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20 **SUPERIOR COURT OF CALIFORNIA**
21 **FOR THE COUNTY OF SACRAMENTO**

22 JAIME MUNOZ, individually and on behalf of
23 all other similarly situated employees,

24 Plaintiff,

25 vs.

26 WILMOR AND SONS PLUMBING AND
27 CONSTRUCTION, a California Corporation;
28 and DOES 1 to 100, inclusive,

Defendant.

Case No.: 34-2021-00306609

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Filed: 8/20/2021

FAC Filed: 12/21/2021

Trial Date: None Set

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT

1 This Private Attorneys General Act Settlement is made and entered into between the Plaintiff
2 Jaime Munoz ("Plaintiff"), on behalf of himself, the Labor and Workforce Development Agency, and
3 Aggrieved Employees, and Defendant Wilmor And Sons Plumbing And Construction ("Defendant"). This
4 Agreement is subject to the terms and conditions set forth below and approval of the Court.

5 **1. DEFINITIONS**

6 The following terms, when used in this Agreement, have the following meanings:

7 1.1 "Action" means the above stated lawsuit, *Munoz v. Wilmor and Sons Plumbing and*
8 *Construction, Inc.*, Sacramento County Superior Court, Case No. 34-2021-00306609, filed August 20,
9 2021.

10 1.2 "Aggrieved Employee(s)" means all non-exempt employees who have worked, or continue
11 to work, for Defendant in California during the PAGA Claim Period. The estimated number of Aggrieved
12 Employees is 112.

13 1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this Private Attorneys
14 General Act Settlement.

15 1.4 "Claim Amount" means an individual Aggrieved Employees' allocation of the Net
16 Settlement Amount, as defined in Section 1.15 and 5.7.

17 1.5 "Claims Administrator" means and refers to ILYM Group, Inc., the third-party entity that
18 will administer the Agreement as outlined in Section 7, or any other third-party settlement claims
19 administrator agreed to by the Parties and approved by the Court for the purposes of administering this
20 Agreement. The Parties each represent that they do not have any financial interest in the Claims
21 Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict
22 of interest.

23 1.6 "Claims Administrator Costs" means the fees and expenses reasonably incurred by the
24 Claims Administrator as a result of the procedures and processes expressly required by this Agreement,
25 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
26 preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees
27 associated with preparing, issuing and mailing any and all notices and other correspondence to Aggrieved
28 Employees; all costs and fees associated with communicating with Aggrieved Employees, Plaintiff's

1 Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing,
2 and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax
3 withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any,
4 and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with
5 preparing any tax returns and any other filings required by any governmental taxing authority or agency;
6 all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the
7 course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the
8 Claims Administrator in connection with the execution of its duties under this Agreement.

9 1.7 "Complaint" means the operative Complaint on file in the Action with the Court.

10 1.8 "Court" means the Sacramento County Superior Court.

11 1.9 "Defendant" means Wilmor And Sons Plumbing And Construction.

12 1.10 "Defendant's Counsel" means Cook Brown LLP.

13 1.11 "Effective Date" means the day the Court files a signed order granting approval of this
14 Settlement unless there is a timely objection lodged that has not later been withdrawn, in which case the
15 Effective Date will be either (a) the 60th calendar day after a signed order approving this settlement has
16 been filed provided no appellate proceeding having been filed; or (b) seventh (7th) calendar day after any
17 appellate proceeding opposing the settlement has been finally dismissed with no material change to the
18 terms of this settlement and there is no right to pursue further remedies or relief, whichever is later.

19 1.12 "Final Approval Date" means the date the Court enters a signed order granting approval of
20 the Agreement.

21 1.13 "Gross Settlement Amount" is the sum of Two Hundred Ninety-Two Thousand Five
22 Hundred Dollars (\$292,500). The Gross Settlement Amount will include all payments to Aggrieved
23 Employees, PAGA Payment, any approved enhancement payment to Plaintiff, attorneys' fees, attorneys'
24 costs, and the cost of the Claims Administrator.

25 1.14 "LWDA" means the California Labor and Workforce Development Agency.

26 1.15 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for
27 distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after
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deduction of Plaintiff's attorneys' fees and litigation costs, any approved enhancement payment to Plaintiff, and Claims Administrator Costs.

1.16 "Notice of Settlement" means the document substantially in the form attached hereto as Exhibit 1.

1.17 "PAGA" means Private Attorneys General Act.

1.18 "PAGA Claim Period" means May 24, 2020 up to either (1) to the Final Approval Date or (2) April 15, 2022, whichever is earlier, unless Defendant exercises its option to cap the PAGA Claim Period as of the date of mediation to avoid any increase in the Gross Settlement Amount per the provisions in Section 9.2, in which case the PAGA Claim Period shall run to January 26, 2022.

1.19 "PAGA Payment" means the 75% share of the Net Settlement Amount paid to the LWDA pursuant to Labor Code section 2699(i).

1.20 "Parties" mean Defendant and Plaintiff.

1.21 "Plaintiff" means Jaime Munoz.

1.22 "Plaintiff's Counsel" means Galen T. Shimoda, Justin P. Rodriguez, and Brittany V. Berzin of Shimoda & Rodriguez Law, PC.

1.23 "QSF" means a Qualified Settlement Fund set up by the Claims Administrator for the benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant until the payments required under the Agreement are made.

1.24 "Qualifying Pay Periods" are pay periods worked by Aggrieved Employees during the PAGA Claim Period in California. The calculation of an Aggrieved Employees' pay periods and a determination as to whether an Aggrieved Employee was actively employed in California in a particular pay period shall be construed from Defendant's records.

1.25 "Released PAGA Claims" means all PAGA claims for civil penalties contained the Complaint, through the PAGA Claim Period, including all claims, both potential and actual, that could have been raised in the Complaint based on the allegations set forth or referred to therein. The release includes but is not limited to PAGA claims for failure to pay overtime wages, failure to pay minimum wages, failure to provide meal periods or pay premiums in lieu thereof, failure to provide rest periods or

1 pay premiums in lieu thereof, failure to provide accurate wage statements, failure to pay final wages,
2 failure to pay reimbursements for expenses, failure to maintain accurate records, untimely payment of
3 wages, and failure to provide sick leave, including claims for alleged violations of Labor Code sections
4 510, 1194, 1197.1, 226.7, 512, 226, 226.3, 201, 202, 203, 256, 2802, 1193.6, 1174, 204, 210, 201.3, 204.1,
5 204.2, 246, 246.5, 248.5, 558 (based on purported violations of the Labor Code as alleged in the
6 Complaint), and IWC Wage Order 16 §§ 3, 4, 11(A), (B), 12(A) and any claims for individual liability of
7 these sections under Labor Code §§ 558 and 558.1. Aggrieved Employees cannot opt out of this waiver
8 of claims.

9 1.26 "Released Parties" means Defendant, as well as Defendant's current and former officers,
10 shareholders, directors, agents, employees, attorneys, insurers, and affiliated entities, including but not
11 limited to Terry Wilson.

12 2. DESCRIPTION OF THE LITIGATION

13 2.1 On or about May 24, 2021, Plaintiff sent notice to the LWDA to exhaust administrative
14 remedies under the PAGA. On August 19, 2022, Plaintiff sent an amended notice to the LWDA to exhaust
15 administrative remedies. The notices covered potential claims for failure to pay overtime wages, failure
16 to pay minimum wages, failure to provide meal periods or pay premiums in lieu thereof, failure to provide
17 rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure to pay
18 final wages, failure to reimburse expenses, failure to maintain accurate records, untimely payment of
19 wages, and failure to provide sick leave. The LWDA did not respond to the notices within the statutorily
20 required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all
21 alleged PAGA claims.

22 2.2 After exhausting administrative remedies, Plaintiff filed a Complaint on August 20, 2021,
23 in Sacramento County Superior Court on behalf of himself and Aggrieved Employees. On December 21,
24 2021, Plaintiff filed a First Amended Complaint for claims alleged in the May 24, 2021 and August 19,
25 2022 notices to the LWDA.

26 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Plaintiff's
27 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,
28 information on the number of Aggrieved Employees, including, but not limited to, Aggrieved Employees'

workweeks, dates of employment, total number of Aggrieved Employees, their rates of pay, and pay periods as well as timecard data and payroll reports for a randomly selected sample of Aggrieved Employees.

2.4 On January 26, 2022, the Parties participated in a lengthy mediation with private mediator Russ J. Wunderli, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution in principal on the Gross Settlement Amount and continued to negotiate several additional terms memorialized in a Memorandum of Understanding after the mediation. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

2.5 Discussions between Plaintiff and Plaintiff's Counsel, between counsel for the Parties, the mediator, document productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the detailed analysis of the sampled records have permitted each side to assess the relative merits of the PAGA claims and the defenses to those claims.

2.6 In the Action, Plaintiff contends that Defendant violated California law by failing to pay overtime wages, failing to pay minimum wages, failing to provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay premiums in lieu thereof, failing to provide accurate wage statements, failing to pay final wages, failing to reimburse expenses, failing to maintain accurate records, engaged in the untimely payment of wages, failing to provide sick leave and violated California Labor Code section 558 and 558.1 based thereon. Defendant has denied each of Plaintiff's claims. The agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the PAGA claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability based on Defendant's factual and legal contentions and defenses.

2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel, Defendant, and

Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis in order for the Court to evaluate and approve the settlement. If the Court does not enter an order approving the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the asserted PAGA claims in the Action via this Agreement, but to the extent this Agreement is deemed void or the Effective Date does not occur, Defendant does not waive, and is expressly reserving, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge representative or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE AGGRIEVED EMPLOYEES

4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Aggrieved Employees as defined in Section 1.2.

4.2 Aggrieved Employees entitled to recover under this Agreement will include only those individuals who are identified in Defendant's records as having worked as an Aggrieved Employee.

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1 **5. TERMS OF THE SETTLEMENT**

2 The Parties agree as follows:

3 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
4 Section 6, Defendant shall pay the Gross Settlement Amount (\$292,500). Funding of the Gross Settlement
5 Amount shall occur within twenty-eight (28) calendar days after the Effective Date to be held in trust in a
6 QSF by the Claims Administrator. The Gross Settlement Amount represents the maximum amount
7 payable under this Agreement by Defendant, and includes without limitation, all Aggrieved Employee
8 payments, payment to the LWDA, any approved enhancement payment to Plaintiff, all attorneys' fees,
9 costs and litigation expenses directly related to the Action incurred to date, as well as all such fees and
10 costs incurred in documenting the Agreement, administering the Agreement (including Claims
11 Administrator Costs), and obtaining approval of the Agreement.

12 5.2 Attorneys' Fees and Costs: Plaintiff's Counsel will apply to the Court for attorney's fees
13 of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
14 Defendant has agreed to not oppose Plaintiff's Counsel's application for attorneys' fees so long as it does
15 not exceed the 35% threshold. Plaintiff's Counsel will also be entitled to reimbursement for advanced
16 litigation expenses not to exceed \$10,000, which shall be paid from the Gross Settlement Amount.
17 Defendant has agreed to not oppose Plaintiff's Counsel's request for reimbursement for advanced litigation
18 expenses so long as they do not exceed the \$10,000 threshold. The Claims Administrator will issue Class
19 Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that
20 the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts
21 not awarded to Plaintiff's Counsel shall be added to the Net Settlement Amount as defined in section 1.15.

22 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
23 Settlement Amount and shall not exceed \$2,990. The difference between any actual costs and the allocated
24 \$2,990 shall be added to the Net Settlement Amount as defined in section 1.15.

25 5.4 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount allocated
26 to Aggrieved Employees that was not claimed by Aggrieved Employees by cashing their respective
27 settlement checks before the deadline to do so, that remaining amount shall be donated equally, *i.e.* 50/50,
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1 to Capital Pro Bono, Inc., and the Center for Workers Rights. No portion of the Gross Settlement Amount
2 will revert to Defendant for any reason.

3 **5.5 No Additional Benefits Contributions:** All Claim Amounts paid to Aggrieved Employees
4 shall be deemed to be income solely in the year in which such amounts were actually received by
5 Aggrieved Employees. It is expressly understood and agreed that the receipt of such Claim Amounts will
6 not entitle any Aggrieved Employee to any new or additional compensation or benefits under any company
7 bonus or other compensation or benefit plan or agreement in place during the period covered by the
8 Agreement, nor will it entitle any Aggrieved Employee to any increased retirement, 401(k) benefits or
9 matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Claim
10 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Aggrieved
11 Employees in connection with this Agreement (notwithstanding any contrary language or agreement in
12 any benefit or compensation plan document that might have been in effect during the period covered by
13 this Agreement).

14 **5.6 Tax Allocation:** The Parties recognize that the Claim Amounts to be paid to Aggrieved
15 Employees reflect settlement of a dispute over claimed penalties. The characterization of Claim Amounts
16 to Aggrieved Employees are as follows:

17 **5.6.1** One Hundred percent (100%) of each Aggrieved Employees' Claim Amount shall
18 be allocated for payment of disputed civil penalties. This portion of the Claim Amount consists of other
19 income, not wages, for which the Aggrieved Employees shall receive an IRS form 1099-MISC.

20 **5.6.2** Aggrieved Employees shall be solely responsible for the reporting and payment of
21 their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this
22 Agreement. No party has made any representation to any of the other Parties as to the taxability of any
23 payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to
24 Plaintiffs Counsel, or otherwise as to tax implications of any provision of this Agreement.

25 **5.7 Pro Rata Distribution Formula:** After Court approved attorneys' fees and costs, the
26 enhancement payment, and Claims Administrator Costs are determined and a Net Settlement Amount has
27 been established, that Net Settlement Amount shall be divided between the PAGA Payment and payment
28 to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount.

1 25% of the Net Settlement Amount will be paid to Aggrieved Employees. Each individual Aggrieved
2 Employees' Claim Amount shall be determined by taking the Qualifying Pay Periods for the individual
3 Aggrieved Employee and dividing that by the Qualifying Pay Periods for all Aggrieved Employees and
4 multiplying that fraction by the 25% share of the Net Settlement Amount. Payment to Aggrieved
5 Employees of their Claim Amount will not require the submission of any claim form.

6 5.8 No Additional Contribution by Defendant: Defendant's monetary obligation under this
7 Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses
8 arising out of or in connection with the performance of this Agreement shall be paid from the Gross
9 Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is
10 deemed null and void as described in Section 3, then Defendant and Plaintiff shall be equally responsible
11 for the Claims Administrator Costs incurred between the date the Agreement was executed and the date
12 of such event.

13 5.9 Enhancement Payment: Plaintiff's Counsel, on behalf of Plaintiff, shall apply to the Court
14 for an enhancement payment to Plaintiff in an amount not to exceed Ten Thousand Dollars (\$10,000) to
15 compensate for the risks, time, and expense of his involvement in the Action and securing the benefits of
16 this Agreement for Aggrieved Employees and the LWDA. The Enhancement Payment is in addition to
17 the Claim Amount Plaintiff would otherwise be due under the Agreement as a Qualified Claimant.
18 Defendant has agreed to not oppose Class Counsel's request for an enhancement payment to Plaintiff so
19 long as it does not exceed the amount stated herein. The enhancement payment will be designated as a
20 non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than
21 the enhancement payment amount requested, then the difference in the amount awarded and the requested
22 amount shall be added to the Net Settlement Amount as defined in section 1.15.

23 6. RELEASE

24 6.1 Upon the Effective Date, Plaintiff and each Aggrieved Employee shall be deemed to have
25 fully, finally, and forever released the Released Parties from all Released PAGA Claims.

26 6.2 Upon the Effective Date, Plaintiff, on behalf of himself, shall be deemed to have fully,
27 finally, and forever released any individual claims he may have arising from, or that could have been
28 asserted, or related in any way to the his employment with Defendant, under federal, state, or local laws,

and/or ordinances, or tort or contract theories, whether known or unknown, and whether anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other similar relief or claims. This release shall include, but not be limited to, any and all claims under the Americans With Disabilities Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Age Discrimination in Employment Act; the Fair Labor Standards Act; the Equal Pay Act; the Employee Retirement Income Security Act; the Consolidated Omnibus Budget Reconciliation Act; the Family and Medical Leave Act; the California Fair Employment and Housing Act; the California Constitution; the California Labor Code; the California Government Code; the California Civil Code; the California Industrial Welfare Commission Wage Orders, as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release excludes claims for workers' compensation, unemployment insurance benefits, or other claims that cannot be released as a matter of law. Plaintiff's release of his individual claims under this section includes a Civil Code section 1542 Waiver. Plaintiff acknowledges that he has been informed and is aware of the provisions of California Civil Code section 1542. Plaintiff hereby expressly waives and relinquishes all rights and benefits which he has or may have under section 1542 which reads as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.."

7. SETTLEMENT ADMINISTRATION

7.1 Duties of Claims Administrator. The Claims Administrator shall be responsible for: 1) receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amount, if any; 3) taking appropriate steps to trace and locate any individual Aggrieved Employees whose address or contact information as provided to the Claims Administrator is inaccurate or outdated and mailing the Notice of Settlement to

1 Aggrieved Employees; 4) providing notification to the appropriate state officials of this Agreement as
2 required; 5) maintaining the Gross Settlement Amount in a QSF; 6) determining and paying the final
3 amounts due to be paid under the Agreement after resolution of awarded attorneys' fees and costs, any
4 enhancement payment to Plaintiff, and Claims Administrator Costs; 7) paying any residual funds from
5 uncashed checks to the *cy pres* beneficiaries; 8) reporting to Plaintiff's Counsel and Defendant's Counsel
6 regarding the statistics of the administration, including (a) the number of initial Notice of Settlements
7 mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of
8 Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces
9 performed for undeliverable Notice of Settlements; (g) the number of Notice of Settlements undeliverable
10 from traced addresses; 9) providing a declaration to the Court regarding the final statistics of the
11 administration and compliance with all payment obligations under the Agreement; 10) completing all
12 necessary tax reporting on the QSF and payment of the Claim Amounts to Aggrieved Employees; and 11)
13 carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of
14 the Court. All disputes relating to the Claims Administrator's ability and need to perform its duties shall
15 be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions
16 of this Agreement, until all payments and obligations contemplated by the Agreement have been fully
17 executed.

18 7.2 Aggrieved Employee Data: Within fourteen (14) calendar days after the Effective Date,
19 Defendant shall provide the Claims Administrator with the name, last known mailing address, last known
20 telephone number, Social Security Number, and Qualifying Pay Periods of each Aggrieved Employee.
21 The Claims Administrator shall review the data to determine the number of Qualifying Pay Periods for
22 each Aggrieved Employee. Defendant shall not provide any information for pay periods during which an
23 Aggrieved Employee may have worked as an exempt employee, worked outside California, or worked
24 outside the PAGA Claim Period. The Claims Administrator shall maintain all information received from
25 Defendant confidential to itself, and Defendant's Counsel. However, Plaintiff's Counsel shall be able to
26 review the breakdown of Qualified Pay Periods and estimated Claim Amounts for Aggrieved Employees
27 prior to mailing for quality assurance.
28

1 7.3 Determination of Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA:

2 Within seven (7) calendar days after Defendant has provided the Claims Administrator with information
3 regarding Aggrieved Employees, the Claims Administrator shall calculate the final Net Settlement
4 Amount, PAGA Payment, and the final Claim Amounts for Aggrieved Employees, and report the results
5 of these calculations to Plaintiff's Counsel and Defendant's Counsel.

6 7.4 Claims Administrator Payments to Aggrieved Employees, Plaintiff's Counsel, and the

7 LWDA: Defendant shall wire the Gross Settlement Amount as described in Section 5.1 to the Claims
8 Administrator within fourteen (14) calendar days after receiving the funding calculation and report from
9 the Claims Administrator, but no earlier than twenty-eight (28) calendar days after the Effective Date, to
10 be to be held in trust in a QSF. Within seven (7) calendar days after the Claims Administrator receives
11 the Gross Settlement Amount, the Claims Administrator shall deliver payment of Plaintiff's Counsel's
12 attorney's fees and costs, any enhancement payment to Plaintiff, the PAGA Payment payable to the
13 LWDA, Claims Administrator Costs, and payment for Claim Amounts to Aggrieved Employees as
14 required under this Agreement and approved by the Court. Plaintiff's Counsel shall provide the Claims
15 Administrator with the pertinent taxpayer identification number and payment instructions for the
16 attorney's fees and costs after the Effective Date.

17 7.5 Notice to Aggrieved Employees: The Claims Administrator will provide a Notice of
18 Settlement, substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently with
19 providing payment for Claim Amounts as described in Sections 5.7 and 7.4. The Notice of Settlement
20 will inform Aggrieved Employees of a summary of the terms and conditions of the Agreement. The
21 Notice of Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net
22 Settlement Amount, attorneys' fees and costs allocations, any enhancement payment to Plaintiff, Claims
23 Administrator Cost allocations, PAGA Payment allocations, the scope of individuals covered by this
24 Agreement, and the nature and extent of the Released PAGA Claims.

25 7.6 Aggrieved Employee Mailing: Within seven (7) calendar days after the Claims
26 Administrator receives the Gross Settlement Amount, the Claims Administrator will perform a national
27 change of address ("NCOA") search, update the addresses per the results of the NCOA search and will
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1 mail the respective Claim Amount, as determined in Sections 5.7 and 7.4, and Notice of Settlement, to
2 each Aggrieved Employee by first-class mail, postage prepaid.

3 **7.7 Returned and/or Re-mailed Notice Packets:** In the event that a Notice of Settlement and
4 Claim Amount payment is returned to the Claims Administrator as undeliverable, the Notice of Settlement
5 and Claim Amount payment shall be sent to the forwarding address affixed thereto within seven (7)
6 calendar days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt
7 to determine a correct address using a single skip-trace, computer or other search using the name, address
8 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
9 seven (7) calendar days. Following each search that does not result in a corrected address, for those
10 Aggrieved Employees who appear to be current employees of Defendant at the time of the Effective Date,
11 the Claims Administrator shall contact Defendant's Counsel for assistance and Defendant shall cooperate
12 in good faith with the Claims Administrator's reasonable efforts to obtain valid mailing addresses for
13 Aggrieved Employees to the extent they were active employees of Defendant at the time of the Effective
14 Date. In the event the procedures in this paragraph are followed and the intended recipient of a Notice of
15 Settlement and Claim Amount payment still does not receive the Notice of Settlement and/or Claim
16 Amount payment, the Aggrieved Employee shall still be bound by all terms of the Agreement, including
17 the releases contained in Sections 1.25 and 6.1, and any final judgment entered by the Court.

18 **7.8 Due Process Acknowledgement:** Compliance with the procedures set forth in Sections 7.2
19 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement
20 and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties,
21 Plaintiffs Counsel, or Defendant's Counsel to provide notice of the Agreement except as expressly
22 required by the Court.

23 **7.9 Settlement Check Expiration and Cy Pres:** The Claims Administrator shall issue Claim
24 Amounts to Aggrieved Employees in the form of a check, which shall become null and void if not
25 deposited within one hundred twenty (120) calendar days of issuance. After one hundred twenty (120)
26 calendar days of issuance, the checks shall be voided and funds from all undeposited checks shall be
27 transmitted to the *cy pres* beneficiaries identified in Section 5.4. The Claims Administrator shall deliver
28 the *cy pres* funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Claims Administrator Declaration Regarding Settlement Administration: Within twenty-one calendar days after the last day for Aggrieved Employees to cash their settlement checks, the Claims Administrator shall provide Plaintiff's Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration and that all the obligations of the Claims Administrator have been completed.

8. SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The schedule for notice and payment procedures carrying out the Agreement is as follows.

Last day for Defendant to provide Claims Administrator with Aggrieved Employee information	Within 14 calendar days after the Effective Date
Last day for Claims Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Claim Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendant to fund Gross Settlement Amount	Within 14 calendar days after the Claims Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Claim Amounts for Aggrieved Employees, but no earlier than twenty-eight (28) calendar days after the Effective Date
Last day for Claims Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendant fund the settlement

Last day for Claims Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, any enhancement payment to Plaintiff, PAGA Payment, Claims Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendant fund the settlement
Last day for Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. MISCELLANEOUS TERMS

9.1 Dismissal and Retention of Jurisdiction to Enforce: Upon the Effective Date, the Action will be dismissed with prejudice, with the Court to retain jurisdiction over the Parties to enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6. The prevailing party in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for attorney's fees and costs is filed.

9.2 Additional Pay Period Contingency: Defendant has represented that there are approximately 4,082 pay periods during the PAGA Claim Period through the date of mediation (January 26, 2022). In the event the number of pay periods during the PAGA Claim Period is more than 4,490 (*i.e.*, greater than 10% more than 4,082), then the Gross Settlement Amount shall be increased proportionally by the pay periods in excess of 4,490, multiplied by the pay period value. For example, if there were 11,900 pay periods represented to exist during the PAGA Claim Period through the date of mediation, but there are actually 15,000 pay periods in the PAGA Claim Period, and the actual pay period value is \$5.00 per pay period, Defendant would have to increase the Gross Settlement Amount by \$9,550 (15,000 pay periods – 13,090 pay periods = 1,910 pay periods x \$5.00/pay period).

1 Alternatively, Defendant shall have the option to cap the PAGA Claim Period as of the date of mediation
2 (January 26, 2022) to avoid any increase.

3 9.3 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
4 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
5 execution of such other documents and the taking of such other action as may reasonably be necessary to
6 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
7 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
8 order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include
9 modifying and/or resubmitting the Agreement for approval. Plaintiff's Counsel shall be responsible for
10 drafting the court approval paperwork. All parties agree to act immediately and diligently to perform their
11 obligations under this Agreement, including the review and approval of settlement documents, such that
12 there are no substantial delays in seeking court approval or administration of this settlement. Plaintiff's
13 Counsel shall endeavor to file a motion for approval of this settlement within sixty (60) calendar days of
14 the date this Agreement is signed. Plaintiff's Counsel shall provide Defendant's Counsel with a draft
15 approval motion within 1 week after this Agreement is fully executed. Defendant's Counsel will provide
16 comments and/or proposed revisions within 1 week after receipt of the draft motion.

17 9.4 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
18 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
19 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
20 Complaint, the representative character of the Action, the validity of any of the claims that were or could
21 have been asserted by Plaintiff and/or Aggrieved Employees in the Action, or of any liability or guilt of
22 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
23 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved
24 Employees, or any other person, and Defendant has specifically disclaimed any liability, culpability,
25 negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person. Each of the
26 Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

27 9.5 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
28 communications given hereunder shall be in writing and shall be deemed to have been duly given as of

the third business day after mailing by United States certified mail, return receipt requested, addressed as follows:

To the Plaintiff:

Galen T. Shimoda,
Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

To Defendant:

Carrie Bushman
Alexis Gabrielson
Cook Brown LLP
2407 J Street, Second Floor
Sacramento, CA 95816

9.6 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

9.7 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Claims Administrators, successors, and assigns.

9.8 Attorneys' Fees and Costs Limitations: Neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for, Aggrieved Employees, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided herein.

9.9 No Modifications: This Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms.

9.10 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement

1 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
2 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
3 this Agreement

4 9.11 Counterparts: This Agreement shall become effective upon its execution by all of the
5 undersigned. Plaintiff, Plaintiff's Counsel, Defendant and Defendant's Counsel may execute this
6 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
7 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
8 same force and effect of originals.

9 9.12 Choice of Law: The Agreement and the exhibits hereto shall be considered to have been
10 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
11 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
12 with, and governed by, the substantive laws of the State of California without giving effect to that State's
13 choice of law principles.

14 9.13 Headings and Captions: Paragraph titles or captions contained in the Agreement are
15 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
16 scope of this Agreement, or any provision thereof.

17 9.14 No Retaliation or Discouragement: The Parties agree they will take no action that could
18 be construed as retaliation against any Aggrieved Employees for participating in this settlement.

19 9.15 Integrated Agreement: This Agreement sets forth the entire understanding between the
20 Parties with regard to any and all material terms or otherwise and supersedes any and all prior agreements,
21 oral or written, pertaining to the subject matter hereof. Each party acknowledges that there is no
22 representation, inducement, promise or agreement which has been made, orally or otherwise, by the other
23 party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this
24 Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are
25 fully understood and voluntarily accepted by the Parties.

26 9.16 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
27 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
28 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

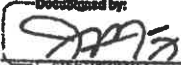
1 9.17 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
2 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
3 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

4 9.18 Waiver of Compliance: No waiver of any condition or covenant contained in this
5 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
6 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy

7 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
8 attorneys, as of the day and year herein set forth.

9 For Plaintiff:

10 Date: 3/25/2022

DocuSigned by:

Jaime Munoz

13 For Defendant:

14 Date: 3/29/2022


By: Terry Wilson
For Wilmor and Sons Plumbing and Construction

19 APPROVED AS TO FORM

21 Dated: 3/25/22

Shimoda & Rodriguez Law, PC
By: 
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff and Aggrieved
Employees

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APPROVED AS TO FORM

Dated: March 29, 2022

COOK BROWN LLP

By: 
Carrie Bushman
Alexis Gabelson
Attorneys for Defendant

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Exhibit 1

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

JAIME MUNOZ, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

WILMOR AND SONS PLUMBING AND
CONSTRUCTION, a California Corporation; and DOES 1
to 100, inclusive,

Defendant.

Case No. 34-2021-00306609

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT AND RELEASE
OF CLAIMS**

TO: All non-exempt employees who have worked, or continue to work, for Defendant Wilmor and Sons Plumbing and Construction ("Defendant") in California from May 24, 2020 up to _____ (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorney General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Munoz v. Wilmor and Sons Plumbing and Construction*, Sacramento County Superior Court, Case No. 34-2021-00306609, filed August 20, 2021 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Jaime Munoz ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of himself and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay premiums in lieu thereof, 5) failing to provide accurate wage statements, 6) failing to pay final wages, 7) failing to reimburse expenses, 8) failing to maintain accurate records, 9) failing to timely pay wages, and 10) failing to provide sick leave. Defendant has denied all of Plaintiff's allegations.

The Court approved the settlement on [date]. This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. The Court has not made any determination as to whether the claims advanced by Plaintiff have any merit. Defendant has denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the Private Attorneys General Act, Cal. Lab. Code §§ 2698 *et seq.* predicated on alleged violations of Labor Code sections 510, 1194, 1197.1, 226.7, 512, 226, 226.3, 201, 202, 203, 256, 2802, 1193.6, 1174, 204, 210, 201.3, 204.1, 204.2, 246, 246.5, 248.5, 558 (based on purported violations of the Labor Code as alleged in the Action), and IWC Wage Order 16 §§ 3, 4, 11(A), (B), 12(A) and any claims for individual liability of these sections under Labor Code §§ 558 and 558.1. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for the PAGA Settlement, Plaintiff has agreed to release any and all liability under PAGA based on violations of the Labor Code sections above, as alleged in the Action. This release applies to all Aggrieved Employees, including you. The release became effective on [date].

Under the terms of the Settlement, Defendant has agreed to pay a Gross Settlement Amount of \$292,500 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees in the amount of \$_____, attorneys' costs in the amount of \$_____, the fees and expenses of the Claims Administrator in the amount of \$_____, and a Representative Enhancement

Payment for Plaintiff in the amount of \$ _____, which will result in a "Net Settlement Amount" of \$ _____ for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$ _____) is being paid to the LWDA and 25% of the Net Settlement Amount (\$ _____) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between May 24, 2020 to _____ and dividing that number by the number of pay periods worked for all Aggrieved Employees between May 24, 2020 to _____, and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation.

You may contact the Court-approved Settlement Administrator, ILYM Group, Inc., at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be null and void 120 days after issuance if not deposited or cashed. Any check not negotiated within 120 days of mailing to an Aggrieved Employee shall be distributed 50/50 to Capital Pro Bono, Inc., and the Center for Workers Rights. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.