

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JAIME MUNOZ
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

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

13 Plaintiff,

14 vs.

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

18 Defendants.
19
20
21

Case No. 34-2021-00306609

Reservation No.: 2634797

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT**

Date: May 19, 2022

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Richard K. Sueyoshi

Filed: August 20, 2021

FAC Filed: December 21, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on May 19, 2022, at 1:30 p.m., or as soon thereafter as the matter
3 may be heard in Department 53 of the above-entitled Court, Plaintiff Jaime Munoz ("Plaintiff") will
4 move for entry of an Order for the following:

- 5 1. Finding that Plaintiff exhausted administrative remedies under the Private Attorneys General
6 Act ("PAGA") and, as such, was authorized to enter into this settlement on behalf of the
7 Labor and Workforce Development Agency;
- 8 2. Approving the \$292,500 PAGA Settlement, which is incorporated by reference as if stated
9 here in full;
- 10 3. Approving the application for payment to Plaintiff's Counsel of reasonable costs in the
11 amount of \$5,400.74;
- 12 4. Approving the appointment of ILYM Group, Inc. as the Claims Administrator and for
13 payment to ILYM Group, Inc., for administering said settlement in an amount not to exceed
14 \$2,990;
- 15 5. Approving the application for payment to Plaintiff's Counsel of reasonable attorneys' fees of
16 35% of the Gross Settlement Amount;
- 17 6. Approving as to form and content the proposed Notice of Settlement, which provides
18 individuals within the scope of the Settlement information regarding the settlement;
- 19 7. Approving the proposed procedures to notify, and deliver payment to, the individuals within
20 the scope of the settlement by first class mail;
- 21 8. Approving a representative enhancement payment of \$10,000 to Plaintiff Jamie Munoz;
- 22 9. Directing Defendant to report employment information, including social security numbers, to
23 the Claims Administrator to administer the settlement proceeds;
- 24 10. Directing that any residue from settlement checks that were not cashed by the check cashing
25 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
26 Workers' Rights under the doctrine of *cy pres*; and
- 27 11. Approving and adopting the Proposed Order and its implementation schedule, which is filed
28 herewith and incorporated by reference.

1 This Motion is being made pursuant to California Labor Code section 2699(1)(2) on the grounds
2 that the proposed PAGA settlement is fair, reasonable, and adequate and furthers the purpose behind the
3 asserted California Labor Code statutes in deterring non-compliance. As a result, the PAGA settlement
4 should be approved by the Court. This motion will be based on the notice of motion, memorandum of
5 points and authorities, the Declaration of Brittany V. Berzin, the Declaration of Jaime Munoz, exhibits,
6 the record and files of this case, and any further oral or documentary evidence introduced at the hearing
7 of this motion.

8 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**
9 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
10 **department may be downloaded off the court's website. If the party does not have online access,**
11 **they may call the dedicated phone number for the department as referenced in the local telephone**
12 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
13 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
14 **court day before the hearing, no hearing will be held.**

15 Dated: April 12, 2022

Shimoda & Rodriguez Law, PC

By: _____



Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
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and DOES 1 to 100, inclusive,

17 Defendants.
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Case No. 34-2021-00306609

Reservation No.: 2634797

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Date: May 19, 2022

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Richard K. Sueyoshi

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 This Motion is brought seeking approval of a Private Attorneys General Act (“PAGA”)
3 settlement in the gross amount of \$292,500. *See generally* Exhibit A (Proposed PAGA Settlement).
4 Plaintiff Jaime Munoz (“Plaintiff”) brought this PAGA lawsuit on behalf of the Labor and Workforce
5 Development Agency (“LWDA”) and Aggrieved Employees employed by Wilmor and Sons Plumbing
6 and Construction (“Defendant”). Plaintiff worked for Defendant in California from January 21, 2019 to
7 January 22, 2021 and was subject to all the same policies and practices that are alleged to be unlawful in
8 this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint); Declaration of Jaime Munoz
9 (“Decl. Munoz”) ¶ 2. Plaintiff has alleged that Defendant violated California law by failing to pay
10 overtime wages, failing to pay minimum wages, failing to provide meal periods or pay premiums in lieu
11 thereof, failing to provide rest periods or pay premiums in lieu thereof, failing to provide accurate wage
12 statements, failing to pay final wages, failing to reimburse expenses, failing to maintain accurate
13 records, engaging in the untimely payment of wages, failing to provide sick leave and violating
14 California Labor Code section 558 and 558.1 based thereon. *See generally* Exhibit B. These violations
15 primarily stem from Plaintiff’s allegations that Defendant violated California law by 1) failing to pay
16 Plaintiff and Aggrieved Employees for all hours worked, including time spent at Defendant’s
17 headquarters, traveling to job sites from headquarters and traveling from job sites to headquarters, and
18 time spent at job sites before the scheduled start time; 2) failing to pay the correct regular rates of pay
19 due to failing to account for the value of per diem wages and bonuses and different rates being paid
20 within the same workweek; 3) failing to authorize and permit all meal and rest periods and failing to
21 keep track of whether employees took meal periods; 4) failing to reimburse employees for the use of
22 personal items for work, such as personal cellphones and vehicles; and 5) failing to include the employer
23 address on wage statements issued to employees. The waiting time claim is derivative. *See id.*

24 Defendant has denied all of Plaintiff’s allegations and any liability or wrongdoing of any kind.
25 *See* Declaration of Brittany V. Berzin (“Decl. Berzin”), ¶ 5. However, subject to approval by the Court,
26 the parties have been able to compromise and settle all asserted claims for monetary compensation as a
27 result of extensive investigations, informal document and data exchanges, and extended negotiations
28 relating to all aspects of the asserted claims. *See* Exhibit A.

1 Plaintiff's counsel believes the proposed settlement is fair, reasonable, and adequate based on the
2 investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues
3 in this case. *See* Decl. Berzin, ¶¶ 6-7, 9-10. The prospect of a potential adverse summary judgment
4 ruling, difficulties of complex litigation, Defendant's possible good faith defense to wage statement and
5 waiting time penalty claims, the lengthy and uncertain process of establishing specific violations as to
6 each individual within the scope of the PAGA claims for each pay period, the Court's discretion to cut
7 PAGA penalties, and various possible delays and appeals were carefully considered by Plaintiff and
8 Plaintiff's Counsel in agreeing to the proposed PAGA settlement. *See id.* at ¶ 6.

9 It is well within the discretion of this Court to approve of the proposed Agreement. Accordingly,
10 Plaintiff requests that the Court: (1) make a finding that Plaintiff has exhausted all administrative
11 remedies and is authorized to enter into the proposed PAGA settlement on behalf of the LWDA; (2)
12 approve the proposed Agreement; (3) set dates for and direct distribution of payment and the Notice of
13 Settlement (Exhibit E) to Aggrieved Employees affected by the settlement as set forth in the Agreement;
14 and (4) adopt the implementation schedule contained in the proposed order.

15 **II. PROCEDURAL AND LITIGATION HISTORY**

16 Plaintiff filed this lawsuit on August 20, 2021. On May 24, 2021, Plaintiff gave written notice to
17 the LWDA and Defendant providing facts and the legal basis for all claims asserted in the Complaint
18 and the claims that are being resolved under the Agreement. *See* Exhibit C (Plaintiff's Ltr. to the Labor
19 and Workforce Development Agency). Plaintiff also submitted the \$75.00 filing fee. *See* Decl. Berzin ¶
20 3. The May 24, 2021, notice was also sent via certified mail to Defendant on the same day. *See* Exhibit
21 C. The LWDA did not provide any response to Plaintiff's notice correspondence within the statutorily
22 required time frame and, as a result, Plaintiff became authorized to act as a Private Attorney General for
23 the asserted claims. *See* Decl. Berzin ¶ 3. Plaintiff uploaded a copy of the filed Complaint to the
24 LWDA on January 13, 2022. *See* Decl. Berzin ¶ 3. No trial date has been set in this matter. *See id.*

25 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

26 Plaintiff thoroughly investigated the merits of the claims and potential damages for such claims.
27 *See id.* at ¶¶ 7, 9-10. Plaintiff worked during the time all of Defendant's policies and practices at issue in
28 the Complaint were in effect and provided information regarding these policies and practices, enabling

1 pre-filing investigations to take place. *See* Decl. Munoz ¶ 2-3; Decl. Berzin ¶ 7. The parties engaged in
2 informal discovery and exchange of documents, including a representative sampling of employee data,
3 such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of
4 limitations applicable to the PAGA claims. The discovery covered all aspects of the asserted claims,
5 including merits issues, damages, the scope and configuration of Aggrieved Employees, the content and
6 implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial,
7 among other relevant areas. *See* Decl. Berzin ¶ 7. The information allowed Plaintiff to determine the
8 extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate
9 damages model to assess the reasonableness of any settlement. *See id.* at ¶¶ 7, 9-10.

10 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

11 **a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

12 The final settlement occurred only after extended, and sometimes contentious, arm's length
13 negotiations. Over the course of approximately eleven (11) months, Plaintiff has been investigating the
14 claims and discussing with Defendant's counsel the merits of the claims and issues present in this case.
15 *See id.* at ¶¶ 5-8. The parties exchanged substantial amounts of information and legal analysis regarding
16 the asserted claims. *See id.* Then, only after nearly eleven (11) months of litigation and negotiation,
17 which included a full day mediation with Russ J. Wunderli, Esq., the parties were able to reach a
18 mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties
19 agreed to a Gross Settlement Amount of \$292,500. *See* Exhibit A.

20 **b. The Terms of the Settlement**

21 Under the Agreement, Defendant has agreed to the following:

22 1. The scope of individuals falling within the PAGA settlement would include all non-
23 exempt employees who have worked, or continue to work, for Defendant in California from May 24,
24 2020 to April 15, 2022, unless Defendant exercises its option to cap the PAGA Claim Period as of the
25 date of mediation to avoid any increase in the Gross Settlement Amount per the provisions in Section
26 9.2, in which case the PAGA Claim Period shall run to January 26, 2022. *See* Exhibit A, ¶¶ 1.2, 1.18.
27 The estimated number of Aggrieved Employees is 112.

28 //

1 2. Pay the Gross Settlement Amount of \$292,500 to resolve and release the PAGA claims
2 alleged in the Complaint and those that could have been brought based on the facts therein. *See id.* at ¶¶
3 1.13, 1.25, 1.26, 5.1, and 6.1.

4 3. The parties agree the cost of administering this settlement shall be paid from the Gross
5 Settlement Amount. Subject to Court approval, the parties selected ILYM Group, Inc. to act as the
6 Claims Administrator. The fees to administer the class shall not exceed 2,990. ILYM Group, Inc. has
7 provided a quote to administer the settlement of \$2,990. *See id.* at ¶ 5.3; Exhibit D (ILYM Group, Inc.
8 Quote). The difference between any actual administration costs and the allocated 2,990 shall be added
9 to the Net Settlement Amount. *See* Exhibit A, ¶ 5.3.

10 4. The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount
11 will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not
12 oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
13 Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation costs as approved
14 by the Court in an amount not to exceed \$10,000. *See id.* At the time this Motion was filed, the
15 estimated total costs incurred and that will be incurred in the future as a result of the litigation and
16 implementing the terms of the Agreement is \$5,400.74. *See* Decl. Berzin ¶ 17; Exhibit G (Plaintiff's
17 Itemized Costs). The difference between any actual costs and the \$10,000 will be added to the Net
18 Settlement Amount. *See* Exhibit A, ¶ 5.2.

19 5. Any Claims Administrator Costs, amounts paid for attorneys' fees and costs, PAGA
20 representative enhancement, and payments to the LWDA will be paid from the Gross Settlement
21 Amount, not in addition to the Gross Settlement Amount. *See id.* at ¶¶ 1.13, 1.15, 5.1-5.3, 5.8, 5.9.

22 6. The Claims Administrator will perform searches to locate Aggrieved Employees based
23 on the last contact information in Defendant's possession. *See id.* at ¶¶ 7.2, 7.5-7.7. The searches will
24 include reference to the U.S. Postal Service's National Change of Address Database and, for any notice
25 returned as undeliverable, skip tracing using the individual's social security number and other pertinent
26 identifying information. *See id.* In addition to their settlement share, Aggrieved Employees will receive
27 a notice that provides them with information concerning all material terms of the settlement. *See id.* at ¶
28 7.5; Exhibit E.

1 7. For any portion of the Net Settlement allocated to Aggrieved Employees that is not
2 claimed by them by cashing their respective settlement checks within 120 days, the remaining amount
3 shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under
4 the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.4. No portion of the settlement will revert to Defendant for
5 any reason. *See id.*

6 8. The parties agree that up to \$10,000 will be paid to Plaintiff as a PAGA representative
7 enhancement. This amount will be in addition to any amount Plaintiff may be entitled to under the
8 terms of the Agreement. *See id.* at ¶ 5.9.

9 **c. Allocation of Settlement Funds**

10 Under the terms of the PAGA settlement, a Net Settlement Amount will be determined. *See*
11 Exhibit A, ¶ 1.15. The Net Settlement Amount will equal the total Gross Settlement Amount (\$292,500)
12 less Plaintiff's attorneys' fees and costs, Claims Administrator Costs, and any enhancement payment
13 awarded to Plaintiff. *See id.* After Court approved attorneys' fees and costs, Claims Administrator
14 Costs, and enhancement payment are determined and a Net Settlement Amount has been established,
15 that Net Settlement Amount shall be divided between the PAGA Payment and payment to Aggrieved
16 Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount pursuant to
17 California Labor Code section 2699(i). 25% of the Net Settlement Amount will be paid to Aggrieved
18 Employees pursuant to California Labor Code section 2699(i). Each individual Aggrieved Employees'
19 Claim Amount shall be determined by taking the Qualifying Pay Periods for the individual Aggrieved
20 Employee and dividing that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying
21 that fraction by the 25% share of the Net Settlement Amount. Payment to Aggrieved Employees of their
22 Claim Amount will not require the submission of any claim form. *See* Exhibit A, ¶¶ 1.2, 1.4, 1.15, 5.7.

23 **V. ARGUMENT**

24 **a. PAGA Settlements Are Subject To Court Review and Approval Under The California**
25 **Labor Code**

26 A PAGA settlement is not effective unless the statutory requirements for becoming an authorized
27 representative of the LWDA have been complied with and the Court has reviewed and approved the
28 terms of the settlement. *See* Cal. Lab. Code §§ 2699(l)(2), 2699.3(a), (c). The Court necessarily has

1 broad discretion in making the decision to approve or reject a settlement for civil penalties as the
2 statutory scheme authorizes the Court to determine whether, in certain circumstances, penalties should
3 be assessed and, if so assessed, the appropriate amount of penalties based on the facts and circumstances
4 of the particular case. *See id.* at § 2699(e)(1)-(2). Although the PAGA does not set forth the particular
5 standards against which a PAGA settlement should be evaluated, the LWDA has provided guidance for
6 approval that mirrors the standards for evaluating class action settlements. *See, e.g., Salazar v. Sysco*
7 *Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the
8 LWDA’s guidance, that approval of PAGA settlements may be had where the statutory requirements of
9 the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and adequate).
10 The established standards for evaluating whether class action settlements are fair, reasonable, and
11 adequate provide a familiar, useful framework for the Court to evaluate PAGA settlements and have
12 been adopted by several courts. *See id.*; *Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D.
13 Cal. 2017) (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d
14 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9
15 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v.*
16 *Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*,
17 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018
18 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

19 In making the determination whether a settlement taken as a whole is fair, reasonable, and
20 adequate, the Court should be careful to still give “proper deference to the private consensual decision of
21 the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
22 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned
23 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the
24 negotiating parties” *Hanlon*, 150 F.3d at 1027. The law favors settlement of lawsuits, particularly
25 complex litigation cases where substantial resources can be conserved by avoiding the time, expense,
26 and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In*
27 *re Synacor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32
28 Cal.App.4th 344, 382 (1995).

1 **b. Plaintiff has Met All Statutory Requirements For Proceeding With PAGA Claims**

2 Prior to commencing a lawsuit under PAGA, an aggrieved employee must give written notice of
3 the facts, theories, and statutes supporting the violations to the LWDA by online filing and by certified
4 mail to the employer as well as pay a filing fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B),
5 (c)(1)(A)-(B). An “aggrieved employee” means any person who was employed by the alleged violator
6 and against whom one or more of the alleged violations was committed.” *id.* at § 2699(c). If the
7 LWDA does not provide notice of its intent to investigate the violation of statutes identified in Labor
8 Code section 2699.5 within 65 calendar days of the notice, the aggrieved employee may commence a
9 civil action. *See id.* at § 2699.3(a)(2)(A). For alleged violations of Labor Code statutes not enumerated
10 in Labor Code section 2699.5, an aggrieved employee may commence a civil action if the employer has
11 not cured the alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A). An
12 aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the
13 same time the agreement is submitted to Court. *See id.* at § 2699(l)(2).

14 As set forth above, Plaintiff complied with all statutory requirements to commence a civil action.
15 *See* Decl. Berzin ¶ 3; Exhibit C. The notice letter to the LWDA sets forth all claims and theories of
16 liability stated in the Complaint as well as supporting facts. *See* Exhibit C. Plaintiff also paid the
17 \$75.00 filing fee. *See* Decl. Berzin ¶ 3. Plaintiff became authorized to commence a civil action on all
18 claims asserted in the notice as of May 24, 2021. Plaintiff's operative Complaint was appropriately filed
19 after this date on December 21, 2021. *See* Exhibit B. Furthermore, Plaintiff has provided a copy of the
20 Agreement *and* the entire motion for approval of the PAGA settlement to the LWDA for its
21 consideration at the same time this motion was filed. *See* Decl. Berzin ¶ 19; Exhibit F (Proof of
22 Submission of Proposed Settlement Agreement to LWDA). As a result, Plaintiff has met all procedural
23 and statutory requirements for commencing and settling a PAGA action.

24 **c. The Terms of The Settlement Are Fair, Reasonable, and Adequate**

25 To make its determination that the PAGA settlement is fair, reasonable, and adequate, the Court
26 may consider several factors, including:

27 the strength of the Plaintiff's case, the risk, expense, complexity and likely
28 duration of further litigation, the risk of maintaining class action status
 through trial, the amount offered in settlement, the extent of discovery

completed and the stage of the proceedings, and the experience and views of counsel

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996); *Juarez*, 2017 U.S. Dist. LEXIS 137205, *5 n.4; *Ramirez*, 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla*, 2017 U.S. Dist. LEXIS 41655, *7, n.4; *Smith*, 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886, *6. However, this Court should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation” *Dunk*, 48 Cal. App. 4th at 1802.

i. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length Negotiations Between the Parties

Settlement in this case was reached only after litigation and extensive arm’s length negotiations lasting nearly eleven (11) months, which included a full day mediation with Russ J. Wunderli, Esq. *See* Decl. Berzin, ¶¶ 6-9. At all times, the negotiations were adversarial and contentious, although still professional in nature. *See id.* Further, while Plaintiff contends he would ultimately prevail on the claims and the issue of manageability, this is not a certainty and there is substantial risk in proceeding to further litigation. *See id.* at ¶¶ 6-9.

ii. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement

The parties were in possession of all necessary information during the negotiations. The parties engaged in substantial informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the PAGA claims and helped thoroughly vet the extent of Plaintiff’s claims against Defendant and create an accurate damages model. *See id.* at ¶ 6-9. Plaintiff was in possession of this information prior to calculating the potential damages in this case. *See id.* As a result, Plaintiff was able to make a reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the settlement now before the Court was reached at a stage where “the parties certainly have a clear view of the strengths

1 and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp.
2 610, 617 (N.D. Cal. 1979).

3 **iii. Plaintiff's Counsel is Experienced in Similar Litigation**

4 Plaintiff's Counsel have considerable experience in PAGA actions, class actions and wage and
5 hour litigation. Plaintiff's Counsel have brought and is currently bringing several wage and hour class
6 and/or PAGA actions. Thus, Plaintiff's Counsel are qualified to evaluate the PAGA claims, the value of
7 settlement versus moving forward with litigation, and viability of possible affirmative defenses. *See*
8 Decl. Berzin, ¶¶ 12-16. Plaintiff's Counsel believes that the settlement is fair, reasonable, and adequate
9 in light of the risks associated with the merits of Plaintiff's claims, the uncertainties of complex
10 litigation, the Court's discretion to lower the amount of penalties ultimately awarded, and the secured
11 benefit to the Aggrieved Employees and LWDA promoting compliance with the Labor Code. *See id.* at
12 ¶¶ 6-10.

13 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
14 **and the Risks and Costs of Further Litigation**

15 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
16 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 11%-44% of
17 the claims' maximum likely value and a net recovery of approximately 7%-26% of the claims'
18 maximum likely value. *See id.* at ¶¶ 9-10. This settlement is a reasonable compromise of the PAGA
19 claims, and exceeds approved settlement ranges in other cases comparing either absolute numbers or as
20 a percentage of total available damages in a class action context. *See Davis v. Cox Commc'ns*
21 *California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000
22 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, *5
23 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to
24 \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011)
25 (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010
26 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000
27 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009)
28 (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist.

1 LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
2 settlement even though PAGA exposure was calculated at \$53,600,000); *Garcia v. Gordon Trucking,*
3 *Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a
4 \$3,700,000 settlement); *Wershba*, 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220
5 Cal.App.3d 1117, 1139 (1990); *Officers for Justice*, 688 F.2d at 628 (9th Cir. 1982); *see also In re*
6 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that the median percentage for
7 recoveries in shareholder class action settlements averaged 2.2%-3% from 2000 through 2002).

8 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

9 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) required additional
10 information be presented to the Court in representative action settlements “to ensure that the recovery
11 represents a reasonable compromise, given the magnitude and apparent merit of the claims being
12 released, discounted by the risks and expenses of attempting to establish and collect on those claims by
13 pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.
14 App. 4th 399 (2010), clarified that *Kullar* does not require the parties to submit an illusory prediction of
15 the outer reaches of exposure without taking into account the actual risks associated with the litigation
16 such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum
17 amount to be recovered if Plaintiff prevailed on all the claims, provided there is a record that allows “an
18 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.”
19 *Id.* at 409. The *Munoz* court found the record before the trial court was sufficient, having included the
20 number of class members, payroll data, declarations describing hours and overtime worked, as well as
21 variances in duties and rest and meal period experience, and a companion action alleging less than
22 \$5,000,000 in damages. This information constituted “an adequate basis from which to garner a
23 reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*.”
24 *Id.*

25 Plaintiff similarly relied upon payroll data and Aggrieved Employee data to determine the
26 realistic potential civil penalties at issue. *See Decl. Berzin* ¶ 7. This analysis allowed Plaintiff to
27 determine the extent and frequency of potential violations on all claims as to all Aggrieved Employees.
28 *See Decl. Berzin* ¶¶ 7, 9-10. Ultimately, Plaintiff secured a percentage of the total demand for the

1 PAGA that is well within, and in fact exceeds, the range of what has been found to be sufficient in
2 several other cases. *See, supra*, Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559
3 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014)
4 (approving a settlement of \$11.7 million where the maximum range of damages was \$5,000 for each of
5 the alleged 300,000 instances of unlawful recording violations (\$1.5 billion), equaling approximately
6 .78% of the total demand and approximately \$800 per class member). This settlement represents a
7 reasonable compromise given the facts of the case, potential defenses, and potential likely recoverable
8 damages.

9
10 **vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the
Aggrieved Employees and State of California Is Reasonable**

11 The enhancement payment to the named Plaintiff is intended to recognize the time and effort
12 expended on behalf of Aggrieved Employees and the State of California. Indeed, Courts routinely
13 approve enhancement payments to compensate named plaintiffs for the services they provide and the
14 risks they incurred during the course of representative litigation. *See Ingram v. The Coca Cola Co.*,
15 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved enhancement payments of
16 \$300,000.00 to each named plaintiff in recognition of the services they provided by responding to
17 discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of
18 the class. *See Id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal.
19 1995) (approving a \$50,000.00 enhancement payment).

20 In this case, Plaintiff provided and explained documents, being available at all times to discuss
21 the case with Plaintiff's counsel. *See Decl. Berzin*, ¶ 7; *Decl. Munoz*, ¶¶ 3-6. Plaintiff spent a
22 significant amount of time pursuing this litigation for the benefit of all Aggrieved Employees and the
23 State of California. *See id.* Plaintiff brought this action knowing there would be a delay in any
24 payment as the litigation progressed, rather than proceeding on individual claims in front of the
25 California Labor Commissioner. *See id.* Payment of \$10,000 to Plaintiff is appropriate given the risk,
26 assistance, time required in bringing this case and resolution of this case.

27 //

28 //

vii. The Requested Attorneys' Fees as a Percentage of the Common Fund are Reasonable and Customarily Approved by Courts

California state and federal courts have recognized that when a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than . . . his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1977). Courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered on his behalf." *Id.* at 271 (citations omitted). Although this litigation is under the PAGA and not a class action, the basis for a common fund applies with equal force in PAGA litigation. The three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this case because there is a sufficiently identifiable class of beneficiaries (*e.g.* Plaintiff, Aggrieved Employees recovering under the settlement, and the LWDA), the benefits can be accurately traced to the settlement Plaintiff and his counsel were able to negotiate on behalf of the beneficiaries, and the fee can be shifted with exactitude to those benefitting as the fee request is a specific, lump-sum percentage of the common fund. As set forth in the fee award examples provided below for the Court's reference, it is an accepted practice in wage and hour litigation, which includes PAGA settlements, to award attorneys' fees based on a percentage of the

1 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City of*
2 *Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
3 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004); *Rincon v. W. Coast Tomato Growers, LLC*, 2018
4 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

5 Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of
6 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
7 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
8 generally approved as reasonable in wage and hour settlements below \$10 million:

9 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
10 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
11 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
12 recent wage and hour class actions where federal district courts approved attorney fee
13 awards ranging from 30 to 33%); *Singer v. Becton Dickenson and Co.*, 2010 U.S. Dist.
14 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

15 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011); *see also In*
16 *re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming 33% of fund as fee in
17 securities case); *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (same). Both California
18 Courts and Federal District Courts regularly award fees within these ranges. *See Watson v. Raytheon*
19 *Company*, USDC Southern District, Case No. 3:10-cv-00634 (33-1/3% fee award); *Dirienzo v. Dunbar*
20 *Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745 (33-1/3% fee award); *Green, et al. v.*
21 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069 (33% fee award);
22 *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122 (33.3% fee award); *Chavez et*
23 *al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122 (33.3% fee award); *Willis et al.*
24 *v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695 (33% fee award); *Birch v.*
25 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
26 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
27 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
28 action settlement). To determine whether a percentage is reasonable, a Court may consider: (1) the

1 percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied
2 in other representative actions; (3) the quality of counsel; and (4) the size of the award. *See In re Ikon*
3 *Office Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000).

4 These factors support Plaintiff's request for reasonable attorneys' fees. The typical percentage
5 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
6 depending on the complexity of the case. In class action and PAGA litigation, the typical percentage
7 negotiated between parties ranges from thirty to forty percent (30% to 40%) based on the same factors.
8 Plaintiff's request of \$102,375 (35%) falls within these typical fee arrangements. *See Decl. Berzin*, ¶ 17.
9 The size of the PAGA settlement also supports the fee request when compared to other PAGA
10 settlements that have been deemed to protect the public's interest. *See Davis*, 2017 U.S. Dist. LEXIS
11 63514, *1 (\$4,000 PAGA allocation); *Moore*, 2014 U.S. Dist. LEXIS 8358, *5 (\$2,500 PAGA
12 allocation); *Jack*, 2011 U.S. Dist. LEXIS 118764, *6 (\$3,000 PAGA allocation); *Singer*, 2010 U.S. Dist.
13 LEXIS 53416, *2 (\$3,000 PAGA allocation); *Hopson*, 2009 U.S. Dist. LEXIS 33900, *9 (approving
14 \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880,
15 *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though
16 PAGA exposure was calculated at \$53,600,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist.
17 LEXIS 160052, at *7 (E.D. Cal. 2012) (\$10,000 PAGA allocation). As a percentage of the total likely
18 recovery at trial, the settlement ranges up to a 44% recovery depending on the amount of discretion the
19 Court may have otherwise used to reduce awarded penalties at trial. *See Decl. Berzin* ¶ 10. The size of
20 the recovery also speaks to the high quality of representation Plaintiff's Counsel was able to effect in this
21 case. Furthermore, Plaintiff's counsel took this case on a contingency basis and has not received any
22 compensation for the work done in this case at all, while shouldering the immense financial risk
23 attendant to complex civil litigation involving 112 Aggrieved Employees. *See id.* at ¶¶ 9-11, 17. For
24 these reasons, Plaintiff's request for fees in the amount of 35% of the common fund should be granted.

25 Plaintiff's Counsel seek reimbursement of \$5,400.74 for the expenses they have incurred and will
26 continue to incur though carrying out the terms of this settlement. *See Exhibit G*. This is less than the
27 \$10,000 provided for in the settlement. These expenses include postage charges, photocopying and
28 printing expenses, mediation expenses, and research and filing expenses, among other expenses

1 necessarily incurred to properly litigate this case. *See id.* For these reasons, Plaintiff's request for
2 reimbursement of litigation expenses should be granted.

3 **VI. CONCLUSION**

4 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
5 has met all statutory requirements to commence a PAGA civil action; approve the Agreement, including
6 Plaintiff's Counsel's application for reasonable attorneys' fees and costs, Claims Administrator Costs,
7 and a PAGA representative enhancement; approve the notice and payment distribution procedures;
8 adopt the implementation schedule identified in the proposed order, which is being filed concurrently
9 herewith.

10
11
12 Dated: April 12, 2022

Shimoda & Rodriguez Law, PC



13
14 By: _____

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JAIME MUNOZ
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

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

13 Plaintiff,

14 vs.

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

17 Defendants.

Case No. 34-2021-00306609

Reservation No. 2634797

18 **EXHIBIT LIST AND EXHIBITS IN**
19 **SUPPORT OF PLAINTIFF'S MOTION TO**
20 **APPROVE PRIVATE ATTORNEYS**
21 **GENERAL ACT SETTLEMENT**

22 Date: May 19, 2022

23 Time: 1:30 p.m.

24 Dept.: 53

25 Judge: Hon. Richard K. Sueyoshi

26 Filed: August 20, 2021

27 FAC Filed: December 21, 2021

28 Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed Private Attorneys General Act Settlement
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the Labor and Workforce Development Agency
D	ILYM Group, Inc. Quote
E	Proposed Notice of Settlement
F	Proof of Submission of Proposed Settlement Agreement to LWDA
G	Plaintiff's Itemized Costs

Dated: April 12, 2022

Shimoda & Rodriguez Law, PC

By: _____



Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

EXHIBIT A

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Blvd., Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JAIME MUNOZ
10 individually and on behalf of similarly situated employees

11 Carrie E. Bushman (Cal. State Bar No. 186130)
12 Alexis M. Gabrielson (Cal. State Bar No. 298738)
13 **Cook Brown LLP**
14 2407 J Street, Second Floor
15 Sacramento, CA 95816
16 Telephone: (916) 442-3100
17 Facsimile (916) 442-4227

18 Attorneys for Defendant WILMOR AND SONS PLUMBING
19 AND CONSTRUCTION

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
28

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,
28

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
28

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.

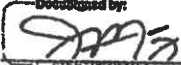
1 9.17 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
2 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
3 applicable precedents so as to define all provisions of this Settlement Agreement valid and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

)

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.

EXHIBIT B

FILED
Superior Court Of California,
Sacramento
12/21/2021
Isanmiguel
By _____, Deputy
Case Number:
34-2021-00306609

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JAIME MUNOZ

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JAIME MUNOZ,

Plaintiff,

vs.

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

Defendants.

Case No.: 34-2021-00306609

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES:**

1. Private Attorneys General Act

1 Plaintiff JAIME MUNOŽ ("Plaintiff") hereby files this Complaint against Defendants
2 WILMOR AND SONS PLUMBING AND CONSTRUCTION, a California Corporation; and DOES
3 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and
4 belief, Plaintiff allege the following:

5 **INTRODUCTION**

6 1. This is a Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff based on
7 the following violations of the California Labor Code: failure to pay overtime wages, failure to pay
8 minimum wages, failure to provide meal periods and rest periods or pay premiums in lieu thereof,
9 failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursements for
10 expenses, violations of provisions regulating hours and days of work, failure to maintain accurate
11 records, failure to pay all sick time owed, and untimely payment of wages.

12 **JURISDICTION AND VENUE**

13 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
14 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
15 Labor Code and Wage Order No. 16.

16 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
17 Defendants reside in Sacramento County. In addition, some of the wrongful acts and violations of law
18 asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in
19 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
20 (1984).

21 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
22 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
23 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
24 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
25 ("LWDA") on approximately May 24, 2021 and August 19, 2021. Plaintiff provided facts and legal
26 bases for his claims within the notice to the LWDA on all violations asserted under the Private
27 Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The notices were
28 also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any

1 response to Plaintiff's notice correspondences. Accordingly, Plaintiff has exhausted all administrative
2 remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf
3 of himself and all similarly situated employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
4 *Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).

5 PARTIES

6 5. JAIME MUNOZ is an individual over the age of eighteen (18) and is a resident of the
7 State of California.

8 6. On information and belief, Plaintiff alleges, WILMOR AND SONS PLUMBING
9 AND CONSTRUCTION is now and/or at all times mentioned in this Complaint was a California
10 Corporation and the owner and operator of an industry, business and/or facility doing business in the
11 State of California.

12 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
13 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
14 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
15 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
16 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
17 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
18 Plaintiff.

19 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
20 other Defendants and was acting within the course and scope of such agency or employment. The
21 Defendants are jointly and severally liable to Plaintiff.

22 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
23 were members of and/or engaged in a joint employment, joint venture, partnership and common
24 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
25 joint venture, partnership and common enterprise.

26 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
27 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.
28

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

GENERAL ALLEGATIONS

12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 12 as though fully set forth herein.

13. Plaintiff worked for Defendants from approximately January 21, 2019 to January 22, 2021 as an hourly, non-exempt employee. Plaintiff and similarly situated employees were not fully compensated due to Defendants' multiple Labor Code violations.

14. Plaintiff and similarly situated employees were required to arrive at Defendants' headquarters prior to departing to the first job site of the day. However, Plaintiff and similarly situated employees did not clock in for the start or end of their shifts, nor did they clock in and out for meal breaks.

15. Plaintiff and similarly situated employees were not compensated for the time spent in transit to and from job sites originating from Defendants' headquarters. Further, there were times that Plaintiff and similarly situated employees worked without receiving wages because of Defendants' failure to account for hours worked. Plaintiff and similarly situated employees are owed unpaid overtime and regular wages for these hours in transit and for hours worked.

16. Defendants paid Plaintiff and similarly situated employees different rates of pay according to the jobs they completed. Defendants also paid a per diem and bonuses to Plaintiff and similarly situated employees. Defendants failed to pay the proper overtime rate as two different rates of pay were used at times to pay Plaintiff and similarly situated employees. Further, Defendants failed to incorporate the per diem and bonuses into the regular rate of pay for purposes of overtime and sick leave.

17. Defendants did not provide Plaintiff and similarly situated employees with the required thirty (30) minute lunch break every five hours of work completed. Defendants only permitted lunch breaks when it was convenient and often occurred well past five (5) hours of work. Plaintiff and similarly situated employees never received second or third lunch breaks when working in excess of ten (10) hours or twelve (12) hours in a day. Defendants have no policy of tracking and calculating when

1 and for how long meal breaks are taken. Due to Defendants refusal to properly account for missed or
2 delayed meal periods, Plaintiff and similarly situated employees are owed meal period premiums.

3 18. Defendants did not provide Plaintiff and similarly situated employees with the required
4 opportunity for rest breaks. Plaintiff and similarly situated employees were deprived of their right to ten
5 (10) minute rest breaks for each four (4) hours of work completed. Defendants only provided rest
6 breaks on rare occasions when temperatures at worksites were at extreme levels. Plaintiff and similarly
7 situated employees are owed compensation for their missed rest breaks.

8 19. When Plaintiff and similarly situated employees were unable to arrive at Defendants'
9 headquarters at the required time before being compensated, they were forced to use their own personal
10 means of transportation to get to job sites. Since Defendants have no policy of reimbursement for
11 transportation, Plaintiff and similarly situated employees were required to pay their own gas and
12 maintenance costs associated with the use of their vehicles. Plaintiff and similarly situated employees
13 are owed reimbursement for the work-related use of their personal vehicles.

14 20. Plaintiff and similarly situated employees were also required to use their personal
15 cellphones without reimbursement. Defendants coordinated arrival times and job site locations by
16 sending messages and calling Plaintiff and similarly situated employees on their personal cellphone.
17 While at job sites and on duty, Defendants contacted Plaintiff and similarly situated employees to
18 instruct them on logistical matters and work duties. Defendants have no policy of reimbursement for the
19 work-related usage of employees' personal cellphones. Plaintiff and similarly situated employees are
20 owed unpaid reimbursement for work-related use of their personal cellphones.

21 21. Defendants failed to provide Plaintiff and similarly situated employees with accurate
22 wage statements. Defendants failed to account for proper hourly rates of overtime and missed or
23 delayed meal period premiums. Defendants also improperly rounded Plaintiff's and similarly situated
24 employees' hourly wages for Defendants' benefit. Since Defendant has no established policy of
25 clocking in and out, Plaintiff and similarly were subjected to an estimation of hours established and
26 entered by Defendant. The paystubs distributed also fail to show the correct rates of pay for overtime
27 and sick leave.

1 22. At the time of Plaintiff's and similarly situated employees' termination and/or separation,
2 Plaintiff and similarly situated employees had regular and overtime and minimum wages owed to them,
3 meal and rest period premiums, and paid sick time according to the regular rate of pay. To date,
4 Defendants have not paid to Plaintiff and similarly situated employees these unpaid wages.

5 **CAUSES OF ACTION**
6 **FIRST CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**
 (As to Defendants)

8 23. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 22 as though fully
9 set forth herein.

10 24. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
11 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
12 current and former employees:

- 13 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay
14 Overtime Wages)
- 15 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay
16 Minimum Wages)
- 17 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B)
18 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 19 • Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide
20 Rest Periods or Pay Premiums in Lieu Thereof)
- 21 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 22 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 23 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 24 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
25 Work in Any Industrial Welfare Commission Order)
- 26 • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- 27 • Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)
- 28 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

25. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

26. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

27. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. As to the First Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

Dated: December 20, 2021

Shimoda Law Corp.

By:

**Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff**

1 *Munoz v. Wilmor and Son's Plumbing and Construction, Inc.*
2 *Sacramento County Superior Court of California 34-2021-00306609*

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a
7 party to the within above-entitled action.

8 On December 20, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint for Civil Penalties

10 Carrie E. Bushman (SBN: 186130) 11 Alexis Gabrielson (SBN: 298738) 12 Cook Brown LLP 13 2407 J Street, Second Floor 14 Sacramento, California 95816 15 Phone: (916) 442-3100 16 Fax: (916) 442-4227 17 Email: cbushman@cookbrown.com 18 agabrielson@cookbrown.com	
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19 [XXX] [By Mail] I am familiar with my employer's practice for the
20 collection and processing of correspondence for mailing with the
21 United States Postal Service and that each day's mail is deposited
22 with the United States Postal Service that same day in the ordinary
23 course of business. On the date set forth above, I served the
24 aforementioned document(s) on the parties in said action by
25 placing a true copy thereof enclosed in a sealed envelope with
26 postage thereon fully prepaid, for collection and mailing on this
27 date, following ordinary business practices, at Elk Grove,
28 California, addressed as set forth above.

29 [] [By Personal Service] By personally delivering a true copy thereof
30 to the office of the addressee above.

31 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
32 shown above. No error was reported by the e-mail service that I
33 used.

34 [] [By Overnight Courier] By causing a true copy and/or original
35 thereof to be personally delivered via the following overnight
36 courier service: _____

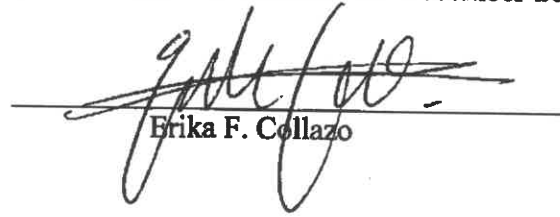
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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed on December 20, 2021,
3 at Elk Grove, California.
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Erika F. Collazo

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

August 19, 2021

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Munoz v. Wilmor and Sons Plumbing and Construction, Inc.*

Dear Labor Commissioner,

Our office previously filed a notice with the Labor and Workforce Development Agency on behalf of Plaintiff Jaime Munoz ("Plaintiff") on May 24, 2021. In this letter we seek to amend our prior notice to identify additional provisions of the Labor Code violated by Defendants Wilmor and Sons Plumbing and Construction, Inc. and Terry Wilson ("Defendants") based on the facts and theories that were asserted in Plaintiff's May 24, 2021 notice. Accordingly, we are providing the following "employers" notice pursuant to California Labor Code section 2699.3:

Wilmor And Sons Plumbing And Construction
8510 Thys Court
Sacramento, CA, 95828

Terry Wilson
8510 Thys Court
Sacramento, CA, 95828

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Defendants. Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all individuals who have, or continue to, perform work for Defendants in California as hourly, non-exempt employees at any time from May 24, 2020 to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).



A. FACTS

Plaintiff worked for Defendants from approximately January 21, 2019 to January 22, 2021 as an hourly, non-exempt employee. Plaintiff and similarly situated employees were not fully compensated due to Defendants' multiple Labor Code violations.

Defendants failed to pay Plaintiff and similarly situated employees for all hours spent driving for work purposes. Plaintiff and similarly situated employees were required to arrive at Defendants' headquarters prior to departing to the first job site of the day. However, Plaintiff and similarly situated employees did not clock in for the start or end of their shifts, nor did they clock in out for meal breaks. Plaintiff and similarly situated employees were not compensated for the time spent in transit to and from job sites originating from Defendants' headquarters. Further, there were times that Plaintiff and similarly situated employees worked without receiving wages because of Defendants' failure to account for hours worked. Plaintiff and similarly situated employees are owed unpaid overtime and regular wages for these hours in transit and for hours worked.

Defendants paid Plaintiff different rates of pay according to the job done. Defendants also paid a per diem and bonuses to Plaintiff and similarly situated employees. Defendants failed to pay the proper overtime rate as two different rates of pay were used at times to pay Plaintiff and similarly situated employees. Further, Defendants failed to incorporate the per diem and bonuses into the regular rate of pay for purposes of overtime and sick leave.

Defendants did not provide Plaintiff and similarly situated employees with the required thirty (30) minute lunch break every five hours of work completed. Defendants only permitted lunch breaks when it was convenient and often occurred well past five (5) hours of work. Plaintiff and similarly situated employees never received second or third lunch breaks when working in excess of ten (10) hours or twelve (12) hours in a day. Defendants have no policy of tracking and calculating when and for how long meal breaks are taken. Due to Defendants refusal to properly account for missed or delayed meal periods, Plaintiff and similarly situated employees are owed meal period premiums.

Defendants did not provide Plaintiff and similarly situated employees with the required opportunity for rest breaks. Plaintiff and similarly situated employees were deprived of their right to ten (10) minute rest breaks for each four (4) hours of work completed. Defendants only provided rest breaks on rare occasions when temperatures at worksites were at extreme levels. Plaintiff and similarly situated employees are owed compensation for their missed rest breaks.

When Plaintiff and similarly situated employees were unable to arrive at Defendants' headquarters at the required time before being compensated, they were forced to use their own personal means of transportation to get to job sites. Since Defendants have no policy of



reimbursement for transportation, Plaintiff and similarly situated employees were required to pay their own gas and maintenance costs associated with the use of their vehicles. Plaintiff and similarly situated employees are owed reimbursement for the work-related use of their personal vehicles.

Plaintiff and similarly situated employees were also required to use their personal cellphones without reimbursement. Defendants coordinated arrival times and job site locations by sending messages and calling Plaintiff and similarly situated employees on their personal cellphone. While at job sites and on duty, Defendants contacted Plaintiff and similarly situated employees to instruct them on logistical matters and work duties. Defendants have no policy of reimbursement for the work-related usage of employees' personal cellphones. Plaintiff and similarly situated employees are owed unpaid reimbursement for work-related use of their personal cellphones.

Defendants failed to provide Plaintiff and similarly situated employees with accurate wage statements. Defendants failed to account for proper hourly rates of overtime and missed or delayed meal period premiums. Defendants also improperly rounded Plaintiff's and similarly situated employees' hourly wages for Defendants' benefit. Since Defendant has no established policy of clocking in and out, Plaintiff and similarly were subjected to an estimation of hours established and entered by Defendant. The paystubs distributed also fail to show the correct rates of pay for overtime and sick leave.

At the time of Plaintiff's and similarly situated employees' termination and/or separation, Plaintiff and similarly situated employees had regular and overtime and minimum wages owed to them, meal and rest period premiums, and paid sick time according to the regular rate of pay. To date, Defendants have not paid to Plaintiff and similarly situated employees these unpaid wages.

Terry Wilson is the owner, director, officer, and/or managing agent of Wilmor and Sons Plumbing and Construction, Inc. and caused each and every one of the aforementioned Labor Code violations.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all



hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendant they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.,* IWC Wage Order MW-2019; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 16, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Four – Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 16, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendant also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.



Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum and overtime wages, meal and rest period premiums, and paid sick time, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Seven – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendant failed to pay any reimbursements for personal cellphone and car usage by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count Eight – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer



to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Terry Wilson was an officer, director, shareholder, and/or managing agent of Defendant responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Nine – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendant failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Count Ten – Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

Labor Code section 204(a) provides that "all wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. As stated above, Defendant failed to comply with this provision by paying Plaintiff and Aggrieved Employees for wages earned between the 1st and 15th and between the 16th and last day of the month beyond the maximum time allowed under the statute. This was in violation of the law.

Count Eleven – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked, effective July 1, 2015. Employers must



authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Defendants failed to abide by the HWHFA when they failed to provide Plaintiff and Aggrieved Employees with all paid sick time owed. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: 

Galen T. Shimoda

GS:bb

cc: Client via e-mail

1 *Munoz v. Wilmor and Sons Plumbing and Construction, Inc.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Erika F. Collazo, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On August 19, 2021, I served the following documents on the party below:

- 8 • Amended Private Attorney General Act Letter

9
10 Wilmor And Sons Plumbing And Construction
8510 Thys Court
11 Sacramento, CA, 95828

Terry Wilson
8510 Thys Court
Sacramento, CA, 95828

12 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
13 and processing of correspondence for mailing with the United States Postal
14 Service and that each day's mail is deposited with the United States Postal
15 Service that same day in the ordinary course of business. On the date set forth
16 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

17 [] [By Personal Service] By personally delivering a true copy thereof to the office
18 of the addressee above.

19 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: _____.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct, and that this declaration was executed on August 19, 2021, at Elk Grove,
22 California.

23
24 
25 Erika F. Collazo
26
27
28

EXHIBIT D

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Munoz v. Wilmor and Sons Plumbing and Construction

Requesting Attorneys Name:	Brittany Berzin
E-Mail:	bberzin@shimodalaw.com
ILYM Contact:	Jonathan Paul
E-Mail:	Jonathan@ilymggroup.com
Contact Number:	310.948.7117

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Estimated # of Class Members	120
Estimated Percentage of Remails	10%
Unclaimed Funds Escheat to State Controller	No
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	2	\$240.00
NCOA	Flat Rate	\$150.00	1	\$150.00
Toll-Free Call Center	Flat Rate	\$150.00	1	\$150.00
Storage, Photocopies, Deliveries	Flat Fee	\$284.00	1	\$284.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$974.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$2.00	120	\$240.00
USPS First Class 1oz Postage	Per Piece	\$0.55	120	\$66.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$5.00	12	\$60.00
Preparation of Taxes	Hourly	\$125.00	1	\$125.00
Annual Filing of Tax Return	Per Year	\$750.00	1	\$750.00

*Additional Bank fees may apply

Subtotal \$1,791.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Process Unclaimed Funds to State Controller	Flat Fee	\$0.00	0	\$0.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$225.00

TOTAL CASE COST - NOT TO EXCEED: \$2,990.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT E

**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.

EXHIBIT F

EXHIBIT G

Date	Description	Amount
05-25-2021	Payment to LWDA - PAGA Filing Fee	\$75.00
05-25-2021	Certified Mail - PAGA Letter to Employers	\$12.93
5/31/2021	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Westlaw Legal Research Fees	\$500.00
08-20-2021	Certified Mail - Amended PAGA Letter to Employers	\$8.62
08-20-2021	Service Fee to Court - Complaint	\$40.00
08-20-2021	Payment to Court - Complaint	\$435.00
09-28-2021	Service Fee to Court - POSOS	\$40.00
12-06-2021	Service Fee to Court - Stipulation and order to file FAC	\$40.00
12-06-2021	Payment to Court - Stipulation and order to file FAC	\$20.00
12-07-2021	Mediation - Fees to Mediator	\$3,000.00
12-21-2021	Service Fee to Court - FAC	\$40.00
01-26-2022	Mediation - Meal	\$49.19
02-02-2022	Payment to Court - Complex Fees	\$1,000.00
02-02-2022	Service Fee to Court - Complex Fees	\$40.00
Anticipated	Payment to Court - PAGA Approval Motion	\$60.00
Anticipated	Service Fee to Court - PAGA Approval Motion	\$40.00
	TOTAL:	\$5,400.74

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JAIME MUNOZ
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

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

13 Plaintiff,

14 vs.

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

18 Defendants.
19
20
21

Case No. 34-2021-00306609

Reservation No.: 2634797

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Date: May 19, 2022

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Richard K. Sueyoshi

Filed: August 20, 2021

FAC Filed: December 21, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on May 19, 2022 at 1:30 p.m., in Department 53 before the
4 Honorable Richard K. Sueyoshi, presiding. Plaintiff Jaime Munoz (“Plaintiff”) filed this Private
5 Attorneys General Act (“PAGA”) action on August 20, 2021. The operative Complaint alleges that
6 Wilmor and Sons Plumbing and Construction (“Defendant”) violated California law by failing to pay
7 overtime wages, failing to pay minimum wages, failing to provide meal periods or pay premiums in lieu
8 thereof, failing to provide rest periods or pay premiums in lieu thereof, failing to provide accurate wage
9 statements, failing to pay final wages, failing to reimburse expenses, failing to maintain accurate
10 records, engaging in the untimely payment of wages, failing to provide sick leave and violating
11 California Labor Code section 558 and 558.1 based thereon. Defendant has denied each of Plaintiff’s
12 claims. The Complaint further alleges that Defendant is liable for civil penalties under the PAGA as a
13 result of the alleged violations. Defendant has denied all of Plaintiff’s allegations. Plaintiff sought
14 attorneys’ fees and costs as part of this Action.

15 The parties have agreed to a settlement of the PAGA claims. Defendant will provide monetary
16 consideration in exchange for a release of claims and dismissal consistent with the terms of the PAGA
17 Settlement (“Agreement”). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff’s Motion, the declarations in support,
19 the Agreement, the Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
20 DETERMINATIONS AS FOLLOWS:

21 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
22 **EMPLOYEES**

23 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
24 PAGA claims asserted in this litigation and is authorized to act as a private attorney general with respect
25 to the PAGA claims being released under the Agreement. The Court finds the scope of individuals
26 subject to the terms and conditions of the Agreement, its releases, and all rights and obligations
27 thereunder include the following:
28

1 All non-exempt employees who have worked, or continue to work, for
2 Defendant in California from May 24, 2020 up to April 15, 2022, unless
3 Defendant exercises its option to cap the PAGA Claim Period as of the
4 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

5 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
6 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
7 the Agreement.

8 **II. APPROVING THE AGREEMENT**

9 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
10 A. The Court finds that the Agreement is fair, reasonable, and adequate and, therefore, is approved as
11 required under California Labor Code sections 2698 *et seq.* Based on the potential amount of penalties
12 at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay period as to
13 each individual as required by statute for damages purposes, and the Court's statutorily authorized
14 power to reduce penalties, the Agreement represents a substantial recovery for Aggrieved Employees
15 and the Labor and Workforce Development Agency ("LWDA") to further the LWDA's purpose in
16 enforcing the Labor Code. The Court also finds that the Agreement provides a recovery that creates an
17 effective, substantial deterrent to any potential future non-compliance, furthering the purpose of the
18 Labor Code and LWDA.

19 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of
20 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
21 paid to Aggrieved Employees as civil penalties pursuant to California Labor Code section 2699(i).

22 Additionally, because the Court finds the Parties' settlement to have been agreed upon only after
23 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays
24 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by
25 reference in its entirety, as if stated here in full, including the \$292,500 Gross Settlement Amount.

26 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
27 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved employees and the
28 LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's

1 Counsel were able to negotiate on behalf of Aggrieved employees and the LWDA, and the fee can be
2 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the
3 Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir.
4 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th
5 480, 506 (2016). The Court finds the attorneys' fees request of thirty-five percent (35%) of the Gross
6 Settlement Amount, *i.e.*, \$102,375, to be appropriate compensation for Plaintiff's Counsel. The
7 attorneys' fees request is within the range that has been approved by other Courts in similar cases and is
8 reasonable in light of the circumstances of this case, the substantial and beneficial results obtained on
9 behalf of Aggrieved Employees and the LWDA, and the contingent nature of the recovery over the
10 course of this case, which included potential loss at summary judgment and/or trial proceedings.
11 Additionally, the Court orders that \$5,400.74 of the Gross Settlement Amount will be paid to Plaintiff's
12 Counsel for reasonable costs incurred in this case.

13 The Court orders that Plaintiff Jaime Munoz will receive \$10,000 as a representative
14 enhancement payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
15 rata distribution formula for Plaintiffs' time and effort on behalf of Aggrieved Employees and the State
16 of California

17 The Court orders and approves ILYM Group, Inc. to act as the Claims Administrator in this case.
18 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
19 \$2,990. Any difference between the actual cost of the Claims Administrator and the approved payment
20 will be added to the Net Settlement Amount for distribution between the LWDA and Aggrieved
21 Employees.

22 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
23 Aggrieved Employees that are not cashed by the deadline to do so shall be donated equally, *i.e.*, 50/50,
24 to Capital Pro Bono, Inc., and the Center for Workers' Rights. No portion of the Gross Settlement
25 Amount will revert to Defendant for any reason.

26 The releases and waivers for Plaintiff and Aggrieved Employees are also approved by the Court
27 as set forth in the Agreement.

28 //

1 **III. APPROVAL OF THE NOTICE OF SETTLEMENT**

2 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
3 Exhibit E, fairly and adequately advised Aggrieved Employees about the Agreement and its effect. The
4 Court further finds that the Notice of Settlement and distribution of such notice by first class mail to
5 each identified Aggrieved Employees at his or her most recent address based on a National Change of
6 Address database search from the Aggrieved Employees' last known address and a skip trace on any
7 Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address"
8 comported with all constitutional requirements, including those of due process.

9 The Court also finds that because there is a strong interest in providing Aggrieved Employees the
10 opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to
11 privacy rights, the sharing of employment information, including social security numbers, is not a
12 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
13 name, last known mailing address, social security number, and hire and termination dates for pay period
14 calculations to the Claims Administrator only, and not to Plaintiff or Plaintiff's Counsel, in order to
15 process this settlement as contemplated within the Agreement and approved by this Order. The Claims
16 Administrator shall only use this information for settlement purposes identified herein, and this
17 information shall be kept confidential, not be shared with any third-party, and used only to administer
18 the settlement.

19 **IV. IMPLEMENTATION SCHEDULE**

20 Accordingly, with good cause shown, the Court hereby approves and orders that the following
21 implementation schedule be adhered to:

22

23 Last day for Defendant to provide Claims 24 Administrator with Aggrieved Employee 25 information	Within 14 calendar days after the Effective Date
26 Last day for Claims Administrator to calculate 27 and report to the Parties the Net Settlement 28 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 funds 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 funds 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

IT IS FURTHER ORDERED that this action be dismissed with prejudice with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: _____

By: _____

Judge of the Superior Court

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JAIME MUNOZ
10 individually and on behalf of similarly situated employees

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**SUPERIOR COURT 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

Reservation No.: 2634797

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Date: May 19, 2022

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Richard K. Sueyoshi

Filed: August 20, 2021

FAC Filed: December 21, 2021

Trial Date: None Set

1 I, Brittany V. Berzin, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Jaime Munoz ("Plaintiff") herein. I am making this
4 declaration on behalf of Plaintiff, and in support of Plaintiff's Motion to Approve Private Attorneys
5 General Act Settlement. A true and correct copy of the Private Attorneys General Act Settlement is
6 being filed with this Motion as Exhibit A.

7 2. This case was brought as a Private Attorneys General Act ("PAGA") lawsuit based on
8 Plaintiff's contention that Defendant Wilmor and Sons Plumbing and Construction ("Defendant")
9 violated California law by failing to pay overtime wages, failing to pay minimum wages, failing to
10 provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay premiums
11 in lieu thereof, failing to provide accurate wage statements, failing to pay final wages, failing to
12 reimburse expenses, failing to maintain accurate records, engaging in the untimely payment of wages,
13 failing to provide sick leave and violating California Labor Code section 558 and 558.1 based thereon.
14 These claims primarily stemmed from Plaintiff's allegations that Defendant violated California law by
15 1) failing to pay Plaintiff and Aggrieved Employees for all hours worked, including time spent at
16 Defendant's headquarters, traveling to job sites from headquarters and traveling from job sites to
17 headquarters, and time spent at job sites before the scheduled start time; 2) failing to pay the correct
18 regular rates of pay due to failing to account for the value of per diem wages and bonuses and different
19 rates being paid within the same workweek; 3) failing to authorize and permit all meal and rest periods
20 and failing to keep track of whether employees took meal periods; 4) failing to reimburse employees
21 for the use of personal items for work, such as personal cellphones and vehicles; and 5) failing to
22 include the employer address on wage statements issued to employees. The waiting time claim is
23 derivative.

24 3. Plaintiff is the only named Plaintiff in this matter. From our initial investigations of
25 Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
26 PAGA action. Plaintiff filed the original complaint on August 20, 2021. Plaintiff exhausted
27 administrative remedies through the Labor and Workforce Development Agency ("LWDA") prior to
28 filing the Complaint in order to pursue penalties under the PAGA. Plaintiff filed a notice with the

1 LWDA on May 24, 2021, setting forth the facts and theories of liability. A true and correct copy of the
2 notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also
3 sent to Defendant via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time.
4 There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's
5 notice. As such, Plaintiff became authorized to commence a civil action under the PAGA. A copy of
6 the Complaint was uploaded to the LWDA shortly thereafter on January 13, 2022, after we received a
7 file stamped copy back from Court. A true and correct copy of Plaintiff's operative Complaint is being
8 filed with this Motion as Exhibit B. Currently, there is no trial date set in this matter.

9 4. Because the settlement is a PAGA only settlement, no certification procedures have or
10 need to occur in the context of approving the Agreement pursuant to *Arias v. Superior Court*, 46
11 Cal.4th 969, 975 (2009) and California Labor Code section 2699(1)(2). The settlement notice being
12 provided to employees within the PAGA settlement identifies the scope of the settlement and that no
13 other claims, class or otherwise, are being compromised as part of the settlement.

14 5. Defendant is represented in this matter by Cook Brown LLP. From the beginning,
15 Defendant has contested the merits of this case, the manageability of the case at trial, and Plaintiff's
16 ability to prove a violation in each pay period for each employee among other defenses and contentions
17 it made challenging the propriety of this action. Defendant further contended that, even assuming there
18 was a finding supporting the imposition of PAGA penalties, the Court would likely exercise its
19 discretion to substantially reduce any such penalties owed based on evidence of good faith attempts to
20 comply with Labor Code obligations by Defendant. Notwithstanding its agreement to settle this matter,
21 Defendant believe the practices Plaintiff is contending are unlawful either do not exist or, to the extent
22 they do exist, fully comply with all state and federal employment laws with respect to Plaintiff and
23 Aggrieved Employees.

24 6. Based on the expected testimony from Plaintiff and Aggrieved Employees, a review of
25 Defendant's policies and procedures and other documents relating to the alleged claims, information on
26 the number of Aggrieved Employees, Aggrieved Employees' dates of employment, and a representative
27 sample of Aggrieved Employees' payroll data, the scope of the potential penalties at issue in light of the
28 claims alleged, the Court's statutorily authorized discretion to reduce any penalties assessed, and the

1 negotiations that have taken place, I am convinced that the proposed settlement is in the best interest of
2 the Plaintiff, Aggrieved Employees affected by the Agreement and the LWDA. The length and risks of
3 trial and other normal perils of complex litigation that impact the value of the claims were also
4 considered and weighed in reaching the proposed settlement. These risks were also exacerbated in this
5 case in that it would have been necessary for Plaintiff to litigate the existence of violations for numerous
6 individual Aggrieved Employees in each pay period that they worked. In addition, I carefully
7 considered the difficulties of complex litigation, and the lengthy process of establishing specific
8 damages and various possible delays and appeals in agreeing to the proposed settlement. I further
9 considered the fact that penalties under the PAGA could be substantially cut at the discretion of the
10 Court even if Plaintiff was successful on proving those claims and there was risk that a Court could find
11 no willfulness in the failure to pay wages at separation, which would eliminate the value of the waiting
12 time penalty entirely. Overall, I believe it is more beneficial to secure a guaranteed benefit to Plaintiff,
13 Aggrieved Employees, and the LWDA now rather than to proceed with litigation and potentially obtain
14 zero funds due to legal or factual issues.

15 7. My office, including the partners Galen T. Shimoda and Justin P. Rodriguez, our
16 paralegals, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
17 and potential damages for such claims. The parties engaged in informal discovery and exchange of
18 documents, including a representative sampling of employee data, such as timecards, paystubs, payroll
19 data and relevant policies for the entirety of the statute of limitations applicable to the PAGA claims.
20 The discovery covered all aspects of the asserted claims, including merits issues, damages, the scope and
21 configuration of Aggrieved Employees, the content and implementation of the wage and hour policies at
22 issue, issues relating to manageability concerns at trial, among other relevant areas. From this
23 production we were able to determine information critical to a reliable damages analysis such as the
24 average hourly rate, average daily hours worked, average number of pay periods that had potential
25 violations based on the asserted claims, and the number of former employees. This information allowed
26 my office to assess both liability and damages and create an accurate damages model. Plaintiff assisted
27 in all aspects of this litigation including providing factual information relating to Defendant's
28 employment conditions, potential witness information, and answered questions regarding Defendant's

1 factual contentions in this matter. This was important because it directly related to our ability to
2 maintain this case as a PAGA action under manageability concerns and our ability to obtain a favorable
3 settlement for the PAGA claims.

4 8. Throughout this litigation, our office had numerous communications with Defendant's
5 Counsel discussing our respective positions. The parties engaged in mediation on January 26, 2022
6 using an experienced mediator, Russ J. Wunderli, Esq. It was only after approximately eleven (11)
7 months of investigation, research and, extensive, arm's length negotiations that the parties were able to
8 reach a settlement, which only occurred after a full-day mediation. The negotiations were at all times
9 contentious and adversarial, though still professional in nature.

10 9. The parties reviewed and analyzed substantial amounts of data regarding the class
11 claims. Based on our analysis and review of all relevant documents and Aggrieved Employee
12 information, I have determined that the likely damages for the asserted PAGA claims is approximately
13 \$3,731,964.20 based on the counts alleged to the LWDA and the Aggrieved Employee data. Based on
14 our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's
15 practices and/or policies were improper. As such, a "subsequent violation" may not be found for
16 penalty calculation purposes and the exposure analysis here is based on an "initial violation" valuation
17 being adopted by any fact finder if this matter went to trial.

18 10. However, I believe the PAGA penalties in this case may be reduced due to the fact that
19 much of the penalties are based on violations due to technical non-compliance with the Labor Code as
20 opposed to substantive wage loss or other more egregious forms of wage and hour violations, such as
21 the wholesale failure of any attempt to comply or intentional non-compliance with Labor Code
22 obligations. Furthermore, Defendant produced a substantial number of documents that a Court may
23 find demonstrates a good faith attempt at compliance that merits the reduction of civil penalties. Courts
24 are statutorily authorized to use discretion to reduce PAGA penalty ranges substantially. *See, e.g.,*
25 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
26 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
27 Thus, it is likely that the civil penalties would be cut somewhere in the range of approximately
28 \$371,753.56 (82% reduction) to \$2,612,374.94 (30% reduction). Taking this into account, Plaintiff's

1 gross recovery of \$292,500 under the PAGA settlement equals approximately 11% to 44% of the total
2 available civil penalties. After reduction of the allocated attorneys' fees and costs, settlement
3 administrator fees, the net recovery of penalties is approximately \$171,734.30, which equals
4 approximately 7% to 26% of the total available civil penalties. I believe the Agreement represents a
5 reasonable compromise of claims based on the legal and factual disputes in this case.

6 11. In agreeing to represent Plaintiff and take on the case for all Aggrieved Employees, our
7 office agreed to take this case on a contingency basis, meaning that we would take a percentage of any
8 settlement or judgment should we recover a monetary amount. We took a risk that we would not
9 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
10 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
11 make sure employees are able to find affordable representation in order to ensure that employers are
12 complying with all their legal obligations towards employees and paying employees all their hard-
13 earned wages.

14 12. I am an associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique law
15 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
16 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I
17 received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda &
18 Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working
19 on individual, class action and PAGA employment cases throughout law school. I also participated in
20 an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal
21 consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour,
22 discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation,
23 and wrongful termination, etc.), preparing wage claims, and providing representation in wage claims
24 before the California Labor Commissioner. From 2016-2017, I completed an externship at the Federal
25 Public Defenders Office as a Certified Law Student where I obtained discovery, completed legal
26 research, drafted motions, negotiated plea deals, represented clients in a variety of hearings (*e.g.*,
27 arraignments, motion hearings, sentencing hearings, etc.), and defended a client against five
28 misdemeanor charges in a jury trial in the United States District Court for The Eastern District of

1 California. I was also a member of the nationally recognized McGeorge Mock Trial Team and went on
2 to coach a high school Mock Trial team in 2018 after graduating from law school. In May 2017, I
3 graduated from the University of the Pacific, McGeorge School of Law with Great Distinction and was
4 inducted into the Order of the Coif, graduating in the top 10% of my class. I received the Witkin
5 Award for Academic Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and
6 Criminal Procedure. From 2020 to present, I have been recognized as a Super Lawyer (Rising Star). I
7 have been a member of the executive committee of the Sacramento County Bar Association Labor &
8 Employment Section since January 2020, serving as Co-Chair of the committee in 2021. I have over
9 seven years of experience working on civil litigation and employment law matters. Most of that
10 experience has been specific to analyzing and litigating wage and hour claims. As an associate, I have
11 worked on a variety of individual, class action, and PAGA cases involving wage and hour claims, such
12 as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods,
13 failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time records,
14 failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition, breach
15 of contract, independent contractor misclassification, and salaried misclassifications. Some of the class
16 action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel, including this
17 case, include the following:

- 18 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
19 Sup. Ct.);
- 20 • *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- 21 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 22 • *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin
23 Sup. Ct.);
- 24 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.
25 Cal.);
- 26 • *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156 (Sac. Sup. Ct.);
- 27 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 28 • *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);

- *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- *Ferreira v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Neufield v. Professional Transportation, Inc.*, Case No. 34-2021-00309849 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);

- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.)

13. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

14. Justin P. Rodriguez, Esq., a partner at Shimoda & Rodriguez Law, PC, also worked on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the Philosophy program. He was one of only two recipients of this award out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge. Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being selected as a Sacramento County

1 Bar Association Diversity Fellow in 2009. Mr. Rodriguez was also a member of the Employment and
2 Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

3 15. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
4 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
5 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
6 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). In
7 September 2018, he was a panel speaker for the Sacramento County Bar Association Labor and
8 Employment Law Section's presentation of "*Epic Systems*, PAGA, and the Future of Employment
9 Arbitration in California." In July 2020, he was a panel speaker for the Association of Defense
10 Counsel of Northern California & Nevada presentation of "Class Actions and PAGA Claims." His
11 practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and
12 Fair Labor Standards Act ("FLSA") claims. He is actively involved in most of the complex litigation
13 handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating, including the
14 instant case, includes, but is not limited to, the following:

- 15 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 16 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 17 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 18 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 19 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
20 (San Joaquin Sup. Ct.);
- 21 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 22 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 23 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
24 Sup. Ct.);
- 25 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
26 Ct.);
- 27 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 28 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-

- 00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
 - *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
 - *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
 - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
 - *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
 - *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
 - *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
 - *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
 - *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
 - *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
 - *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);

- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovation Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

16. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

1 17. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
2 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
3 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
4 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an
5 identifiable benefit on behalf of Aggrieved Employees and the LWDA and equity counsels that the cost
6 of the representation should be born equally amongst all who are receiving these benefits. The
7 settlement recovery provides an excellent result and is the product of substantial time and effort in
8 analyzing the facts and law applicable to this case. Our firm agreed to take this case on a contingency
9 basis and as a representative action with the possibility that we would not receive any compensation for
10 our time and efforts due to issues regarding the merits and have carried that risk over the course of this
11 case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I
12 believe that the thirty-five percent (35%) fee request is within the accepted ranges. In my experience
13 with contingency cases in employment law cases, the typical percentage negotiated between parties
14 ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class action and
15 PAGA litigation, my experience in our firm and working with several other firms as co-counsel has
16 been that the typical percentage negotiated between parties and approved by a court ranges from thirty
17 to forty percent (30% to 40%) based on the same factors. I have also reviewed several recent Federal
18 District Court Cases where the Court has approved common fund-based fee requests. These cases
19 include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon*
20 *Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC
21 Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC
22 Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District, Case No.
23 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122, and
24 *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695, which are
25 cited in Plaintiff's Memorandum of Points and Authorities. I believe our request of \$102,375
26 (approximately 35%) for attorneys' fees is justified given the results obtained on behalf of Aggrieved
27 Employees and the LWDA. Moreover, at this time, my firm has advanced all costs for Plaintiff and
28 Aggrieved Employees and has not received any compensation whatsoever for our time expended in this

1 case. The incurred costs to date and the expected costs through overseeing the complete distribution of
2 all settlement proceeds are \$10,000. Attached as Exhibit G is a true and correct copy of an itemization
3 of our firm's incurred costs and expected costs through the complete distribution of all settlement
4 proceeds.

5 18. I have used several settlement administrator companies in the wage and hour class
6 actions and PAGA actions I have resolved in the past, and believe ILYM Group, Inc. will provide the
7 best service to administer the proposed class settlement. A true and correct copy of a cost estimate
8 provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. Any difference in the actual costs
9 and the allocated amounts to cover costs will be redistributed to Aggrieved Employees pro rata per the
10 terms of the settlement.

11 19. A copy of the proposed Settlement Agreement and the entire Motion to Approve the
12 PAGA Settlement was submitted to the LWDA at the same time the Motion was submitted to the Court
13 pursuant to California Labor Code section 2699(1)(2). A true and correct copy of the proof of
14 submission demonstrating the settlement documents were provided to the LWDA and that the LWDA
15 has confirmed receipt are being filed with this Motion as Exhibit F.

16 20. A true and correct copy of the proposed Notice of Settlement to be distributed to
17 Aggrieved Employees informing them of the settlement and all material terms is being filed with this
18 Motion as Exhibit E.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct. Executed this 12th day of April 2022 in Elk Grove, California.

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Brittany V. Berzin

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff JAIME MUNOZ
individually and on behalf of similarly situated employees

**SUPERIOR COURT 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,

Defendants.

Case No. 34-2021-00306609

Reservation No.: 2634797

**DECLARATION OF PLAINTIFF JAIME
MUNOZ IN SUPPORT OF PLAINTIFF'S
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT**

Date: May 19, 2022

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Richard K. Sueyoshi

Filed: August 20, 2021

FAC Filed: December 21, 2021

Trial Date: None Set

1 I, Jaime Munoz, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion To Approve Private Attorneys General Act Settlement.

5 2. I worked for Defendant Wilmor And Sons Plumbing And Construction ("Defendant")
6 from approximately January 21, 2019 to January 22, 2021 as a non-exempt employee receiving an
7 hourly wage. I was subject to all of Defendant's policies and practices that have been alleged as
8 unlawful in the Complaint and the notice sent to the Labor and Workforce Development Agency,
9 including the following: failing to pay overtime wages, failing to pay minimum wages, failing to
10 provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay premiums
11 in lieu thereof, failing to provide accurate wage statements, failing to pay final wages, failing to
12 reimburse expenses, failing to maintain accurate records, engaging in the untimely payment of wages,
13 and failing to provide sick leave.

14 3. I have actively participated in the litigation of this case. I have given a detailed account of all
15 the facts related to my employment and the claims asserted in the Complaint. I provided extensive
16 documentation in support of the claims brought against Defendant including paystubs, Defendant's
17 policies, and other documents related to my work with Defendant and to the claims brought in the
18 action. I met with and assisted my attorneys, Galen T. Shimoda, Justin P. Rodriguez, and Brittany V.
19 Berzin, in understanding the documents and providing context for Defendant's payroll process as it
20 applied to me and how I believed it applied to Defendant's other employees.

21 4. My attorneys explained to me the risks and benefits of bringing a representative action.
22 I understood that I took on the risk, both professionally and financially, in pursuing the case as a
23 representative action. I understood that pursuing the case as a representative action meant that it would
24 take substantially longer than pursuing a claim with the California Labor Commissioner and that I
25 risked getting nothing in the end, but I believed it was important to make sure that Defendant followed
26 the law for everyone.

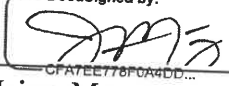
27 5. I maintained communication with my attorneys throughout the litigation, discussing the
28 facts and policies at issue in the case. I asked questions when I needed clarification about various

1 aspects of this case to make sure there were continually steps taken to advance the interests of the class.
2 I also understood that the recovery in this case was for the benefit of my fellow coworkers, not just for
3 me. When my attorneys contacted me asking for more information or documents related to the case, I
4 made myself available and tried to give or obtain any additional information I could. I participated in
5 the negotiations and settlement discussions in this case, including participating in mediation by phone,
6 speaking with my attorney to answer questions, providing any additional information needed to assist
7 the negotiations, and discussing the potential terms of the Agreement to evaluate its adequacy.

8 6. I have reviewed the Private Attorneys General Act Settlement, discussed the terms with
9 my attorneys, and asked my attorneys any questions I had. I believe the settlement terms and
10 allocations are fair and reasonable given the facts of the case.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct. Executed this 12 day of April 2022 in Sacramento, California.

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DocuSigned by:

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Jaime Munoz

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JAIME MUNOZ
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
10

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

13 Plaintiff,

14 vs.

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

17 Defendants.
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Case No. 34-2021-00306609

Reservation No. 2634797

PROOF OF SERVICE

Date: May 19, 2022

Time: 1:30 p.m.

Dept.: 53

Judge: Hon. Richard K. Sueyoshi

Filed: August 20, 2021

FAC Filed: December 21, 2021

Trial Date: None Set

Munoz v. Wilmor and Sons Plumbing and Construction, Inc.
Sacramento County Superior Court of California 34-2021-00306609

**PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Estefania Vega Rodriguez, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On April 14, 2022, I served the following documents on the party below:

- Plaintiff's Notice Of Motion And Motion To Approve Private Attorneys General Act Settlement
- Memorandum Of Points & Authorities In Support Of Plaintiff's Motion To Approve Private Attorneys General Act Settlement
- Exhibits List And Exhibits In Support Of Plaintiff's Motion To Approve Private Attorneys General Act Settlement
- Declaration Of Brittany V. Berzin In Support Of Plaintiff's Motion To Approve Private Attorneys General Act Settlement
- Declaration Of Plaintiff Jaime Munoz In Support Of Plaintiff's Motion To Approve Private Attorneys General Act Settlement
- [Proposed] Order Granting Plaintiff's Motion To Approve Private Attorneys General Act Settlement

Carrie E. Bushman (SBN: 186130) Alexis Gabrielson (SBN: 298738) Cook Brown LLP 2407 J Street, Second Floor Sacramento, California 95816 Phone: (916) 442-3100 Fax: (916) 442-4227 Email: cbushman@cookbrown.com agabrielson@cookbrown.com	
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[XXX] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

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1 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
2 shown above. No error was reported by the e-mail service that I
used.

3 [] [By Overnight Courier] By causing a true copy and/or original
4 thereof to be personally delivered via the following overnight
courier service: _____.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct, and that this declaration was executed on April 14, 2022, at
Elk Grove, California.



Estefania Vega Rodriguez