay Period Value." Each PAGA Member's share of the PAGA Net Fund will be calculated by multiplying each individual PAGA Member's total number of Pay Periods in the PAGA Period by the PAGA Pay Period Value. Any pay period in which a PAGA Member worked at least one day shall be counted as a Pay Period.

All settlement payments are subject to taxation. Each individual PAGA Member Payment will be allocated as follows: 100% as penalties that will not be subject to deductions and withholdings. Each PAGA Member will receive an IRS Form-1099 for his/her/their individual PAGA Member Payment, unless said payment is less than or equal to \$600.

The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. PAGA Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

According to Defendant's records, you worked during the PAGA Period in a non-exempt position for a total of ____ Pay Periods. Accordingly, your estimated payment from the PAGA Net Fund is approximately \$ ____.

A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code sections 2698, et seq. and the PAGA Member will receive their portion of the PAGA Net Fund even if he/she/they submits a valid Request for Exclusion.

Disputes: If you believe the Workweek and/or Pay Period information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. To be valid, your written dispute of Workweeks and/or Pay Periods worked must: (1) include your full name and address and (2) be accompanied by satisfactory evidence of the workweeks and/or pay periods you contend you worked as an hourly, non-exempt employee for Defendant during the Class Period and/or PAGA Period, including any supporting documentation (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

c/o _____
Fax No. _____

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court. If you move, you must provide the Settlement Administrator with your current mailing address or you may not receive your portion of the Net Settlement Fund and/or PAGA Net Fund.

If you choose **Option 1**, and if the Court grants final approval of the Settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims, and if you are also a PAGA Member, the Released PAGA Claims.

Released Class Claims: "Released Class Claims" means the claims released by Class Members, other than those who submit valid requests for exclusion, and are all ~~and~~ causes of action that were or could have been asserted based on the facts alleged in the original Complaint and First Amended Class Action and PAGA Complaint ~~and PAGA Notice Letter~~ arising during the Class Period. The Released Class Claims specifically include alleged violations of California Labor Code sections: (a) 510 and 1198 (failure to pay overtime wages); (b) 1182.12, 1194, 1197, 1197.1, and 1198 (failure to pay minimum wages); (c) 226.7, 512(a), and 1198 (failure to provide meal periods); (d) 226.7 and 1198 (failure to provide rest periods); (e) 226(a), 226(e), 1174(d), and 1198 (failure to provide accurate wage statements, accurate and complete payroll records, and accurate and complete timekeeping records); (f) 204 and 210 (failure to timely pay wages during employment); (g) 201, 202 and 203 (failure to timely pay wages upon termination); (h) 223 (secret underpayment of wages); (i) 2810.5 (failure to provide written notice of material information); (j) 2800 and 2802 (failure to ~~unreimbursed~~ necessary business expenses); and (k) California Business & Professions Code sections 17200, et seq. (unfair business practices) premised on the facts, claims, or legal theories described herein or in the Action.

Released PAGA Claims: "Released PAGA Claims" means all claims for PAGA civil penalties that were or could have been asserted based on the facts alleged in the ~~original Complaint, First Amended Class Action and PAGA Complaint, and~~ PAGA Notice Letter, arising during the PAGA Period, including the following: (a) all claims for civil penalties stated in the Action alleging violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802 and 2810.5 and California Code of Regulations Title 8, Section 11040; (b) all claims for civil penalties for alleged failure to pay overtime wages; (c) all claims for civil penalties for alleged failure to pay minimum wages; (d) all claims for civil penalties for alleged failure to provide meal periods; (e) all claims for civil penalties for alleged failure to provide rest periods; (f) all claims for civil penalties for alleged failure to provide accurate wage statements; (g) all claims for civil penalties for alleged failure to provide accurate and complete payroll records; (h) all claims for civil penalties for alleged failure to provide accurate and complete timekeeping records; (i) all claims for civil penalties for alleged failure to timely pay wages during employment; (j) all claims for civil penalties for alleged failure to timely pay wages upon termination; (k) all claims for civil penalties for alleged secret underpayment of wages; (l) all claims for civil penalties for alleged failure to provide written notice of material information; and (m) all claims for civil penalties for alleged failure to ~~unreimbursed~~ necessary business expenses. The Released PAGA Claims do not include individual claims ~~other than those under the Released Class Claims, unless a valid request for exclusion is exercised.~~

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action and PAGA Settlement, decided not to participate in the settlement, and desire to be excluded from the class portion of the settlement. To be valid, the Request for Exclusion must: (a) set forth your full name, telephone number; (b) be returned to the Settlement Administrator, as outlined below; (c) include the following statement or a similar statement: “I wish to exclude myself from the class settlement reached in the matter of *Argueta v. SMM Facilities, Inc.* I understand that by excluding myself, I will not receive any money from the class settlement reached in this matter”; and (d) be postmarked on or before the deadline outlined below.

Settlement Administrator

c/o _____

The Request for Exclusion must be postmarked or faxed not later than _____, 2024. If you submit a Request for Exclusion which is not postmarked or faxed by _____, 2024, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, you will not receive a Payment from the Net Settlement Fund, and you will not have released the Released Class Claims. Please note that if you are also a PAGA Member, you cannot request exclusion as a PAGA Member and you will still release the Released PAGA Claims and will still receive a payment from the PAGA Net Fund.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Approval/Fairness Hearing to object to the Settlement. For the Notice of Objection to be valid, it must include: (a) your full name, signature, address, and last four digits of your Social Security Number; (b) the dates of your employment with Defendant; (c) telephone number, (d) a written statement of all grounds for the objection accompanied by any legal support for such objection; (e) copies of any papers, briefs, or other documents upon which the objection is based; (f) the full name, address, and telephone number of your legal representative, if any; and (g) a statement whether you intend to appear at the final fairness hearing. Your objection must be submitted to the administrator at:

Settlement Administrator

c/o _____

All written objections must be postmarked not later than _____, 2024. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only. Only Participating Class Members have the right to object to the Settlement.

You may also, if you wish, appear at the Final Approval/Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Alameda and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney at your own expense to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims and Released PAGA Claims.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Please note that Defendant approves the Settlement and will not retaliate in any way against any Class Member for participating in the Settlement. Your decision to participate, not participate, or object to this Settlement will not affect your employment with Defendant or Defendant's treatment of you as a former employee.

Additional Information

It is recommended that Class Members and PAGA Member seek his/her/their own personal tax advice prior to acting in response to the Notice.

This Notice of Class Action and PAGA Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. Please visit the Settlement Administrator's website at [_____].

The pleadings and other records in this litigation may be examined online on the Alameda County Superior Court's website, known as "eCourt Public Portal," at <https://eportal.alameda.courts.ca.gov>. After arriving at the website, click the "Search" tab at the top of the page, then select the Document Downloads link, enter the case number and click "Submit." Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

To view the Register of Actions, go to the "Search" tab at the top of the page, then select the "Search by Case Number" enter the case number RG21100765, select "Search" and click the link to the case name. You will see the Register of Actions and more.

All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Mark Yablonovich
Monica Balderrama
Tony Roberts
Law Offices of Mark Yablonovich
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212
Phone: *Case-Specific Number*

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANT'S ATTORNEYS
WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******