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6
7

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

11 SILVIANO VASQUEZ, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.
15

16 CHRISWELL HOME IMPROVEMENTS,
INC., A California Corporation; and DOES 1
17 to 100, inclusive,

18 Defendants.
19
20
21
22

Case No. 34-2021-00305938

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: June 16, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri Damrell

Filed: August 10, 2021

FAC Filed: January 5, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 16, 2023, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 28 of the above-entitled Court, Plaintiff Silviano Vasquez, individually and
4 on behalf of all other similarly situated individuals, hereby move for entry of an Order for the following:

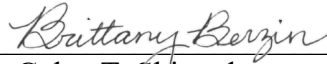
- 5 1. Certifying the proposed class herein for purposes of settlement;
- 6 2. Appointing Plaintiff Silviano Vasquez as class representative for purposes of settlement;
- 7 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 8 4. Approving the proposed class action and Private Attorneys General Act settlement, in the
9 gross amount of \$133,065.24, which is incorporated herein by reference;
- 10 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
11 35% of the Gross Settlement Amount;
- 12 6. Approving the application for payment to Class Counsel of reasonable costs in the amount of
13 \$6,661.23;
- 14 7. Approving the Class Representative Enhancement Payment of \$10,000 to Plaintiff Silviano
15 Vasquez;
- 16 8. Approving the appointment of ILYM Group, Inc. as the Claims Administrator and for
17 payment to ILYM Group, Inc. for administering said class action settlement in the amount of
18 \$7,500;
- 19 9. Approving the settlement of claims under the Private Attorneys General Act for the total
20 amount of \$2,500, 75% of which will be paid to the Labor and Workforce Development
21 Agency and 25% of which will be paid to Aggrieved Employees;
- 22 10. Determining that the class notification procedure and process complied with Class Members'
23 due process rights;
- 24 11. 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*;
- 27 12. 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 Code of Civil Procedure section 382, Labor Code section
2 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the preliminarily approved
3 class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class
4 Members and should be approved by the Court. This motion will be based on the notice of motion,
5 memorandum of points and authorities, the Declaration of Brittany V. Berzin, the Declaration of
6 Silvano Vasquez, the Declaration of Cassandra Polites, exhibits, the record and files of this case, and
7 any further oral or documentary evidence introduced at the hearing of this motion.

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

16 Dated: May 22, 2023

Shimoda & Rodriguez Law, PC

17 By: 
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Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

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12 employees,

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14 vs.

15 CHRISWELL HOME IMPROVEMENTS,
16 INC., A California Corporation; and DOES 1
17 to 100, inclusive,

18 Defendants.
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21
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23

Case No. 34-2021-00305938

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 16, 2023

Time: 9:00 a.m.

Dept.: 28

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26	<i>Richard Posner, Economic Analysis of Law</i> § 21.9, at 534-35 (3d ed. 1986)	17

I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

This Motion is brought seeking final approval of a wage and hour class action settlement in the gross amount of \$133,065.24. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release). Plaintiff Silviano Vasquez (“Plaintiff”) brought this class action individually and on behalf of other similarly situated employees employed by Defendant Chriswell Home Improvement, Inc. (“Defendant”). Plaintiff worked for Defendant in California from about March 15, 2021 to June 1, 2021 and was subject to all the same policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint); Declaration of Silviano Vasquez (“Decl. Vasquez”) ¶ 2.

Plaintiff has alleged that Defendant failed to pay overtime, failed to pay minimum wages, failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed to pay final wages, failed to reimburse expenses, and engaged in unfair competition. *See generally* Exhibit B. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendants violated California law by 1) failing to pay Class Members for all hours worked; and 2) failing to incorporate the value of nondiscretionary remuneration, such as bonuses into Class Members’ regular rates of pay for the purpose of calculating overtime and paid sick time; 3) failing to authorize and permit all meal and rest periods and failing to keep track of whether Class Members’ took meal periods; and 4) failing to reimburse Class Members’ for the use of personal items for work, such as personal cellphones, vehicles, and tools. *See* Exhibit B. Plaintiff has contended that this is a meritorious class action lawsuit and that this case is appropriate for class certification for settlement purposes as the requisites for class certification in this case can be satisfied. *See* Exhibit B.

Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Declaration of Brittany V. Berzin (“Decl. Berzin”), ¶ 5. Defendant has denied that this case is appropriate for class certification other than for purposes of settlement and that Plaintiff would have difficulty proving class certification is proper here. *See id.* However, subject to

1 approval by the Court, the parties have been able to compromise and settle all asserted claims for
2 monetary compensation as a result of extensive investigations, informal document and data exchanges,
3 and extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiff's
4 counsel believes that the proposed settlement is in the best interest of the putative class based on the
5 discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See* Decl.
6 Berzin, ¶¶ 3, 6-11. The prospect of potential class certification issues and the uncertainty of class
7 certification, Defendant's factual and legal contentions, difficulties of complex litigation, the lengthy
8 process of establishing specific damages and various possible delays and appeals were carefully
9 considered by Plaintiff and Plaintiff's counsel in agreeing to the proposed settlement. *See id.*

10 The reaction of Class Members to the preliminarily approved Agreement has been
11 overwhelmingly positive and gives substantial support to the Agreement has been overwhelmingly
12 positive and gives substantial support to the Agreement and all terms and allocations therein being fair,
13 reasonable, and adequate. Zero Class Members opted out of the settlement and there have been zero
14 objections to the Agreement. *See* Declaration of Cassandra Polites ("Decl. Polites"), ¶¶ 9-10. It is well
15 within the discretion of this Court to grant final approval of the proposed settlement, which satisfies all
16 of the criteria for final settlement approval under California law. Accordingly, Plaintiff request that the
17 Court: (1) certify the proposed settlement class; (2) grant final approval of the proposed Agreement; (3)
18 find that the procedures used to notify Class Members complied with due process; (3) grant Plaintiff's
19 request for attorney's fees and costs, the Enhancement Payment to the Class Representative, and
20 Claims Administrator Costs; and (5) approve and adopt the proposed order granting final approval,
21 which is filed concurrently herewith.

22 II. PROCEDURAL AND LITIGATION HISTORY

23 Plaintiff filed a class action complaint on approximately August 10, 2021, in the Sacramento
24 County Superior Court against Defendants. Plaintiff exhausted administrative remedies under the
25 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
26 2699.3(a), (c); Decl. Berzin, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
27 approximately January 5, 2022 to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
28 motion for certification or trial in this matter. *See* Decl. Berzin, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See* Decl. Berzin, ¶7. Plaintiff worked during the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Vasquez ¶¶ 2, 5-6. The parties engaged in formal and informal discovery and exchange of documents, including a representative sampling of employee data, such as time records, paystubs and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Berzin, ¶ 7. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

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

The final settlement occurred only after extended, and sometimes contentious, arm's length negotiations. Over the course of nearly one year, Plaintiff has been investigating the claims and discussing with Defendant's counsel the merits of the claims and certification issues present in this case. *See id.* at ¶¶ 6-11. The parties exchanged substantial amounts of information and legal analysis regarding the asserted claims. *See id.* Then, only after nearly one year of litigation and negotiation, which included a full day mediation with Russ J. Wunderli, Esq., the parties able to reach a mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties agreed to a Gross Settlement Amount of \$110,000. *See* Exhibit A.

b. The Terms of the Settlement

Under the Agreement, Defendant has agreed to the following:

1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶ 1.2, 1.8):

1 All individuals who have, or continue to, perform work for Defendant in
2 California as non-exempt employees from August 10, 2017 up to
September 26, 2022

3 All individuals who have, or continue to, perform work for Defendant in
4 California as non-exempt employees from August 10, 2020 up to
September 26, 2022

5 2. Pay the Gross Settlement Amount of \$133,065.24¹, exclusive of the employer's share of
6 payroll taxes, to resolve and release the claims alleged in the Complaint. *See id.* at ¶¶ 5.1, 5.2, 10.1.
7 No portion of the Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.6. Aggrieved
8 Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of
9 being Class Members. *See id.* at 7.5.1.

10 3. The parties agree that up to \$10,000 for Plaintiff Silviano Vasquez will be paid as a
11 Class Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff
12 may be entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

13 4. The parties agree that the cost of administering this class action settlement shall be paid
14 from the settlement proceeds. Subject to Court approval, the parties have selected ILYM Group, Inc. to
15 act as the Claims Administrator, whose final costs are \$7,500. *See Decl. Polites* ¶ 17. The difference
16 between the actual administration costs and the originally allocated \$10,000 under the Agreement, will
17 be added to the Net Settlement Amount and paid to Class Members on a pro rata basis. *See id.* at ¶ 5.3

18 5. The parties agree that \$2,500 of the Gross Settlement Amount shall be allocated to
19 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
20 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See id.* at ¶ 5.5.
21 Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts by
22 Defendant to maintain complaint policies and take corrective action, the presence of what may likely be
23 deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff believes
24 the \$2,500 PAGA Payment allocation represents meaningful settlement aimed at deterring non-
25 compliance given the facts of this case. *See Decl. Berzin*, ¶¶ 9-11; *see also Nordstron Com. Cases*, 186
26 Cal.App.4th 576,589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their
27

28 ¹ The Gross Settlement Amount was increased from \$110,000 to \$133,064.24 pursuant to paragraph 10.1 of the Agreement based on an increase in the number of workweeks during the Class Period.

1 being disputed and being part of a class settlement which was evaluated based on the terms of the
2 agreement overall); *Davis v. Cox Commc'ns California, LL*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D.
3 Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement; *Jack v. Hartford*
4 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation
5 in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D.
6 Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands*
7 *Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in
8 \$1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D.
9 Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food*
10 *Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000
11 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011)
12 (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund
13 settlement).

14 6. The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount
15 (\$46,752.83) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant
16 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
17 Additionally, the parties agree that Plaintiff will be entitled to the actual litigation costs in the amount
18 of \$6,661.23. *See Exhibit D (Plaintiff's Counsel's Itemized Costs)*. The difference between the actual
19 costs and the originally allocated \$10,000 will be redistributed to Class Members on a pro rata basis.
20 *See Exhibit A, ¶ 5.2.*

21 7. Any Claims Administrator Costs, any amounts paid for attorneys' fees and costs, the
22 Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross
23 Settlement Amount, not in addition to the Gross Settlement Amount. *See Exhibit A, ¶¶ 5.1-5.5.*

24 8. In consideration for the value received in the Agreement, Class Members who fail to
25 timely opt-out of this settlement will waive all Qualified Claimant's Released Claims as set forth in the
26 Agreement. *See Exhibit A, ¶¶ 1.30-1.31.* Aggrieved Employees will waive all Released PAGA Claims
27 as set forth in the Agreement regardless of whether they opt out of being a Class Member. *See id.* at
28 1.33, 7.5.1.

1 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to Qualified
2 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
3 settlement checks within 120 days, the remaining amount shall be paid 50/50 to Capital Pro Bono, Inc.,
4 and the Center for Workers' Rights under the doctrine of *cy pres*. See Exhibit A, at ¶ 5.6.

5 **c. Allocation of Settlement Funds**

6 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
7 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
8 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
9 Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA
10 Payment. Each Class Member's share will be determined by dividing their total weeks worked within
11 the Class Period by the total weeks worked by all Class Members within the Class Period. That
12 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
13 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
14 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
15 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
16 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
17 Aggrieved Employee's individual share. See Exhibit A, at ¶ 5.8.

18 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
19 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

20 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
21 Court on February 3, 2023. To comply with the class members' due process rights, the parties enlisted
22 an exhaustive method to ensure the best practical means possible was used to provide notice to the
23 class. The parties provided the class action administrator the names, last known address, and social
24 security numbers for the class. The class action administrator then updated this information by doing
25 an address trace for each individual using this information. See Decl. Polites, ¶¶ 4-5. If the Notice
26 Packets were returned as undeliverable, further investigation was performed and they were re-mailed
27 using updated information. See *id.* at ¶ 7. Of the 141 Notice Packets mailed, only 6 were undeliverable
28 after use of these methods. See *id.* at ¶ 8. The Notice Packets included information regarding the

1 requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax allocations. *See*
2 Decl. Polites, Exh. A. The average distribution to participating class members is approximately
3 \$422.77, the maximum distribution is approximately \$3,243.07. *See id.* at ¶ 16. No objections to the
4 preliminarily approved settlement have been made and no Class Members opted out. *See* Decl. Polites,
5 ¶¶ 9-10.

6 It is not required that Class Members be given actual notice of a class settlement; instead, the
7 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
8 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
9 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*
10 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
11 1994), the Court rejected a class member's argument that he had not received due process because he
12 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
13 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
14 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
15 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable Notice in this case, the
16 Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not
17 receive actual notice due to their mailings being deemed undeliverable were still properly held to be
18 part of the class settlement because they received the best notice practicable under the circumstances.
19 *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-
20 984 (2019), the California Supreme Court noted that California has adopted a similar approach
21 regarding providing notice to class members.

22 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice
23 contains all information necessary for a Class Member to assess the litigation, the settlement, and
24 whether they wanted to participate, object, or opt-out. *See* Decl. Polites, Exh. A. The Claims
25 Administrator utilized a national change of address database, forwarding notices, and skip tracing in an
26 effort to ensure that all reasonable means were exhausted in attempting to provide Class Members
27 notice of this settlement. *See* Decl. Polites, ¶¶ 5-7. Additionally, the entire motion for preliminary
28 approval, the Notice, and all filings in this matter were available, free of charge, on a web page

accessible to all Class Members. *See id.* at ¶ 3(i). The content of the notice provided and the manner in which it was provided to Class Members was the best practicable notice to satisfy due process.

VI. THE AGREEMENT WARRANTS FINAL APPROVAL AS IT IS FAIR, REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS, PROVIDING AN EXCELLENT RECOVERY UNDER THE FACTS OF THIS CASE

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)²; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(1)(2) (requiring Court review of PAGA settlements). However, courts should give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms agreeable to all parties, a court should disapprove of the settlement "only with considerable circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

The purpose of the Court's final evaluation of a proposed class action settlement is to determine only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within "the range of reasonableness," it should grant final approval of the class action settlement. *See, e.g., North County Contr.'s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168

²The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

Cal. App. 4th 116, 133 (2008). To make the fairness determination, the Court must consider several factors, including:

the strength of the Plaintiff's case, the risk, expense, complexity and likely 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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996). 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; and (4) the percentage of objectors is small." *Id.* at 1802; *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (C.D. Cal. June 10, 2005) ("It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members").

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 one year, which included a full day mediation with Russ J. Wunderli, Esq. *See Decl. Berzin*, ¶¶ 6-10. 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 certification, this is not a certainty and there is substantial risk in proceeding to further litigation. *See id.* at ¶¶ 6-10. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this settlement. *See id.*

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 and formal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, and relevant policies for the

entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the class claims and helped thoroughly vet the extent of Plaintiff's claims against Defendant and create an accurate damages model. *See id.* at ¶ 6-10. 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 and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

iii. Plaintiff's Counsel are Experienced in Similar Litigation

Plaintiff's counsel has considerable experience in class and PAGA actions and wage and hour litigation. Plaintiff's counsel has brought and are currently bringing several wage and hour class and/or PAGA actions. Thus, Plaintiff's counsel are qualified to evaluate the class claims, value of settlement versus moving for certification and going to trial, and the viability of possible affirmative defenses. *See* Decl. Berzin, ¶¶ 11-16. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to the class. *See id.* at ¶ 6.

iv. No Class Members Objected or Opted Out

The reaction by Class Members to the Agreement and all the terms and allocations stated therein is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement and zero have opted out. *See* Decl. Polites, ¶¶ 9-10. This provides strong evidence that the settlement is fair, reasonable, and adequate. *In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (“It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members”); *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“That unanimous, positive reaction to the Proposed Settlement is compelling evidence that the Proposed Settlement is fair, just, reasonable, and adequate”).

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1 **v. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
2 **and the Risks and Costs of Further Litigation**

3 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
4 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 4.4% of the
5 maximum likely value in this matter and between 13.1% and 52.7% of the likely recovery, and a net
6 recovery of approximately 2% of the maximum likely value in this matter. The net recovery also
7 represents between 5.9 % and 23.7% of the likely recovery. *See* Decl. Berzin, ¶ 11. Additionally, the
8 average net award per class member is approximately \$422.77. *See id.* This settlement is a reasonable
9 compromise of the class and PAGA claims, and is within the percentile ranges of the total available
10 damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th at 246,
11 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv.*
12 *Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559
13 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum
14 potential recovery after reduction for attorney's fees was higher than median percentage for recoveries
15 in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale*
16 *Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net
17 recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila*
18 *v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement
19 with a gross recovery of 11% of the projected maximum damages available and a net recovery of
20 approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306
21 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5%
22 of the projected maximum recovery). *David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D.
23 Cal. 2012) ("Class Members will receive an average of approximately \$198.70, with the highest
24 payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are
25 good, which is highlighted by the fact that there was no objection to the settlement amount or the
26 attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal.
27 2012) ("the results achieved in this case were very favorable. Class members are provided with
28 immediate monetary relief, with an average award of around several hundred dollars and a minimum
award of \$50").

1 **vi. The Proposed Settlement is a Reasonable Compromise of Claims**

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

18 Plaintiff similarly relied upon payroll data and Class Members’ data to determine the realistic
19 potential damages suffered by the class as a whole. *See* Decl. Berzin, ¶¶ 6-11. This analysis allowed
20 Plaintiff to determine the extent and frequency of potential violations on all claims as to all Class
21 Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative class
22 that is within the range of what has been found to be sufficient in several other cases. *See, supra*,
23 Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-*
24 *800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7
25 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of
26 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
27 approximately \$800 per class member). This settlement represents a reasonable compromise given the
28 percentage of the total demand that was secured, the average recovery per class member, the Court’s

1 ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See* Decl.
2 Berzin, ¶¶ 9-11.

3 **b. Certification of the Class is Appropriate**

4 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
5 defined community of interest in the questions of law and fact involved affecting the parties to be
6 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
7 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
8 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
9 Here, the Court conditionally certified the settlement class on February 3, 2023, and nothing has
10 happened in the interim that would warrant changing the decision. *See Garcia v. City of King City*,
11 2017 WL 363257, *4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, *4
12 (N.D. Cal. 2017). Here, the parties agree that, for the purposes of settlement, these prerequisites are
13 met. *See* Exhibit A.

14 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

15 The proposed settlement class is ascertainable because all putative class members can be readily
16 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th
17 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
18 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 143 individuals
19 who fall within the definition of Class Member, which makes joinder of all members impracticable.
20 *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531
21 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to
22 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
23 these requirements are satisfied.

24 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

25 The commonality requirement is met when there are questions of law or fact regarding the class
26 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
27 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
28 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d

1 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
2 and class-wide treatment of a dispute must be superior to individual litigation.³ *See Richmond*, 29
3 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
4 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
5 named representative are typical of those of the class, though “they need not be substantially identical.”
6 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

7 The common questions of law and fact in this case stem from Plaintiff's contention that
8 Defendant violated California law by 1) failing to pay Class Members for all hours worked; and 2)
9 failing to incorporate the value of nondiscretionary remuneration, such as bonuses into Class Members’
10 regular rates of pay for the purpose of calculating overtime and paid sick time; 3) failing to authorize
11 and permit all meal and rest periods and failing to keep track of whether Class Members’ took meal
12 periods; and 4) failing to reimburse Class Members’ for the use of personal items for work, such as
13 personal cellphones, vehicles, and tools. *See Exhibit B*. The waiting time penalties, unfair
14 competition, and PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class
15 Members seek the same remedies under state law. Under these specific circumstances, the
16 commonality and predominance requirements are satisfied. Regarding the typicality requirement,
17 Plaintiff contends he suffered from the same unlawful policies, treatment, and circumstances as Class
18 Members did, will request the same remedies, and will rely on the same methods of proof to establish
19 liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

20 **iii. The Adequacy Requirement is Met**

21 The adequacy of representation requirement is met if the named representative and counsel have
22 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
23 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
24 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed settlement,
25 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
26 number of workweeks they worked for Defendants. *See Exhibit A*. Finally, any settlement class
27

28 ³When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 member who wished to opt-out of the settlement was able to do so, and he or she was also able to
2 dispute the number of workweeks stated in the Notice of Settlement.

3 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
4 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
5 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
6 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
7 engaged Defendant's counsel in settlement discussions over the course of nearly one year. Moreover,
8 Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's
9 counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy requirement is
10 met. *See generally* Decl. Berzin.

11 **VII. THE AMOUNTS REQUESTED FOR ATTORNEY'S FEES AND COSTS, AN**
12 **ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND CLAIMS**
13 **ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE APPROVED**

14 The Notice of Settlement sent to Class Members specifically identified the allocations for
15 attorney's fees and costs, the Class Representative Enhancement Payment, and Claims Administrator
16 Costs. *See* Decl. Polites, Exh. A. The reaction of Class Members to these requested amounts provides
17 useful evidence of whether they are reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403,
18 *21 ("The absence of objections or disapproval by class members to Class Counsel's fee request further
19 supports finding the fee request reasonable"). As noted above, there were no objections raised to the
20 Agreement or any term or allocation therein whatsoever. *See* Decl. Polites, ¶¶ 9-10. In addition to
21 Class Members' reactions supporting the requested amount, the facts and applicable case law also
22 support awarding these amounts in full.

23 An award of attorney's fees should include compensation for all hours reasonably spent. *See*
24 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431
25 (1983) (finding hours are reasonably spent if they are the kind normally billed to a fee-paying client).
26 California has not adopted any "benchmark" percentage utilized by several federal courts. *See Emmons*
27 *v. Quest Diagnostics Clinical Lab'ys, Inc.*, 2017 WL 749018, at *7 (E.D. Cal. 2017) ("Notably, while
28 the California Supreme Court recognized the Ninth Circuit's 25 percent benchmark for percentage
awards in common fund cases, it did not adopt such a benchmark for California cases"). Instead, "[t]he

1 benchmark in determining attorney fees is reasonableness.” *Karton v. Ari Design & Constr., Inc.*, 61
2 Cal.App.5th 734, 744 (2021).

3 a. **A Fee of Thirty-Five Percent of the Common Fund Is Reasonable Because It Is Within**
4 **the Ranges Historically Approved by Courts in Class Settlements and a Lodestar**
5 **Cross Check Validates the Proposed Fee**

6 An award of attorney’s fees under the common fund doctrine is appropriate in this case as there
7 is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be
8 accurately traced to the settlement Plaintiff and Class Counsel were able to negotiate on behalf of Class
9 Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific,
10 lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016);
11 *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van*
12 *Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of
13 persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”).
14 The requested fee, 35% of the common fund, is within ranges awarded in other cases. *See Martin v.*
15 *Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
16 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
17 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
18 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
19 action settlement); Decl. Berzin, ¶ 22; Exhibit G (*Strawn, et. al. v. Bridgestone Retail Operations, LLC*,
20 Final Approval Order) (awarding 35% of a common fund class action settlement).

21 To the extent there may be some Courts that have granted fees at a percentage less than 35%,
22 that does not justify an arbitrary cap on Class Counsel’s fees in this case. First, in many instances, the
23 treatises or cases discussing these percentages are relying on federal decisions guided by a
24 “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See*
25 *Emmons*, 2017 WL 749018, at *7. This artificially lowers the average percentage of fees awarded.
26 Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement
27 fund to begin with, which will generally correspond to a lower percentage of fees being deemed
28 reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an
appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of

1 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on
2 any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as
3 the lodestar method is a tool to cross check the reasonableness of the requested percentage. *See Karton*,
4 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot rationally apply any particular
5 percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference
6 to all the circumstances of the case”).

7 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the
8 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of
9 attorney’s fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at
10 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind
11 normally billed to a fee-paying client). To date, Class Counsel has spent approximately 276.4 hours
12 performing tasks that would normally be billed to any fee playing client in complex litigation and
13 estimate that this number will increase to approximately 286.4 after monitoring the disbursement of all
14 funds and compliance hearing(s). *See Decl. Berzin*, ¶ 23; Exhibit F; *Syers Props. III, Inc. v. Rankin*,
15 226 Cal.App.4th 691, 699 (2014) (“Because time records are not required under California law ... ,
16 there is no required level of detail that counsel must achieve.”) (internal quotations omitted).
17 At the prevailing market rates for Class Counsel’s level of experience and this type of complex
18 litigation, this equates to a lodestar of approximately \$152,260.00. *See Decl. Berzin*, ¶¶ 23-24; Exhibit
19 G; *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were
20 reasonable where they were “within the range of reasonable rates charged by and judicially awarded
21 comparable attorneys for comparable work”).

22 The reasonableness of Class Counsel’s fee request is also demonstrated by the fact that the
23 amount requested would not require any multiplier of the lodestar. Multipliers are typically awarded in
24 contingent fee litigation to compensate counsel for the risk of non-payment:

25 It is an established practice in the private legal market to reward attorneys
26 for taking the risk of non-payment by paying them a premium over their
27 normal hourly rates for winning contingency cases. *See Richard Posner*,
28 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent
fees that may far exceed the market value of the services if rendered on a
non-contingent basis are accepted in the legal profession as a legitimate

1 way of assuring competent representation for Plaintiff who could not
2 afford to pay on an hourly basis regardless whether they win or lose.

3 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th
4 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their
5 winning the case, must make up in compensation in the cases they win for the lack of compensation in
6 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the
7 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive
8 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither
9 unexpected nor fortuitous”); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or
10 even higher”). Yet, Class Counsel’s requested fee of \$46,752.83 would actually result in a negative
11 multiplier. As a result, a lodestar cross check validates the common fund percentage requested and the
12 Court should grant Plaintiffs’ Counsel’s fee request. *See Decl. Berzin*, ¶¶ 22-24.

13 **b. Class Counsel’s Expenses and Costs Were Necessarily Incurred to Achieve the Benefit
14 Obtained**

15 The appropriate analysis in determining whether particular costs are compensable is whether
16 they are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v.*
17 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees
18 those out-of pocket expenses that ‘would normally be charged to a fee paying client’”); *Abrams v.*
19 *Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8
20 F.3d 722, 725-26 (10th Cir. 1993). The categories of expenses for which Class Counsel seek
21 reimbursement here are categories normally charged to hourly clients and, therefore, should be
22 reimbursed out of the common fund. *See Decl. Berzin*, ¶ 25; Exhibit D.

23 **c. Class Counsel’s Request for A Class Representative Enhancement Payment Is
24 Justified In Light of The Results Achieved for the Class**

25 A service payment to a named plaintiff is intended to recognize their time and effort on behalf
26 of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the
27 services they provide and the risks they incurred during the course of the class action litigation. *See*
28 *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved
incentive awards of \$300,000.00 to each named Plaintiff in recognition of the services they provided to

1 the class by responding to discovery, participating in the mediation process, and taking the risk of
2 stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*,
3 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone*
4 *Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010) (approving \$10,000 awards to each of the
5 four (4) named plaintiffs); *See Exhibit G* (awarding class representative service fee enhancements of
6 \$15,000).

7 In this case Plaintiff provided substantial support in helping to secure payment to Class
8 Members. Plaintiff provided and explained a substantial number of documents critical to helping
9 establish important facts central to this case and participated in substantial amount of informal
10 discovery. *See Decl. Vasquez ¶¶ 5-7.* Plaintiff is also subject to a much broader release of claims than
11 Class Members, including a Civil Code section 1542 release. *See Decl. Vasquez ¶ 8.* Payment of
12 \$10,000.00 to Plaintiff is appropriate given the risk, assistance, time required, and burden experienced
13 in bringing and resolving this case, especially since this amount was identified in the Notice of
14 Settlement and no objections to it have been received. *See West v. Circle K Stores, Inc.*, 2006 U.S.
15 Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative
16 enhancement where 10,000 class members were to receive a gross award of approximately \$500 each
17 from the \$5,000,000 settlement); *Dent v. ITC Serv. Group*, 2013 U.S. Dist. LEXIS 139359, at *9-*10,
18 *15-*16 (D. Nev. 2013) (awarding a \$15,000 representative enhancement out of a \$150,000 settlement
19 for approximately 530 class members).

20 **d. The Court Should Approve the Payment of Claims Administrator Costs**

21 Since being preliminarily approved as the Claims Administrator, ILYM Group, Inc., has carried
22 out its duties as set forth in the Court's order and the Agreement. *See generally See Decl. Polites.*
23 Under the Agreement, a maximum of \$10,000 was set aside for potential Claims Administrator Costs.
24 ILYM Group, Inc.'s final costs are \$7,500, well under the potential maximum Class Members were
25 given notice of. Plaintiff requests that the Court approve payment to the Claims Administrator in the
26 amount of \$7,500 to compensate it for the costs of administration as part of the final order approving
27 the Settlement.

28 //

1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class
3 for settlement purposes; grant final approval of the proposed settlement, including the Plaintiff's Class
4 Representative Enhancement Payment, the payment to the LWDA under PAGA, and Class Counsel's
5 application for reasonable attorneys' fees and costs; find that the Notice of Settlement and
6 administration process satisfied Class Members' due process rights; and approve the proposed order
7 submitted concurrently herewith.
8

9 Dated: May 22, 2023

Shimoda & Rodriguez Law, PC

10
11 By: *Brittany Berzin*
12 Galen T. Shimoda
13 Justin P. Rodriguez
14 Brittany V. Berzin
15 Attorneys for Plaintiff
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Attorneys for Plaintiff SILVIANO VASQUEZ

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SILVIANO VASQUEZ, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

CHRISWELL HOME IMPROVEMENTS,
INC., A California Corporation; and DOES 1
to 100, inclusive,

Defendants.

Case No. 34-2021-00305938

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: June 16, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri Damrell

Filed: August 10, 2021

FAC Filed: January 5, 2022

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA
F	Summary of Plaintiff's Counsel's Hours
G	<i>Strawn, et. al. v. Bridgestone Retail Operations, LLC</i> Final Approval Order

Dated: May 22, 2023

Shimoda & Rodriguez Law, PC

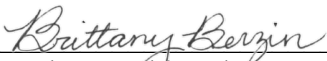
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Brittany V. Berzin
 Attorneys for Plaintiff

EXHIBIT A

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IMPROVEMENTS, INC., PAUL C. CROMWELL
and CHRIS J. MESUNAS

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

SILVIANO VASQUEZ, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

CHRISWELL HOME IMPROVEMENTS,
INC., A California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No.: 34-2021-00305938

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: August 10, 2021

FAC Filed: January 5, 2022

Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Silviano Vasquez (“Plaintiff”), on behalf of himself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendants Chriswell
4 Home Improvements, Inc., Paul C. Cromwell and Chris J. Mesunas (“Defendants”). This Agreement is
5 subject to the terms and conditions set forth below and the approval of the Court.

6 **1. DEFINITIONS**

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

8 1.1 “Action” means the above stated lawsuit, *Vasquez v. Chriswell Home Improvements, Inc.*,
9 Sacramento County Superior Court, Case No. 34-2021-00305938, filed August 10, 2021.

10 1.2 “Aggrieved Employee(s)” means all individuals who have, or continue to, perform work
11 for Chriswell Home Improvements, Inc. in California as non-exempt employees during the PAGA Claim
12 Period.

13 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
14 Regarding Class Action and PAGA Settlement and Release.

15 1.4 “Claim Amount” means an individual Qualified Claimant’s and Aggrieved Employee’s
16 allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21,
17 1.25, 5.5, and 5.8.

18 1.5 “Claims Administrator” means and refers to ILYM Group, Inc., the third-party entity that
19 will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action
20 settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of
21 administering this Agreement. The Parties each represent that they do not have any financial interest in
22 the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create
23 a conflict of interest.

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

Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class Members and/or Aggrieved Employees, Class Counsel, and Defendants’ Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

1.7 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC.

1.8 “Class Member(s)” means all individuals who have, or continue to, perform work for Chriswell Home Improvements, Inc. in California as non-exempt employees during the Class Period.

1.9 “Class Period” means August 10, 2017 up to either (1) the Preliminary Approval Date, or (2) September 26, 2022, whichever is earlier.

1.10 “Class Representative” means Plaintiff Silviano Vasquez.

1.11 “Complaint” means the operative Complaint on file in the Action with the Court.

1.12 “Court” means the Sacramento County Superior Court.

1.13 “Defendants” means Chriswell Home Improvement, Inc., Paul C. Cromwell and Chris J. Mesunas.

1.14 “Defendants’ Counsel” means Coggins Law and Elguindy Meyer & Koegel, APC.

1.15 “Enhancement Payment” means the amount approved by the Court to be paid to the Class Representative in recognition of the time and effort expended on behalf of Class Members for the benefit of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a Qualified Claimant.

1.16 “Effective Date” means the Final Approval Date unless there is a timely objection lodged that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day

1 after a signed order approving this settlement has been filed provided no appellate proceeding having been
2 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
3 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
4 further remedies or relief, whichever is later.

5 1.17 “Final Approval Date” means the date a signed order granting final approval of this
6 Agreement is filed with the Court.

7 1.18 “Gross Settlement Amount” is the sum of One Hundred Ten Thousand Dollars and No
8 Cents (\$110,000).

9 1.19 “LWDA” means the California Labor and Workforce Development Agency.

10 1.20 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
11 distribution to Qualified Claimants, as described in this Agreement, after deduction of Class Counsel’s
12 attorneys’ fees and litigation costs, Claims Administrator Costs, the PAGA Payment, and Enhancement
13 Payment to the Class Representative.

14 1.21 “Notice of Settlement” means the document substantially in the form attached hereto as
15 Exhibit 1.

16 1.22 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
17 Settlement to Class Members and Aggrieved Employees.

18 1.23 “PAGA” means Private Attorneys General Act.

19 1.24 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
20 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

21 1.25 “PAGA Claim Period” means August 10, 2020 up to either (1) to the Preliminary Approval
22 Date or (2) September 26, 2022, whichever is earlier.

23 1.26 “Parties” mean Defendants and Plaintiff.

24 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
25 of this Agreement is filed with the Court.

26 1.28 “QSF” means a Qualified Settlement Fund set up by the Claims Administrator for the
27 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this
28

Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain the property of Defendants until the payments required under the Agreement are made.

1.29 “Qualified Claimant” means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.30 “Qualified Claimant’s Released Claims” means all claims contained in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant’s Released Claims exclude claims for workers’ compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

1.31 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members, workweeks shall be defined as the total length of service (in days) in California during the Class Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class Member’s and/or Aggrieved Employee’s workweeks and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall be construed from Defendants’ records.

1.32 “Released PAGA Claims” means any all Private Attorneys General Act claims for civil penalties contained in Plaintiff’s letter to the LWDA and/or operative Complaint, through the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

1.33 “Released Parties” means Defendants, as well as Defendants’ officers, shareholders, directors, agents, employees, attorneys, and insurers.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about August 10, 2021, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursements for expenses, failure to maintain accurate records and

1 failure to provide paid sick leave. The LWDA did not respond to the notice within the statutorily required
2 time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged
3 PAGA claims.

4 2.2 On or about August 10, 2021, Plaintiff filed a class action Complaint in Sacramento
5 County Superior Court on behalf of himself and Class Members alleging claims for failure to pay
6 minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest
7 periods, failure to provide accurate wage statements, failure to pay final wages, failure to pay
8 reimbursements for expenses, and unfair competition. Plaintiff filed a First Amended Complaint on
9 approximately January 5, 2022 to add a PAGA cause of action based on the violations alleged in the
10 August 10, 2021 notice to the LWDA on behalf of himself and Aggrieved Employees.

11 2.3 Through informal discovery, Defendants and Defendants' Counsel provided Class
12 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,
13 information on Class Members including, but not limited to, Class Members' dates of employment, total
14 number of Class Members, as well as timecard data and payroll reports for a randomly selected sample of
15 Class Members.

16 2.4 On July 28, 2022, the Parties participated in a lengthy mediation with private mediator
17 Russ J. Wunderli, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution.
18 At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

19 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties,
20 document productions, extensive legal analysis, the provision of information by Defendants to Plaintiff
21 and the detailed analysis of the records, including expert analysis, have permitted each side to assess the
22 relative merits of the claims and the defenses to those claims.

23 2.6 In the Action, Plaintiff contends that Defendants violated California law by 1) failing to
24 pay Plaintiff and similarly situated employees for all hours worked; and 2) failing to incorporate the value
25 of nondiscretionary remuneration, such as bonuses into Plaintiff's and similarly situated employees'
26 regular rates of pay for the purpose of calculating overtime and paid sick time; 3) failing to authorize and
27 permit all meal and rest periods and failing to keep track of whether employees took meal periods; and 4)
28 failing to reimburse employees for the use of personal items for work, such as personal cellphones,

1 vehicles, and tools. Defendants have denied each of Plaintiff's claims and Defendants have denied that
2 this Action is appropriate for class certification for anything other than settlement purposes. The agreed
3 upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure
4 for the underlying claims and the class data supporting these claims. The Parties, with the assistance of
5 the mediator, also assessed appropriate discounts to the potential liability based on Defendants' claim of
6 financial hardship.

7 2.7 The Parties agree that the above-described investigation and evaluation, as well as
8 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
9 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class
10 Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the Action be
11 settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense,
12 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
13 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
14 Plaintiff, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for
15 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts
16 and circumstances.

17 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

18 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
19 of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
20 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
21 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
22 conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the
23 Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement
24 shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or
25 utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain
26 subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence
27 408, and any other analogous rules of evidence that may be applicable.

28 //

3.2 Defendants have 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. Defendants have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendants do not waive, but rather expressly reserve, 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 class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

4.1 The scope of the class 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 Class Members as defined in Section 1.8 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

4.2 Individuals entitled to recover under this Agreement will include only those individuals who are identified as being within the scope of this Agreement under Section 4.1.

4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data request to the Claims Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time his or her employment with Defendants ended; (c) the years during which such employee was employed with Defendants; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted to the Claims Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event more than two business days) transmit the data requests to Defendants' Counsel and request that Defendants review their records.

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1 4.4 If Defendants agree that the person listed in a data request is a Class Member and/or
2 Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person
3 who submitted the data request, at the address designated for that purpose in the data request. All
4 provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements
5 sent in response to data requests, and any person who submits a data request and is sent a Notice of
6 Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved
7 Employee for all other purposes.

8 4.5 If Defendants disagree that the person listed in a data request is a Class Member and/or
9 Aggrieved Employee, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute
10 in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
11 dispute. Defendants' records shall control unless the individual submitting the data request provides
12 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendants'
13 Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The
14 Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve
15 the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar
16 days after Defendants' Counsel and Class Counsel submit the dispute to the Claims Administrator. The
17 decision by the Claims Administrator shall be final and there shall be no right of appeal.

18 **5. TERMS OF THE SETTLEMENT**

19 The Parties agree as follows:

20 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
21 Section 6, Defendants shall pay the Gross Settlement Amount (\$110,000). Funding of the Gross
22 Settlement Amount shall occur within 30 calendar days after the Effective Date to be held in trust in a
23 QSF by the Claims Administrator. The Gross Settlement Amount includes payments to Qualified
24 Claimants, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action
25 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering
26 the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement,
27 the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary
28 to satisfy Defendants' tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage

1 payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross
2 Settlement Amount.

3 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of
4 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants
5 have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the
6 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not
7 to exceed \$10,000, which shall be paid from the Gross Settlement Amount. Defendants have agreed to
8 not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they
9 do not exceed the \$10,000 threshold. The Claims Administrator will issue Class Counsel an IRS Form
10 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less
11 than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
12 Counsel shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro
13 rata basis.

14 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
15 Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
16 allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Qualified Claimants
17 on a pro rata basis.

18 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
19 an Enhancement Payment to the Class Representative in an amount not to exceed \$10,000 to compensate
20 for the risks, time, and expense of his involvement in the Action and securing the benefits of this
21 Agreement for Class Members. The Enhancement Payment is in addition to the Claim Amount Plaintiff
22 would otherwise be due under the Agreement as a Qualified Claimant. Defendants have agreed to not
23 oppose Class Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed the
24 amount stated herein. The Enhancement Payment will be designated as a non-wage payment and reported
25 on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement Payment
26 amount requested, then any portion of the requested amount not awarded to the Class Representative shall
27 be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

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1 5.5 PAGA Payment: Two Thousand Five Hundred Dollars No Cents (\$2,500) of the Gross
2 Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%)
3 of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to
4 Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved
5 by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be
6 distributed to Qualified Claimants on a pro rata basis.

7 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or
8 PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by
9 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
10 donated equally, i.e. 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights. No portion of
11 the Gross Settlement Amount will revert to Defendants for any reason.

12 5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants
13 and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
14 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not
15 entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits
16 under any company bonus or other compensation or benefit plan or agreement in place during the period
17 covered by the Agreement, nor will it entitle any Qualified Claimant Aggrieved Employee to any increased
18 retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is
19 the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments
20 to be made by Defendants to the Qualified Claimants and Aggrieved Employees in connection with this
21 Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan
22 document that might have been in effect during the period covered by this Agreement).

23 5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved
24 Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement
25 Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved
26 attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims
27 Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing
28 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks by all Class

Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Qualified Claimants as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved Employees are as follows:

5.9.1 One third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

5.9.2 Two thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive an IRS Form 1099-MISC.

5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants' Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.

No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class Representative, the payroll tax liability of Defendants, or the allocation of the Net Settlement Amount or PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this Agreement.

5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Defendants and Plaintiff shall be equally responsible for the costs of the Claims Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and Aggrieved Employees.

6. RELEASE

6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's Released Claims against any of the Released Parties.

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6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.

7. SETTLEMENT ADMINISTRATION

7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts, including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members and Aggrieved Employee whose address or contact information as provided to the Claims Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving, independently reviewing, and resolving any challenges (in consultation with Class Counsel and Defendants' Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for

undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's and Aggrieved Employee's estimated Claim Amount. The Notice of Settlement will provide information on how to access electronic copies online of the Notice of Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents as the Court directs.

7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the Preliminary Approval Date, Defendants shall provide the Claims Administrator with the name, last known mailing address, last known telephone number, Social Security Number, start and end date of employment (if any) of each Class Member and Aggrieved Employee, and any other information the Claims Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined herein.

1 The Claims Administrator shall review the data to determine the number of Qualifying Workweeks for
2 each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days after receipt of
3 such address information, the Claims Administrator will perform a national change of address (“NCOA”)
4 search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement,
5 substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved Employee by first-
6 class mail, postage prepaid. The Claims Administrator shall maintain all information received from
7 Defendants confidential to itself, and Defendants’ Counsel. However, Class Counsel shall be able to
8 review the breakdown of Qualified Workweeks and estimated Claim Amounts for Class Members and
9 Aggrieved Employees prior to mailing for quality assurance provided the personal identifying information
10 is redacted and/or omitted.

11 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
12 is returned to the Claims Administrator as undeliverable on or before the conclusion of the Notice Period,
13 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar
14 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to
15 determine a correct address using a skip-trace, computer or other search using the name, address and/or
16 Social Security number of the individual involved, and shall then perform a single re-mailing within five
17 (5) calendar days to any more recent address found as a result of the search. Following each search that
18 does not result in a corrected address, for those Class Members who appear to be current employees of
19 Defendants at the time of the Preliminary Approval Date, the Claims Administrator shall contact
20 Defendants’ Counsel for assistance and Defendants shall cooperate in good faith with the Claims
21 Administrator’s reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
22 are active employees of Defendants. In the event the Notice of Settlement is forwarded to a new address
23 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
24 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
25 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
26 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
27 be bound by all terms of the Agreement, including the releases contained in Section 6.

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1 7.5 Responses to Notice of Settlement:

2 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish
3 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.
4 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that
5 he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants
6 to be excluded from the settlement; (c) identify the case name and number (i.e. Vasquez v. Chriswell
7 Home Improvement, Inc., 34-2021-00305938); (d) be signed; and (e) be post-marked no later than the
8 conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must
9 personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class
10 Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to
11 determine whether a request to opt-out has been timely submitted. Any Class Member who requests to
12 opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net
13 Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or
14 comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound
15 by all terms of the Agreement and any order or final judgment thereon, regardless of whether they
16 otherwise have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this
17 Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt
18 out of being a Class Member.

19 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes
20 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
21 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and
22 Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
23 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
24 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
25 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify
26 the case name and number (i.e. Vasquez v. Chriswell Home Improvement, Inc., 34-2021-00305938) (e)
27 be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing
28 timeline stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with

1 the Court and serve the notice on Class Counsel and Defendants' Counsel, if they intend to appear at the
2 final approval hearing.

3 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
4 Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)
5 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
6 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
7 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two
8 business days) forward all such disputes to Defendants' Counsel and request that Defendants review the
9 dispute. Defendants' records shall presumptively control unless the Class Member can produce
10 documentation evidencing other periods of employment worked. If Defendants do agree with submitted
11 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
12 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
13 Class Member's Claim Amount. If Defendants do not agree with the submitted information, Defendants'
14 Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
15 documentation submitted by the Class Member as part of the dispute. Defendants' Counsel and Class
16 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
17 Counsel being advised of the dispute. Each dispute that Defendants' Counsel and Class Counsel cannot
18 timely resolve shall be resolved by the Claims Administrator or Court.

19 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
20 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator
21 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If
22 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency
23 shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever
24 is later.

25 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
26 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
27 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
28 Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

1 7.7 Claims Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar
2 days after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and
3 Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed
4 report regarding the statistics and responses of settlement administration to date and all the Claims
5 Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

6 7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff:
7 Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of
8 attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the
9 PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net
10 Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any
11 applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants'
12 Counsel. Defendants shall wire the Gross Settlement Amount and applicable taxes necessary to fund the
13 Settlement as described in Section 5.1 to the Claims Administrator within thirty (30) calendar days after
14 the Effective Date to be to be held in trust in a QSF. Within seven (7) calendar days after Defendants fund
15 the settlement, the Claims Administrator shall deliver payment of Class Counsels' attorney's fees and
16 costs, the Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable to
17 the LWDA, Claims Administrator Costs, and payment to Qualified Claimants and/or Aggrieved
18 Employees as required under this Agreement and approved by Court.

19 7.8.1 The Claims Administrator shall wire the Court-approved attorneys' fees and costs
20 to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide the
21 Claims Administrator with the pertinent taxpayer identification number and payment instructions after the
22 Final Approval Date.

23 7.8.2 The Claims Administrator shall send a check by mail for the Court-approved
24 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
25 requested by Class Counsel.

26 7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim
27 Amount.

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7.8.4 The Claims Administrator shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this Agreement. Defendants agree to reasonably cooperate with the Claims Administrator to the extent necessary to determine the amount of the payroll tax payment required.

7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash their settlement checks, the Claims Administrator shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Claims Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. 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 preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to provide Claims Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
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Last day for Claims Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
Last day for Defendants to fund settlement	Within 30 calendar days after the Effective Date
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after Defendants fund the settlement
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Qualified Members and 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

1 **9. DUTIES OF THE PARTIES**

2 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed
3 motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this
4 Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class
5 action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of
6 any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may
7 be requested by the Court relating to, or that are otherwise necessary to the approval and implementation
8 of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement
9 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to
10 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final
11 approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the
12 Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments
13 and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from
14 Class Counsel. With regard to the final approval documents, a similar one-week maximum review and
15 response time shall be observed by the Parties. The Parties will request that the Court's preliminary
16 approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and
17 PAGA Settlement.

18 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
19 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
20 Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily
21 appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving
22 settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving
23 the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment
24 of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
25 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
26 approved as fair, reasonable and adequate as to the Class Members.

27 9.1.2 Defendants shall not oppose Plaintiff's motion for approval of the proposed
28 Agreement.

1 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during
2 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
3 appropriate to assure effective communication to individual Class Members of information about their
4 rights and obligations under this Agreement.

5 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
6 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
7 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
8 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice
9 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of
10 the Claim Administrator's mailings including tracing and re-mailing efforts.

11 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which
12 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,
13 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the
14 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
15 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)
16 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
17 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

18 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
19 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
20 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
21 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
22 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and
23 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and
24 assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each
25 other and assist the Claims Administrator as needed or requested in completing the distribution of any
26 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with
27 the Claims Administrator, will certify to the Court completion of all payments required to be made by this
28 Agreement.

1 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
2 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
3 and PAGA Settlement and Final Judgment.

4 9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development
5 Agency (“LWDA”) of this settlement in accordance with Labor Code § 2699(1)(2).

6 **10. MISCELLANEOUS TERMS**

7 10.1 Defendants’ Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
8 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
9 with the provisions of the Agreement, Defendants may rescind the Agreement and all actions taken in its
10 furtherance will be thereby null and void. Defendants must exercise this right of rescission, in writing, to
11 Class Counsel, within seven (7) calendar days after the Claims Administrator notifies the Parties of the
12 total number of opt-outs. If the option to rescind is exercised, then any Claims Administrator Costs shall
13 be paid by Defendants. Defendants have represented that there are no more than 3,987 workweeks
14 during the Class Period. In the event the number of workweeks during the Class Period is more than
15 4,386 (*i.e.*, greater than 10% more than 3,987), then the Gross Settlement Amount shall be increased
16 proportionally by the workweeks in excess of 3,987, multiplied by the pay period value. For example,
17 if there were 11,900 workweeks represented to exist during the Class Period, but there are actually
18 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per workweek,
19 Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 workweeks –
20 11,900 workweeks = 3,100 workweeks x \$5.00/workweek).

21 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
22 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
23 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
24 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
25 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
26 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
27 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
28 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT

1 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
2 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
3 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
4 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
5 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
6 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
7 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
8 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
9 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
10 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
11 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
12 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
13 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
14 BY THIS AGREEMENT.

15 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
16 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
17 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
18 and discharged in this Agreement.

19 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
20 signing this Agreement Defendants are waiving any rights to appeal from the Court's approval of the
21 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
22 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

23 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
24 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
25 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

26 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment
27 will be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
28 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil

1 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of
2 the Agreement after default by the other party may recover reasonable attorney's fees and costs related
3 thereto.

4 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
5 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
6 execution of such other documents and the taking of such other action as may reasonably be necessary to
7 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
8 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
9 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

10 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
11 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
12 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
13 Complaint, the representative character of the Action, the validity of any of the claims that were or could
14 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
15 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
16 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,
17 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or
18 wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered
19 into this Stipulation with the intention to avoid further disputes and litigation.

20 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
21 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
22 the third business day after mailing by United States certified mail, return receipt requested, addressed as
23 follows:

24 To Plaintiff and the Class:

25 Justin P. Rodriguez
26 Brittany V. Berzin
27 Shimoda & Rodriguez Law, PC
28 9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

To Defendants:

Brian Coggins
Coggins Law
9001 Foothills Blvd., Ste. 110
Roseville, CA 95747

10.10 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.

10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided in this Agreement.

10.12 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

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

10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement may be executed on behalf of all Class Members by the Class Representative.

10.15 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiff, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed

1 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
2 and effect of originals.

3 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
4 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
5 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
6 with, and governed by, the substantive laws of the State of California without giving effect to that State's
7 choice of law principles.

8 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
9 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
10 this Agreement, or any provision thereof.

11 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could
12 be construed as retaliation against any Class Members for participating or seeking to participate in this
13 class action settlement. The Parties will not discourage any class member from participating or seeking
14 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
15 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
16 shall be entitled to further attorneys' fees and costs.

17 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
18 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
19 Each party acknowledges that there is no representation, inducement, promise or agreement which has
20 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
21 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
22 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

23 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
24 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

25 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
26 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
27 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
28

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

Date: _____

Date: 9-12-2022

Date: 7/12/2022

Date: 11/2/2022

Chris J. Mesunas

Shimoda & Rodriguez Law, PC

Dated: 9-14-22

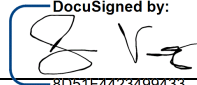
By: Justin P. Rodriguez
 Brittany V. Berzin
 Attorney for Plaintiff and Aggrieved
 Employees

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

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

For Plaintiff:

Date: 9/8/2022

DocuSigned by:

8D51F4423499433...

Silviano Vasquez

For Defendants:

Date: _____

By:
For Chriswell Home Improvement, Inc.

Date: _____

Paul C. Cromwell

Date: _____

Chris J. Mesunas

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

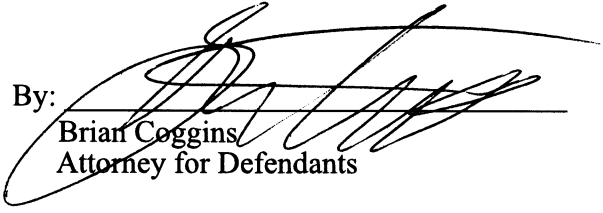
Dated: _____

By: _____
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and Aggrieved
Employees

1 APPROVED AS TO FORM

COGGINS LAW

2
3
4 Dated: 9/13/2022

By: 

Brian Coggins
Attorney for Defendants

EXHIBIT B

FILED
Superior Court Of California,
Sacramento
01/05/2022
reanmiguel
By _____, Deputy
Case Number:
34-2021-00305938

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 SILVIANO VASQUEZ

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

SILVIANO VASQUEZ, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

CHRISWELL HOME IMPROVEMENTS,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No.: 34-2021-00305938

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff SILVIANO VASQUEZ ("Plaintiff"), on behalf of himself and all other similarly
2 situated employees, hereby files this Complaint against Defendants CHRISWELL HOME
3 IMPROVEMENTS, INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all
4 collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

5 INTRODUCTION

6 1. This is a class action lawsuit brought by Plaintiff for failure to pay minimum wages,
7 failure to pay overtime wages, failure to provide meal periods or pay premiums in lieu thereof, failure to
8 provide rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure
9 to pay final wages, failure to reimburse for expenses, failure to maintain accurate records, and unfair
10 competition. Plaintiff has also alleged a representative claim for civil penalties under the Private
11 Attorneys General Act.

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, California Business and Professions 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 and/or are foreign entities and have not designated any county
18 in California as being where they maintain their principal offices. In addition, some of the wrongful acts
19 and violations of law asserted herein occurred within Sacramento County, and Defendants' obligation to
20 pay wages arose in Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36
21 Cal.3d 403, 414 (1984).

22 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
23 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
24 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
25 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
26 approximately August 10, 2021. Plaintiff provided facts and legal bases for his claims within the notice
27 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
28 Plaintiff submitted the \$75.00 filing fee. The August 10, 2021 notice was also sent via certified mail to

1 Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not
2 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
3 believes that he has exhausted all administrative remedies pursuant to the Private Attorneys General Act
4 and may bring this action on behalf of himself and all Aggrieved Employees. See Cal. Labor Code §
5 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
6 (2005). Aggrieved Employees includes all individuals who have, or continue to, perform work for
7 Defendants in California as non-exempt employees from August 10, 2020 to the present.

8 PARTIES

9 5. SILVIANO VASQUEZ is an individual over the age of eighteen (18) and is a resident
10 of the State of California.

11 6. On information and belief, Plaintiff alleges, CHRISWELL HOME
12 IMPROVEMENTS, INC., is now and/or at all times mentioned in this Complaint was a California
13 Corporation and the owner and operator of an industry, business and/or facility doing business in the
14 State of California.

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

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

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

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

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

CLASS ALLEGATIONS

12. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

all individuals who have, or continue to, perform work for Defendants in California as non-exempt employees from August 10, 2017 the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) **Numerosity**: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) **Common Questions Predominate**: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether as a result of Defendants' policies and practices Plaintiff and putative class members were deprived of meal periods or premiums;
- (2) Whether as a result of Defendants' policies and practices Plaintiff and putative class members were deprived of rest periods or premiums;

- 1 (3) Whether Defendants failed to pay Plaintiff and putative class members for all
2 hours worked;
- 3 (4) Whether Defendants included all non-discretionary remuneration paid to
4 employees when calculating their regular rate of pay for overtime and sick leave
5 purposes;
- 6 (5) Whether as a result of Defendants' policies and practices Plaintiff's and putative
7 class members received all wages, due and owing, at the time of their termination
8 or separation; and
- 9 (6) Whether Defendants provided Plaintiff's and putative class members with wage
10 statements that complied with Labor Code section 226.
- 11 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
12 class. The putative class also sustained damages arising out of Defendants' common
13 course of conduct in violation of the law as complained of herein. Plaintiff and all
14 members of the putative class were non-exempt employees who were not paid for all
15 work performed, not paid overtime owed, not provided with meal and rest periods or
16 premiums in lieu thereof, and not paid all sick leave wages owed resulting in unpaid
17 wages at their separation. Additionally, Defendants issued Plaintiff and all members of
18 the putative class wage statements that did not comply with Labor Code section 226. As
19 a result, Plaintiff and each member of the putative class will have suffered the same type
20 of harm and seek the same type of recovery based on the same legal theories.
- 21 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
22 putative class. For all relevant times, Plaintiff resided in California and worked for
23 Defendants in California. Moreover, Plaintiff is an adequate representative of the
24 putative class as Plaintiff has no interests that are adverse to those of putative class
25 members. Additionally, Plaintiff has retained counsel who has substantial experience in
26 complex civil litigation and wage and hour matters.
- 27 (e) Superiority: A class action is superior to other available means for the fair and efficient
28 adjudication of the controversy since individual joinder of all members of the putative

1 class is impracticable. Class action treatment will permit a larger number of similarly
2 situated persons to prosecute their common claims in a single forum simultaneously,
3 efficiently, and without the unnecessary duplication of effort and expense that numerous
4 individual actions would engender. Further, as damages suffered by each individual
5 member of the class may be relatively small, the expenses and burden of the individual
6 litigation would make it difficult or impossible for individual members of the class to
7 redress the wrongs done to them, and an important public interest will be served by
8 addressing the matter as a class action. The cost to the court system of adjudication of
9 such individualized litigation would be substantial. Individualized litigation would also
10 present the potential for inconsistent or contradictory judgments.

11 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
12 management of this action that would preclude its maintenance as a class action.

13 **GENERAL ALLEGATIONS**

14 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
15 set forth herein.

16 16. Plaintiff worked for Defendants from approximately March 15, 2021 to June 1, 2021 as
17 an hourly, non-exempt employee. Plaintiff and similarly situated employees were not fully compensated
18 due to Defendants' multiple Labor Code violations.

19 17. Defendants failed to pay Plaintiff and similarly situated employees for all hours spent
20 working. Defendants used phone applications to coordinate employees' schedules and for timekeeping.
21 Plaintiff and similarly situated employees received nightly texts they were required to review and
22 respond to regarding shift scheduling during hours that they were not clocked in.

23 18. Plaintiff and similarly situated employees were also required to clock in and out using a
24 phone app. After Plaintiff and similarly situated employees were done working for the day, they would
25 submit their time entries through the app. Plaintiff and similarly situated employees routinely found that
26 their submitted times were rounded in a way that reduced working hours prior to the entries being
27 approved by management. Defendants used this rounding policy to reduce labor costs and avoid
28

1 compensating employees for all time worked. Plaintiff and similarly situated employees are owed
2 unpaid minimum and overtime wages due to Defendants rounding policy.

3 19. Defendants did not consistently provide Plaintiff and similarly situated employees with
4 the required thirty (30) minute lunch break every five hours of work or ten (10) minute rest breaks every
5 four hours. To reduce labor costs and increase profits, Defendants mandated that construction projects
6 were completed as fast as possible, even if that meant foregoing meal and rest breaks. Defendants often
7 instructed Plaintiff and similarly situated employees to continue working through meal and rest breaks to
8 complete construction jobs as quickly as possible. Despite Plaintiff and similarly situated employees not
9 entering meal breaks through the timekeeping app, Defendants would change employee submissions to
10 reflect that a meal break had occurred before approving the entries. Plaintiff and similarly situated
11 employees are owed unpaid meal and rest period premiums, as well as unpaid minimum wages and
12 overtime that would have resulted had there been no unlawful deduction of thirty (30) minutes from
13 Plaintiff's and similarly situated employees' hours worked.

14 20. Defendants failed to reimburse Plaintiff and similarly situated employees for work-
15 related uses of personal items. Defendants required that employees have their own cell phones, personal
16 vehicles, and personal tools for work purposes. Plaintiff and similarly situated employees used their
17 personal cell phones while working to enter their hours, update management on project progress and
18 completion, coordinate worksite duties, and coordinate work schedules.

19 21. Plaintiff and similarly situated employees used their personal vehicles to transport
20 materials and travel to and in between jobsites. Employees were forced to spend their own money on
21 gas and maintenance costs related to work-related use of their personal vehicles. Plaintiff and similarly
22 situated employees we also required to purchase and use tools needed to complete construction projects
23 without being reimbursed or being paid two times the minimum wage. Plaintiff and similarly situated
24 employees are owed reimbursement for personal expenditures and work-related usage of personal items
25 required by Defendants.

26 22. Defendants failed to properly calculate overtime and paid sick time wages at Plaintiff's
27 and similarly situated employees' regular rate of pay. Plaintiff and similarly situated employees
28 received non-discretionary remuneration in addition to basic rate of pay that was not included in

1 calculating regular rate of pay for overtime and paid sick leave purposes. This included, but was not
2 limited to, bonuses and commissions. Due to Defendants' failure to include the additional renumeration
3 in the overtime and paid sick leave regular rate of pay calculations, Plaintiff and similarly situated
4 employees are owed unpaid wages.

5 23. Defendants failed to provide Plaintiff and similarly situated employees with accurate
6 wage statements. Defendants improperly excluded missed or delayed meal and rest period premiums
7 owed to Plaintiff and similarly situated employees. Defendants also failed to properly account for
8 unpaid minimum, overtime, and paid sick leave wages as a result of their time rounding policy and
9 improper regular rate of pay calculations. Defendants distributed wage statements with inaccurate gross
10 wages earned, total hours worked, net wages earned, and applicable hourly rates in effect. Due to
11 Defendants failure to accurately account for all wages owed to Plaintiff and similarly situated
12 employees, Defendants owe penalties for distributing inaccurate wage statements.

13 24. At the time of Plaintiff's and similarly situated employees' termination and/or separation,
14 Plaintiff and similarly situated employees were owed minimum wages, regular wages, paid sick leave
15 wages, overtime wages, and meal and rest period premiums. To date, Defendants have not paid Plaintiff
16 and similarly situated employees these unpaid wages.

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION** 19 **FAILURE TO PAY OVERTIME WAGES** 20 **(As to all Defendants)**

21 25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24 as though fully
22 set forth herein.

23 26. During the period Plaintiff was employed by Defendants, Defendants were required to
24 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
25 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
26 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 16, section*
(3)(A); Cal. Lab. Code §§ 510, 1194.

27 27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
28 and/or forty (40) hours per week on several occasions while employed by Defendants. However,

Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at their regular rate of pay.

28. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

29. 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.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully set forth herein.

31. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 16, section 4(A); Cal. Lab. Code § 1194.

32. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

33. 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.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully set forth herein.

35. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

1 43. California Labor Code section 226.7 and Wage Order No. 16, section 12(A) require
2 an employer to provide a rest period of not less than ten (10) minutes for each work period of more
3 than four (4) hours or a major fraction thereof.

4 44. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
5 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
6 they worked more than four (4) hours or a major fraction thereof.

7 45. Defendants further failed to pay Plaintiff and similarly situated employees the
8 applicable rest period premiums for any such missed rest periods.

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

12 **FIFTH CAUSE OF ACTION**
13 **WAGE STATEMENT VIOLATIONS**
14 **(As to all Defendants)**

15 47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully
16 set forth herein.

17 48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
18 statement to an employee, semimonthly or at the time of each payment of wages, showing:

19 *(1) gross wages earned, (2) total hours worked by the employee, except for*
20 *any employee whose compensation is solely based on a salary and who is*
21 *exempt from payment of overtime under subdivision (a) of Section 515 or*
22 *any applicable order of the Industrial Welfare Commission, (3) the*
23 *number of piece-rate units earned and any applicable piece rate if the*
24 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
25 *all deductions made on written orders of the employee may be aggregated*
26 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
27 *period for which the employee is paid, (7) the name of the employee and*
28 *the last four digits of his or her social security number or an employee*
identification number other than a social security number, (8) the name
and address of the legal entity that is the employer and, if the employer is
a farm labor contractor, as defined in subdivision (b) of Section 1682, the
name and address of the legal entity that secured the services of the
employer, and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate
by the employee. The deductions made from payment of wages shall be
recorded in ink or other indelible form, properly dated, showing the
month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at

1 *the place of employment or at a central location within the State of*
2 *California.*

3 49. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
4 itemized statement or failed to provide an accurate and complete itemized statement showing the
5 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
6 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
7 and double time hours worked and corresponding rates of pay, and gross and net wages earned. The
8 paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours
9 worked due to Defendants' rounding policy and changing of timesheets that resulted in off-the-clock
10 work. Plaintiff and similarly situated employees were not able to promptly and easily determine
11 their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated
12 employees suffered confusion over whether they received all wages owed and were prevented from
13 effectively challenging information on their wage statements.

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

17 **SIXTH CAUSE OF ACTION**
18 **WAITING TIME PENALTIES**
19 **(As to all Defendants)**

20 51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully
21 set forth herein.

22 52. An employer must pay an employee who is terminated all unpaid wages immediately
23 upon termination. *See Cal. Lab. Code § 201.*

24 53. An employer must pay an employee who resigns all unpaid wages within seventy-two
25 (72) hours of their resignation. *See Cal. Lab. Code § 202.*

26 54. Plaintiff and similarly situated employees did not receive all wages, including minimum
27 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
28 within the required time after their separation from employment.

1 55. An employer who willfully fails to pay an employee wages in accordance with California
2 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
3 days. *See* Cal. Lab. Code § 203.

4 56. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
5 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
6 and similarly situated employees were not being paid accurately due to their rounding policy and
7 practice of adding meal breaks to timesheets that had not occurred. Such conduct shows Defendants had
8 knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the
9 remaining wages owed.

10 57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
11 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
12 thirty (30) days for Defendants' failure to pay all wages due.

13 **SEVENTH CAUSE OF ACTION**
14 **FAILURE TO REIMBURSE EXPENSES**
 (As to all Defendants)

15 58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully
16 set forth herein.

17 59. California Labor Code section 2802(a) states that "An employer shall indemnify his or
18 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
19 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
20 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
21 unlawful."

22 60. Defendants required Plaintiff and similarly situated employees to use their personal cell
23 phones, personal vehicles, and personal tools but failed to reimburse them for such use. Defendant
24 required Plaintiff and similarly situated employees to use their personal items for work-related activities.

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

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully set forth herein.

63. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

64. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter.

65. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

66. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

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

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

- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code § 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

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

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

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

- 1 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
2 Code section 1194;
- 3 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 4 4. As to the Third Cause of Action:
- 5 a. Wages in an amount to be proven at trial;
- 6 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
7 section 1021.5;
- 8 5. As to the Fourth Cause of Action:
- 9 a. Wages in an amount to be proven at trial;
- 10 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
11 section 1021.5;
- 12 6. As to the Fifth Cause of Action:
- 13 a. Penalties as provided for in Labor Code section 226, including the greater of all
14 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
15 violation occurred and one hundred dollars (\$100.00) per employee for each
16 violation in the subsequent pay periods, but not to exceed four thousand dollars
17 (\$4,000.00);
- 18 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
19 226(e);
- 20 7. As to the Seventh Cause of Action:
- 21 a. An amount to be proven at trial;
- 22 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
- 23 8. As to the Ninth Cause of Action:
- 24 a. For civil penalties as provided for in the Labor Code for each enumerated
25 violation in the amount of \$2,000,000;
- 26 b. For those Labor Code sections, the violation of which there is no civil penalty
27 provided, the default penalty provided in Labor Code section 2699(f): for any
28 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay

1 period; For any subsequent violation, two hundred dollars (\$200) for each
2 aggrieved employee per pay period;

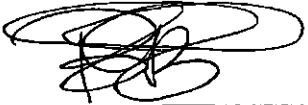
- 3 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
4 d. For any other remedies as allowed by law and/or deemed appropriate by the
5 Court;

6 9. For such other and further relief as this Court may deem just and proper,
7 including, but not limited to:

- 8 a. Wages as proved at trial;
9 b. Injunctive and Declaratory relief;
10 c. Attorney's fees and costs as provided for by law; and
11 d. Interest.

12
13 Dated: January 4, 2022

Shimoda Law Corp.

14
15 By: 

16 Galen T. Shimoda
17 Justin P. Rodriguez
18 Brittany V. Berzin
19 Attorneys for Plaintiff
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Vasquez v. Chriswell Home Improvements, Inc.
Sacramento County Superior Court, Case No. 34-2021-00305938

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

I, Erika F. Collazo, 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 January 4, 2022, I served the following documents on the party below:

- First Amended Class Action Complaint

Brian Coggins (SBN: 239481) COGGINS LAW 9001 Foothills Blvd., Ste. 110 Roseville, CA 95747 Telephone: (916) 270-2895 Facsimile: (916) 270-2894 Email: blc@cogginslawoffice.com	
---	--

[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.

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 4, 2022, at Elk Grove, California.

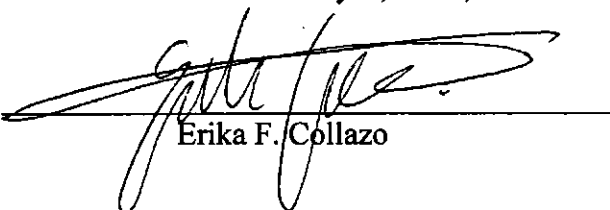

Erika F. Collazo

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #200
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

August 10, 2021

For Online Filing:

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

Re: *Vasquez v. Chriswell Home Improvement, Inc.*

Dear Labor Commissioner,

As counsel for Silviano Vasquez ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Chriswell Home Improvements, Inc.
3628 Madison Avenue Suite 5
North Highlands, CA, 95660

Paul C. Cromwell
3628 Madison Avenue Suite 5
North Highlands, CA, 95660

Chris J. Mesunas
3628 Madison Avenue Suite 5
North Highlands, CA, 95660

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 Chriswell Home Improvements, Inc., Paul Cromwell, and Chris Mesunas ("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 non-exempt employees from one year prior to the date of this notice 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 March 15, 2021 to June 1, 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 working. Defendants used phone applications to coordinate employees' schedules and for timekeeping. Plaintiff and similarly situated employees received nightly texts they were required to review and respond to regarding shift scheduling during hours that they were not clocked in. Plaintiff and similarly situated employees were also required to clock in and out using a phone app. After Plaintiff and similarly situated employees were done working for the day, they would submit their time entries through the app. Plaintiff and similarly situated employees routinely found that their submitted times were rounded in a way that reduced working hours prior to the entries being approved by management. Defendants used this rounding policy to reduce labor costs and avoid compensating employees for all time worked. Plaintiff and similarly situated employees are owed unpaid minimum and overtime wages due to Defendants rounding policy.

Defendants did not consistently provide Plaintiff and similarly situated employees with the required thirty (30) minute lunch break every five hours of work or ten (10) minute rest breaks every four hours. To reduce labor costs and increase profits, Defendants mandated that construction projects were completed as fast as possible, even if that meant foregoing meal and rest breaks. Defendants often instructed Plaintiff and similarly situated employees to continue working through meal and rest breaks to complete construction jobs as quickly as possible. Despite Plaintiff and similarly situated employees not entering meal breaks through the timekeeping app, Defendants would change employee submissions to reflect that a meal break had occurred before approving the entries. Plaintiff and similarly situated employees are owed unpaid meal and rest period premiums, as well as unpaid minimum wages and overtime that would have resulted had there been no unlawful deduction of thirty (30) minutes from Plaintiff's and similarly situated employees' hours worked.

Defendants failed to reimburse Plaintiff and similarly situated employees for work-related uses of personal items. Defendants required that employees have their own cell phones, personal vehicles, and personal tools for work purposes. Plaintiff and similarly situated employees used their personal cell phones while working to enter their hours, update management on project progress and completion, coordinate worksite duties, and coordinate work schedules. Plaintiff and similarly situated employees used their personal vehicles to transport materials and travel to and in between jobsites. Employees were forced to spend their own money on gas and maintenance costs related to work-related use of their personal vehicles. Plaintiff and similarly situated employees were also required to purchase and use tools needed to complete construction projects without being reimbursed or being paid two times the minimum



wage. Plaintiff and similarly situated employees are owed reimbursement for personal expenditures and work-related usage of personal items required by Defendants.

Defendants failed to properly calculate overtime and paid sick time wages at Plaintiff's and similarly situated employees' regular rate of pay. Plaintiff and similarly situated employees received non-discretionary remuneration in addition to basic rate of pay that was not included in calculating regular rate of pay for overtime and paid sick leave purposes. This included, but was not limited to, bonuses and commissions. Due to Defendants' failure to include the additional remuneration in the overtime and paid sick leave regular rate of pay calculations, Plaintiff and similarly situated employees are owed unpaid wages.

Defendants failed to provide Plaintiff and similarly situated employees with accurate wage statements. Defendants improperly excluded missed or delayed meal and rest period premiums owed to Plaintiff and similarly situated employees. Defendants also failed to properly account for unpaid minimum, overtime, and paid sick leave wages as a result of their time rounding policy and improper regular rate of pay calculations. Defendants distributed wage statements with inaccurate gross wages earned, total hours worked, net wages earned, and applicable hourly rates in effect. Due to Defendants failure to accurately account for all wages owed to Plaintiff and similarly situated employees, Defendants owe penalties for distributing inaccurate wage statements.

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

Paul Cromwell and Chris Mesunas are the owners, directors, officers, and/or managing agents of Cromwell Home Improvements, Inc. and caused each and every one of the aforementioned Labor Code violations.

B. ALLEGATIONS AND CHARGES

Count #1 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order No. 16, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants 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, Defendants 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 #2 – Violation of Labor Code §§ 510, 1194; IWC Wage Order No. 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 #3 - 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. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count #4 – 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. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.



Count #5 – 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, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count #6 – 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, 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 #7 – 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.” Defendants failed to pay any reimbursements for work use of personal cell phones, vehicles, and tools by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count #8 – 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 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. Defendants 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 #9 – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

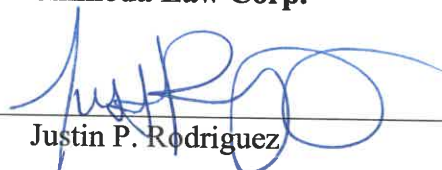
Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. 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. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons stated above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. 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:


Justin P. Rodriguez

JR

cc: Client via e-mail

EXHIBIT D

Shimoda & Rodriguez Law, PC Costs

<u>Date</u>	<u>Description</u>	<u>Amount</u>
8/10/2021	Service Fee to Court - Complaint, Civil Case Cover Sheet, and Summons	\$40.00
8/10/2021	Payment to Court - Complaint	\$435.00
8/11/2021	Payment to LWDA - PAGA Filing Fee	\$75.00
8/11/2021	Postage - Certified PAGA Letter to Employers	\$12.90
8/26/2021	ALS Service Fee - Complaint to Chriswell Home Improvements Invoice 166443	\$50.00
8/31/2021	Service Fee to Court - Notice of Depositing Complex Fees	\$40.00
8/31/2021	Payment to Court - Complex Fees	\$1,000.00
8/31/2021	Service Fee to Court - Proof of Service of Summons	\$40.00
9/1/2021	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
9/8/2021	Priority Mail - Discovery Set One	\$7.40
9/9/2021	Service Fee to Court - Case Management Statement	\$40.00
12/6/2021	Service Fee to Court - Stipulation and Proposed Order to Amend	\$40.00
12/6/2021	Payment to Court - Stipulation and Proposed Order to Amend	\$20.00
1/4/2022	Service Fee to Court - First Amended Complaint to Court	\$40.00
1/19/2022	Payment for Records - PRA Records	\$28.88
3/17/2022	Priority Mail - Motion to Compel to OC	\$7.75
3/21/2022	Payment to Court - Motion to Compel	\$120.00
4/7/2022	Payment to Court - Jury Fees	\$150.00
4/7/2022	Service Fee to Court - Notice of Depositing Jury Fees	\$40.00
4/13/2022	Service Fee to Court - Case Management Statement	\$40.00
4/14/2022	Mediation Fee	\$3,000.00
8/9/2022	Service Fee to Court - Case Management Statement	\$40.00
11/1/2022	Payment to Court - Preliminary Approval Motion	\$60.00
11/1/2022	One Legal Filing Fee - Preliminary Approval Motion	\$294.92
1/18/2023	One Legal Filing Fee - Amended Proposed Order to Court	\$109.38
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	One Legal Filing Fee - Final Approval Motion	\$300.00
Anticipated	One Legal Filing Fee - Compliance Declarations	\$70.00
		\$6,661.23

EXHIBIT E

EXHIBIT F

<u>TASK CATEGORY</u>	<u>Galen Shimoda</u>	<u>Justin Rodriguez</u>	<u>Brittany Berzin</u>
Pre-filing investigation, Pleadings, Admin Exhaustion. Includes time spent speaking with potential client. Initial client meeting and review of claims and documents, pre-filing investigation/research. Public record searches and review of public record documents. Drafting pleadings, stipulations, administrative filings and court filings and communications with opposing counsel regarding same regarding same, internal communications regarding same (email or otherwise), communications with client regarding same.	3.2	6.8	7.4
Case Review, Management, Strategy Meetings. Includes time spent discussing general plan of action updates and strategies in weekly meetings, research and analysis regarding claims, case management conferences and related meet/confer, drafting of statements, and attendance for hearings. Communications with opposing counsel regarding same, communications with client regarding same.	12.1	4.2	7.9
Discovery (Non-Mediation Related). Includes time spent preparing discovery requests, Belaire Notice, Protective Order, and meet and confer efforts. Communicate with client regarding same, communicate with opposing counsel regarding same.	3.2	2.9	10.5
Discovery / Investigation for Mediation. Includes time spent preparing informal/formal discovery specifically geared towards mediation, reviewing informal mediation productions, including data, analyses, documents, public records, analyzing the sample, speaking with witnesses, legal research for mediation, research related to Defendant's finances, and communications with client and opposing counsel regarding same.	4.0	5.7	39.7
Mediation / Settlement Conference. Includes time spent drafting mediation briefs and accompanying exhibits, prepare for and attending mediation, drafting damages analysis, drafting notes for mediation, reviewing financial documents, communications with client and mediator, communications with opposing counsel regarding same, solicit bids from settlement administrators, prepare MOU. Includes legal research relating to issues on day of	13.7	14.8	35.5
Drafting Settlement Agreements. Includes time spent preparing long form agreements and exhibits, revisions relating thereto, research regarding any approval procedures or issues regarding disputed terms. Communicating with client regarding same, communicating with opposing counsel regarding same.	2.3	6.9	8.7
Settlement Approval and Administration. Includes time spent drafting motion for preliminary approval and supporting declarations and order, drafting supplemental briefing for preliminary approval, legal research related to settlement approval, class data review, speaking with Settlement Administrator regarding calculations and distributions, analyze calculations and estimated disbursements, review notice updates and class member responses, drafting motion for final approval and supporting declarations and order, communicate with opposing counsel regarding same, communicate with client regarding same. Includes 10 hours for Brittany Berzin supervising final distributions and compliance with Court final approval order and compliance hearings	20.9	22.3	53.7
Total Per Billing Party:	59.4	63.6	163.4

EXHIBIT G

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 BRIAN STRAWN

10 [additional parties continued on next page]

11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13 BRIAN STRAWN, ESTABAN ESTRADA,
14 ADRIAN PULIDO, DOMINADOR DUAZ,
15 BRANDON NELSON and MATTHEW
16 FARWELL, on behalf of themselves and all
17 other similarly situated aggrieved employees,

18 Plaintiffs,

19 vs.

20 BRIDGESTONE RETAIL OPERATIONS,
21 LLC, a Delaware Limited Liability Company;
22 BRIDGESTONE AMERICAS, INC., a
23 Nevada Corporation;
24 GORDON KNAPP, an individual;
25 CHRISTOPHER NICASTRO, an individual;
26 AMANDA MATHIS, an individual;
27 MICHELLE ALMANDIGER, an individual;
28 WILLIAM THOMPSON, an individual;
DAMIEN HARMON, an individual;
ERIC TURNER, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2018-00242049

CLASS ACTION

Assigned to the Honorable Jill H. Talley for all purposes

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: November 15, 2022

Time: 1:30 p.m.

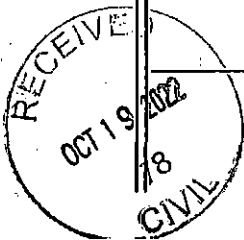
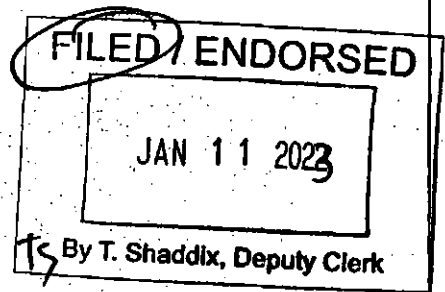
Dept.: 25

Judge: Hon. Jill H. Talley

Filed: October 5, 2018

FAC Filed: April 21, 2022

Trial Date: None Set



~~[PROPOSED]~~ ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 Kevin T. Barnes, Esq. (#138477)
2 Gregg Lander, Esq. (#194018)
3 LAW OFFICES OF KEVIN T. BARNES
4 1635 Pontius Avenue, Second Floor
5 Los Angeles, CA 90025-3361
6 Tel.: (323) 549-9100 / Fax: (323) 549-0101
7 Email: Barnes@kbarnes.com

8 Raphael A. Katri, Esq. (#221941)
9 LAW OFFICES OF RAPHAEL A. KATRI
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Attorneys for Plaintiffs BRANDON NELSON and MATTHEW FARWELL

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement came on for
3 regularly noticed hearing on November 15, 2022, before the Hon. Jill H. Talley, in Department 25 of
4 the above-entitled Court, as set forth in the Parties' Stipulation of Class Action Settlement and Release
5 ("Settlement Agreement"). Having considered the Parties' Settlement Agreement, Notice of Class
6 Action Settlement, and Memorandum of Points and Authorities filed in Support of the Unopposed
7 Motion for Final Approval of Class Action Settlement, the arguments and discussion of counsel for the
8 respective parties, the documents submitted in support therewith including, without limitation, the
9 Declarations submitted by the Parties and the Claims Administrator, as well as all supporting legal
10 authorities and documents filed herein, and having conducted an inquiry pursuant to California Rules of
11 Court, rule 3.769(g), including an inquiry into the notice to the Class, and good cause appearing therefor,
12 the court now finds and **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS**
13 **FOLLOWS:**

14 1. The Court, for purposes of this Final Judgment and Order ("Judgment"), adopts all
15 defined terms (i.e., terms with initial capitalization) as set forth in the Parties' Settlement Agreement.

16 2. The Court has jurisdiction over the subject matter over this Action, the Class Members,
17 the Named Plaintiffs, and Defendant.

18 3. The Court finds that the distribution of the Notice to Class Members, as provided for in
19 the Order Granting Preliminary Approval for the Settlement and as detailed in the Declaration of Lluvia
20 Islas of ILYM Group, Inc., constituted the best notice practicable under the circumstances to all Class
21 Members and fully met the requirements of California law and due process under the California and
22 United States Constitution. Based on evidence and other material submitted in conjunction with the
23 Preliminary and Final Approval Hearings, the actual notice to the class was adequate in all respects.

24 4. The Court finds that the instant Action presented a good faith dispute over unpaid wage
25 claims and reimbursement of business expenses and other relief, and the Court finds in favor of
26 settlement approval.

27 5. The Court approves the Settlement of the above-captioned action, as set forth in the
28 Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and adequate.

1 The Parties to the Settlement Agreement are directed to perform in accordance with the terms set forth
2 in the Settlement Agreement.

3 6. The Parties are to bear their own costs, except as otherwise provided in the Settlement
4 Agreement.

5 7. For purposes of effectuating this Judgment, this Court has certified a class of all
6 Settlement Class Members defined as follows: All current and former non-exempt employees who have
7 worked, or continue to work, for defendant Bridgestone Retail Operations, LLC in California from July
8 31, 2017 through July 21, 2022, who did not Opt-Out (collectively referred to as "Settlement Class").
9 The Court deems this definition sufficient for purposes of California Rules of Court, rule 3.765(a). Five
10 (5) Class Members submitted timely Opt-Out Requests to the class action portion of the Settlement
11 Agreement, including Chan Le, Charles Rivera, David Contizano, Ivan Perez, and Miguel A. Martinez.
12 These individuals will remain as PAGA Members under the terms of the Settlement Agreement, will
13 still receive their pro rata share of the PAGA Penalty Payment, and will still be subject to, and bound by,
14 the release of claims brought under the Private Attorneys General Act ("PAGA") in any of the Actions
15 or that could have been brought in any of the Actions based on the facts alleged therein. However, these
16 individuals will not be paid any portion of the Net Settlement Amount outside of their pro rata share of
17 the PAGA Penalty Payment.

18 8. With respect to the Settlement Class and for purposes of approving this Settlement, this
19 Court finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that
20 joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement
21 Class Members, and there is a well-defined community of interest among the Settlement Class Members
22 with respect to the subject matter of the Action; (c) the claims of the Named Plaintiffs are typical of the
23 claims of the Class Members; (d) the Named Plaintiffs have fairly and adequately protected the interests
24 of the Class Members; (e) a class action is superior to other available methods for an efficient
25 adjudication of this controversy; and (f) the counsel of record for the Named Plaintiffs, *i.e.*, Class
26 Counsel, are qualified to serve as counsel for the Plaintiffs in their individual and representative
27 capacity, as well as for the Settlement Class.
28

1 9. By this Judgment, each of the Settlement Class Members shall be deemed to have, and by
2 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged
3 all Released Claims, as defined in the Settlement Agreement. Specifically, the Settlement fully releases
4 and discharges Bridgestone Retail Operations, LLC and each of its former and present parents,
5 subsidiaries, affiliates, officers, directors, operators, principals, owners, heirs, representatives,
6 accountants, auditors, consultants, insurers and reinsurers, employees, partners, shareholders, members,
7 divisions, fiduciaries, trustees, agents, attorneys, investors, benefit plans, other successors and
8 predecessors in interest, assigns or legal representatives (including the parties named in the original
9 Complaint filed by Strawn on October 5, 2018: Bridgestone Americas, Inc., Gordon Knapp,
10 Christopher Nicastro, Amanda Mathis, Michelle Almandinger, William Thompson, Damien Harmon,
11 Eric Turner) of any all past, present and future claims, administrative or otherwise, actions, causes of
12 action, rights, or liabilities, up to July 21, 2022, whether known or unknown, whether in law or equity,
13 which were asserted or which could have been asserted based on the factual allegations in this Action,
14 including claims based on or arising out of the following categories of claims and allegations: (1) all
15 claims for unpaid wages, including any type of regular wages, minimum wages, overtime wages or an
16 overtime premium on non-hourly compensation, including bonus, SPIFF or other incentive pay, in
17 accordance with California state or federal law; (2) all claims for liquidated damages; (3) all claims
18 related to the provision or maintenance of tools, including any claim for two times the minimum wage
19 under the wage orders and indemnification under *Labor Code* Section 2802; (4) all claims for failure to
20 indemnify employees for hand tools, equipment (including personal safety equipment such as gloves and
21 glasses), mileage or other expense from personal vehicle usage and personal device usage (data, text or
22 phone); (5) all claims for the failure to provide meal breaks or rest breaks or premium pay in lieu
23 thereof; (6) all claims for the failure to keep accurate records, including records pertaining to hours
24 worked and start and stop time of meal breaks, due to time "edits" or any other reason; (7) all claims that
25 Defendant owed and failed to timely pay all wages due and owing during employment, or within the
26 required time at Class Members' termination, resignation or discharge; (8) all future claims for *Labor*
27 *Code* 203 penalties to the extent premised on a wage claim pled in the First Amended Complaint in this
28 case, with the alleged violation supposedly occurring prior to July 21, 2022; (9) all claims for the failure

1 to issue properly itemized wage statements pursuant to California *Labor Code* Section 226; (10) all
2 interest and statutory penalties based thereon, including those recoverable under the PAGA; (11) all
3 claims for violations of *Labor Code* Sections 201, 201.3, 202, 203, 204, 204b, 204.1, 204.2, 205, 205.5,
4 210, 218.6, 221-223, 226, 226.3, 226.7, 256, 500-508, 510, 512, 515, 516, 558, 558.1, 1174, 1174.5,
5 1182.12, 1194, 1194.2, 1197, 1197.5, 1198, 2698, 2699, 2699.3, 2699.5, 2802, 2810.5; 2926 and 2927;
6 (12) all claims for violations of any Wage Order issued by the Industrial Welfare Commission related to
7 any of the claims set forth herein; and (13) all claims for unfair competition pursuant to California
8 *Business and Professions Code* Section 17200, *et seq.* related to any of the claims set forth herein at any
9 time from July 31, 2017 through July 21, 2022.

10 10. As of the date of this Judgment and the Effective Date as set forth in the Settlement
11 Agreement, Named Plaintiffs Brian Strawn, Esteban Estrada, Adrian Pulido, Dominador Dauz, Brandon
12 Nelson, and Matthew Farwell hereby release and waive any and all claims of any kind whatsoever,
13 known or unknown, against the Released Parties through the execution of the Settlement Agreement.
14 Plaintiffs release the Released Parties from all claims, demands, rights, liabilities and causes of action of
15 every nature and description whatsoever, known or unknown, asserted or that might have been asserted,
16 whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of,
17 relating to, or in connection with any act or omission by or on the part of any of the Released Parties
18 committed or omitted prior to the execution hereof with the sole exception of workers' compensation
19 claims and any claims which cannot be released as a matter of law. The General Release includes any
20 unknown claims Plaintiffs do not know or suspect to exist in their favor at the time of the General
21 Release, which, if known by them, might have affected their settlement with, and release of, the
22 Released Parties or might have affected their decision not to object to this Agreement or the General
23 Release. By operation of the Stipulation and this Judgment, the Court further finds that Named
24 Plaintiffs have expressly waived and relinquished the provisions, rights, and benefits of Section 1542 of
25 the California Civil Code.

26 11. All Settlement Class Members and Named Plaintiffs are hereby permanently enjoined
27 and forever barred from instituting or prosecuting any action against Defendant or any other Released
28 Party for the Released Claims. Named Plaintiffs may take steps in *Bridgestone Retail Operations Wage*

1 and Hour Cases, Judicial Council Coordination Proceeding, Case No. 5054 to seek and effectuate
2 dismissal of the lawsuit with prejudice.

3 12. Neither the Settlement Agreement nor the Settlement contained therein, nor any act
4 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the
5 Settlement (i) is, or may be deemed to be, or may be used as an admission of, or evidence of, the validity
6 of any Released Claim, or of any wrongdoing or liability of Defendant or any Released Party; or (ii) is,
7 or may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of
8 Defendant or any Released Party in any civil, criminal, or administrative proceeding in any court,
9 administrative agency, or other tribunal. Defendant or any of the Released Parties may file the
10 Settlement Agreement and/or the Judgment from this Action in any other action that may be brought
11 against it or them in order to support a defense or counterclaim based on principles of *res judicata*,
12 collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim
13 preclusion or issue preclusion or similar defense or counterclaim.

14 13. The only Class Members entitled to payment pursuant to this Judgment are Settlement
15 Class Members. Neither the Settlement Agreement nor this Judgment will result in the creation of any
16 unpaid residue or residual. Any funds that would have been paid to Settlement Class Members had they
17 cashed the check containing their respective Claim Amount within the Check-Cashing Period will be
18 paid to the State Controller Unclaimed Property Fund in the name of the Settlement Class Member for
19 whom the funds are designated in accordance with the Settlement Agreement. Pursuant to section 1.20
20 of the Settlement Agreement, no part of the Maximum Settlement Amount shall revert to Defendant.

21 14. The Court has reviewed Defendant's Hand Tool Policy attached as Exhibit A to the
22 Declaration of Erika Avila submitted in support of Plaintiff's unopposed Motion for Preliminary
23 Approval of Class Action Settlement, as well as Labor Code § 2802 and the applicable Wage Order
24 requirements concerning the provision of hand tools and finds that Defendant's Hand Tool Policy
25 facially complies with the California Labor Code and applicable Wage Order Requirements since
26 Defendant does not require its employees to provide tools or spend money on tools in order to do their
27 job. The Court makes no finding as to the legality of any acts in the administration of Defendant's Hand
28 Tool Policy. The applicable Tool Policy is attached as Exhibit A to this [Proposed] Judgment.

1 15. Class Counsel sought an award of attorneys' fees of \$805,000.00, litigation expenses of
2 \$61,480.58, Class Representative Service Fees for the Named Plaintiffs in the amount of \$15,000 each,
3 and for Claims Administration Costs in the amount of \$25,000.00. Defendant does not oppose these
4 requests. The Notice sent to Class Members included information regarding these amounts and that they
5 would be requested in connection with final approval of the Settlement Agreement. Class Members
6 have been given the opportunity to object to these amounts and not objections have been submitted in
7 any respect whatsoever. The Court has reviewed the evidence submitted by Class Counsel regarding
8 their hourly rates and the amount of time expended in the Actions for the benefit of Class Members.
9 The Court finds that the rates requested and hours expended are reasonable. This finding is further
10 supported by the lack of objection by Class Members to these amounts. The Court finds that these
11 amounts as set forth in the Settlement Agreement are fair and reasonable, and shall be awarded
12 accordingly as set forth herein.

13 16. The following payments, as required by the Settlement Agreement, are approved:

- 14 A) Payments to the Settlement Class Members for the full value of their Claim
15 Amount from the Net Settlement Amount and/or PAGA Penalty Payment in
16 accordance with the Settlement Agreement and as calculated by the Claims
17 Administrator;
18 B) \$805,000.00 in attorneys' fees awarded to Class Counsel;
19 C) \$61,480.58 for attorney' costs/expenses to be paid to Class Counsel;
20 D) \$25,000.00 to the Settlement Administrator, ILYM Group, Inc.;
21 E) \$15,000.00 each to Named Plaintiffs; and
22 F) \$37,500.00 to the Labor and Workforce Development Agency for PAGA
23 penalties.

24 17. Within one (1) business day after the Effective Date of this settlement (as that term is
25 defined in the Settlement Agreement), the Claims Administrator shall provide the Defendant with wire
26 and account information, and direct Defendant to deposit the amount of money necessary to fund the
27 Maximum Settlement Amount as set forth in the Settlement Agreement. Within nine (9) business days
28 of receiving the post-Effective Date notice from the Claims Administrator, Defendant shall wire the

1 funds requested by the Claims Administrator into a QSF. Within five (5) business days after receiving
2 the wire transfer from Defendant, the Claims Administrator shall prepare and wire the settlement funds
3 payable to Class Counsel for attorneys' fees and litigation costs awarded by the Court and the Named
4 Plaintiffs' Class Representative Service Fees. The Claims Administrator will calculate, withhold, and
5 remit all applicable taxes from the Maximum Settlement Fund, as well as comply with state, federal,
6 local or other tax reporting and tax return filing requirements, pursuant to the Settlement Agreement.
7 The Claims Administrator shall also distribute the funds to the Labor Workforce Development Agency,
8 Class Members, PAGA Members or State Unclaimed Property Fund, in accordance with the Settlement
9 Agreement.

10 18. This document shall constitute a Judgment for purposes of California Rule of
11 Court 3.769(h). Without affecting the finality of this Judgment in any way, the Court reserves exclusive
12 and continuing jurisdiction over the Action, the Named Plaintiffs, the Class Members, and Defendant for
13 the purposes of supervising the implementation, enforcement, construction, administration, and
14 interpretation of the Settlement Agreement and this Judgment.

15 IT IS SO ORDERED.

16 Dated: 1/11/23



17 *Talley*
Honorable M. Talley
Judge of the Superior Court
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6
7

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

11 SILVIANO VASQUEZ, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.

15 CHRISWELL HOME IMPROVEMENTS,
16 INC., A California Corporation; and DOES 1
to 100, inclusive,

17 Defendants.
18
19
20
21
22

Case No. 34-2021-00305938

CLASS ACTION

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 16, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri Damrell

Filed: August 10, 2021

FAC Filed: January 5, 2022

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 Silviano Vasquez (“Plaintiff”) herein. I am making
4 this declaration on behalf of the named Plaintiff, the putative class members, and in support of
5 Plaintiff’s Motion for Final Approval of Class Action and PAGA Settlement (“Motion”). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 (“Agreement”) in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Defendant Chriswell Home Improvements, Inc. (“Defendant”) failed to pay overtime, failed to pay
10 minimum wages, failed to provide meal periods, failed to provide rest periods, failed to provide
11 accurate wage statements, failed to pay final wages, failed to reimburse expenses, and engaged in unfair
12 competition. Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act
13 (“PAGA”). These claims were based allegations that Defendant violated California law by 1) failing to
14 pay Class Members for all hours worked; 2) failing to incorporate the value of nondiscretionary
15 remuneration, such as bonuses into Class Members’ regular rates of pay for the purpose of calculating
16 overtime and paid sick time; 3) failing to authorize and permit all meal and rest periods and failing to
17 keep track of whether Class Members’ took meal periods; and 4) failing to reimburse Class Members’
18 for the use of personal items for work, such as personal cellphones, vehicles, and tools. The PAGA,
19 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
20 violations.

21 3. Plaintiff is the only named representative in this matter. From our initial investigations
22 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
23 class action. We filed the action on or about August 10, 2021. Plaintiff exhausted administrative
24 remedies through the Labor and Workforce Development Agency (“LWDA”) prior to amending the
25 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on August 10, 2021, setting
26 forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is
27 being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified
28 mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the

1 LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65 days.
2 As such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First
3 Amended Complaint on January 5, 2022. A true and correct copy of Plaintiff's operative Complaint is
4 filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to the LWDA on January
5 21, 2022, after we received an endorsed copy back from Court.

6 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

7 5. Defendant is represented in this matter by Coggins Law and Elguindy Meyer & Koegel,
8 APC. From the beginning, Defendant has contested the merits of this case, the suitability of the case
9 for class action or representative treatment, the manageability of the case at trial, and Plaintiff's ability
10 to prove a violation in each pay period for each employee among other defenses and contentions it
11 made challenging the propriety of this action. Defendant further contended, even assuming there was a
12 finding supporting the imposition of PAGA penalties, that the Court would likely exercise its discretion
13 to substantially reduce any such penalties owed based on evidence of good faith attempts to comply
14 with California Labor Code obligations by Defendant and Defendant's financial condition.
15 Notwithstanding its agreement to settle this matter, Defendant believes the practices Plaintiff is
16 contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state
17 and federal employment laws with respect to Plaintiff and Class Members. Defendant also contends
18 that this matter is not appropriate for class certification outside of this proposed class settlement.
19 Finally, Defendant contends that it is experiencing substantial financial hardship and that defense of
20 this class litigation would likely force Defendant into bankruptcy.

21 6. Based on the expected testimony from Plaintiff and Class Members, a review of
22 Defendant's policies and procedures and other documents relating to the alleged claims, information on
23 the number of Class Members, Class Members' dates of employment, and a representative sample of
24 Class Members' time and payroll data, the scope of the potential damages to Plaintiff and Class
25 Members in light of the claims alleged, the uncertainty in the law with regard to certification, and the
26 negotiations that have taken place, I am convinced that the proposed settlement is in the best interest of
27 the class. The length and risks of trial and other normal perils of litigation that impact the value of the
28 claims were also considered and weighed in reaching the Agreement. In addition, I carefully considered

1 Defendant's financial condition, the prospect of potential class certification issues as well as the
2 uncertainty of class certification, the difficulties of complex litigation, and the lengthy process of
3 establishing specific damages and various possible delays and appeals in agreeing to the proposed
4 settlement. I further considered the fact that penalties under the PAGA could be substantially cut at the
5 discretion of the Court even if Plaintiff was successful on proving those claims and there was risk that a
6 Court could find no willfulness in the failure to pay wages at separation, which would eliminate the
7 value of the waiting time penalty claim entirely. Overall, I believe it is more beneficial to secure a
8 guaranteed benefit to the class now rather than to proceed with litigation and potentially obtain zero
9 funds to the class due to legal or factual issues in the case.

10 7. My office, including the partners Galen T. Shimoda and Justin P. Rodriguez, our
11 paralegals, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the
12 claims, potential damages for such claims, and Defendant's financial condition. The parties engaged in
13 formal and informal discovery and exchange of documents, including a representative sampling of
14 employee data, such as timecards, paystubs, and relevant policies for the entirety of the statute of
15 limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims,
16 including certification issues, merits issues, damages, the scope and configuration of Class Members, the
17 content and implementation of the wage and hour policies at issue, issues relating to manageability
18 concerns at trial, among other relevant areas. From this production we were able to determine
19 information critical to a reliable damages analysis such as the average hourly rate, average daily hours
20 worked, average number of workweeks and pay periods that had potential violations based on the
21 asserted claims, the frequency with which violations occurred in a given week and/or pay period, and the
22 number of former employees. This information allowed my office to assess both liability and damages
23 and create an accurate damages model. This information also allowed my office to assess Defendant's
24 ability to pay. Plaintiff assisted in all aspects of this litigation including providing factual information
25 relating to Plaintiff's and Class Members' employment conditions, providing a substantial number of
26 documents, and answering questions regarding Defendant's factual contentions in this matter. This was
27 important because it directly related to our ability to maintain this case as a class action and our ability
28 to obtain a favorable settlement for the class.

1 8. Throughout this litigation our office had numerous communications with Defendant's
2 counsel discussing our respective positions. The parties engaged in mediation on July 28, 2022 using an
3 experienced mediator, Russ J. Wunderli, Esq. It was only after nearly one year of extensive, arm's
4 length negotiations that the parties were able to reach a settlement, which only occurred after a full-day
5 mediation. The negotiations were at all times contentious and adversarial, though still professional in
6 nature. Prior to mediation, Defendant's counsel expressed that Defendant was experiencing financial
7 hardship and contemplating filing for bankruptcy. As part of the mediation, Defendant produced its
8 recent tax returns, a profit and loss statement for 2021, a profit and loss statement for January 2022
9 through April 2022, a balance sheet for April 2022 through to the present, and W-2s for its owners, for
10 my office to be able to verify Defendant's financial condition. I also conducted independent research
11 through public records searches to identify potential assets of Defendant and its owners. Defendant's
12 financial hardship and the risk of Defendant filing bankruptcy was one of the main drivers for Plaintiff
13 agreeing to the settlement.

14 9. The following represents the potential maximum recovery for each of Plaintiff's claims
15 based on my office's analysis of Defendant's relevant policies and the data produced by Defendant,
16 including a sample of time and payroll records for Class Members. There were 3,987 workweeks in the
17 class period, 936 PAGA pay periods, an average base hourly rate of \$25.00 and an average overtime rate
18 of \$37.50. The average adjusted regular rate of pay based on Plaintiff's calculations was \$25.32. We
19 also interviewed several putative class members, covering their work experiences in relation to the
20 asserted claims and utilizing that information in conducting a merits and damages analysis:

- 21 a) Overtime Wages: This claim is based on allegations that 1) bonuses paid to Class
22 Members were non-discretionary and should have been included in Class Members'
23 regular rates of pay for the purpose of calculating overtime wages; and 2) Defendant
24 failed to pay Class Members for all hours worked due to its practice of rounding Class
25 Members' hours worked and failing to compensate Class Members for after-hours
26 scheduling communications. At the time of mediation, the maximum possible damages
27 for this claim based on Defendant's time and payroll records was \$568,805.36, which
28 was based on 3.75 unpaid overtime hours per week. This amount does not take into

1 account any potential risks with respect to Plaintiff proving the merits or damages. For
2 instance, a trier of fact could find that Defendant did not know or have reason to know
3 that Class Members were working off the clock, which would entirely preclude liability.
4 *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051 (2012). Defendant maintained
5 a timekeeping policy in its Employee Handbook that “strictly prohibits” Class Members
6 from working off the clock for any reason and requires Class Members to log any time
7 spent working, including time spent using electronic devices for work-related purposes.
8 Defendant’s policy further states, “[i]t is the responsibility of all employees to submit and
9 approve their time records each week.” Defendant produced signed acknowledgments
10 showing that Class Members were provided with a copy of the Employee Handbook.
11 This presents significant hurdles to obtaining certification as well. *See id.* Additionally,
12 Defendant’s time and pay records reflect both underpayments and overpayments due to
13 Defendant’s rounding practice. *See See’s Candy Shops, Inc. v. Sup. Ct.*, 210 Cal.App.4th
14 889, 907 (2012) (holding California law allows rounding of employee work time if the
15 policy is neutral on its face and as applied, even if some employees ultimately are not
16 paid for all time they have actually worked).¹ Finally, the amount of any potential off-
17 the-clock work was contested and it was also contested whether the bonuses were truly
18 non-discretionary. If they were discretionary, then there would be no requirement to
19 include their value in Class Members’ regular rates of pay. Taking these factors into
20 account, a more realistic range of recovery for this claim is \$74,765.25 to \$149,512.50.

- 21 b) Minimum Wages: Like Plaintiff’s overtime claim, this claim is based on allegations that
22 Defendant failed to pay Class Members for all hours worked due to its practice of
23 rounding Class Members’ hours worked and failing to compensate Class Members for
24 after-hours scheduling communications. At the time of mediation, the maximum possible
25 damages for this claim based on Defendant’s time and payroll records was \$179,415.00

26
27 ¹ After the parties entered into the settlement, there became a split of California authority on this issue. The holding in *See’s*
28 *Candy Shops, Inc.* was questioned by another appellate court in *Camp v. Home Depot U.S.A., Inc.*, 210 Cal.App.5th 638
(2022). However, because this change of the state of the law occurred after the settlement was entered into, it is not relevant
for purposes of the fairness analysis. *See Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 506 (2009) (“a
settlement must be evaluated in light of the law applicable at the time of settlement”).

1 for liquidated damages pursuant to Labor Code section 1194.2.² This amount does not
2 take into account any potential risks with respect to Plaintiff proving the merits or
3 damages. For the same reasons described above (*i.e.*, Defendant's timekeeping policy,
4 which could potentially constitute a good faith defense pursuant to section 1194.2(b), and
5 California law regarding rounding), a more realistic range of recovery for this claim is
6 \$0.00 to \$47,844.00.

7 c) Meal Periods: This claim is based on allegations that Class Members did not receive all
8 meal periods they were entitled to due to pressure to quickly complete construction
9 projects and that Defendant failed to keep record of whether meal periods were taken. At
10 the time of mediation, the maximum possible damages for this claim based on
11 Defendant's time and payroll records was \$313,452.35, which was based on
12 approximately 11,841 shifts in excess of five hours where there was no record of a first
13 meal period and 538 shifts in excess of 10 hours without a record of a second meal
14 period. This amount does not take into account any potential risks with respect to
15 Plaintiff proving the merits or damages. Defendant produced an Employee Handbook
16 with a legally compliant meal period policy that requires Class Members to notify a
17 supervisor if a meal period is missed. Defendant produced signed acknowledgements
18 evidencing that it provided Class Members with a copy of the Employee Handbook. It is
19 disputed whether Defendant kept accurate records of meal periods. Defendant contends
20 documents it produced show that Class Members received meal periods. The policies
21 and acknowledgements provided by Defendant created substantial risk that any
22 presumption of meal period violations may be rebutted, which significantly affects the
23 value of this claim. Proving liability for this claim would likely require substantial
24 testimony from Class Members to counter Defendant's policy and records, which could
25 raise concerns about manageability. Taking these risks into account, a more realistic
26 range of recovery for this claim is \$0 to \$45,427.88.

28 ² Only liquidated damages were sought because any underlying unpaid minimum wages were accounted for in the value of Plaintiff's overtime claim.

- 1 d) Rest Period: This claim is based on allegations that Class Members did not receive all
2 rest periods they were entitled to due to pressure to quickly complete construction
3 projects. While it is possible that Defendant could make meal periods available, but not
4 rest periods, or vice versa, it is reasonable to infer, especially where the reasoning for
5 missed meal and rest periods is the same, that there would be a similar violation rate for
6 both types of breaks. At the time of mediation, the maximum possible damages for this
7 claim based on Defendant's time and payroll records was \$313,452.35, which is based on
8 the same violation rates and shift experiences that Plaintiff contends applied to the meal
9 period claims. This amount does not take into account any potential risks with respect to
10 Plaintiff proving the merits or damages. Defendant produced an Employee Handbook
11 with a legally compliant rest period policy that requires Class Members to notify a
12 supervisor if a rest period is missed. Defendant also produced signed acknowledgments
13 evidencing that Class Members were provided with a copy of the Employee Handbook.
14 Because there is no requirement to keep records of rest periods taken, this claim would
15 not benefit from any presumption of liability like that for meal period claims. The claim
16 would likely require substantial testimony from Class Members to counter Defendant's
17 policy, which could raise concerns about manageability. Taking these risks into account,
18 a more realistic range of recovery for this claim is \$0 to \$45,427.88.
- 19 e) Sick Time: This claim is based on allegations that bonuses paid to Class Members were
20 non-discretionary and should have been included in Class Members' regular rates of pay
21 for purposes of calculating paid sick time. At the time of mediation, the maximum
22 possible damages for this claim based on Defendant's time and payroll records was
23 \$588.85. This amount does not take into account any potential risks with respect to
24 Plaintiff proving the merits or damages. As mentioned above, it was contested whether
25 the bonuses were truly non-discretionary. If they were discretionary, then there would be
26 no requirement to include their value into Class Members' regular rates of pay, which
27 would eliminate damages for this claim entirely.
- 28

1 f) Wage Statement: This claim is wholly derivative of the above claims and is based on
2 allegations that Defendant's wage statements did not contain accurate information as a
3 result of its failure to pay all minimum wages, overtime wages, and paid sick time, and its
4 failure to provide all meal and rest periods. At the time of mediation, the maximum
5 possible damages for this claim based on Defendant's time and payroll records was
6 \$46,800. This amount does not take into account any potential risks with respect to
7 Plaintiff proving the merits or damages. This was calculated using a \$50 penalty for each
8 pay period during the 1-year statute of limitations. This damages amount is likely an
9 overestimation because it is derivative and assumes violations present in 100% of pay
10 periods during the claim period and assumes that Plaintiff would succeed in proving that
11 alleged wage statement inaccuracies were the result of knowing and intentional conduct
12 by Defendant that caused Class Members to suffer harm. If Plaintiff failed to prove
13 violations in each pay period for the above claims, the number of pay periods could be
14 substantially reduced resulting in a much lower penalty amount. Moreover, if Plaintiff
15 could not prove Class Members suffered harm and that Defendant's conduct was
16 knowing and intentional, recovery for this claim could be eliminated entirely. Because
17 there is potential variance with the ability to prove each of the violations the wage
18 statement claim is based on, it is hard to exactly quantify the more realistic range of
19 damages. However, it would be less than \$46,800.

20 g) Waiting Time: Similar to Plaintiff's wage statement claim, this claim is derivative of the
21 above claims. It is based on allegations that Class Members had wages due and owing to
22 them that remained unpaid after the end of their employment. Because this claim is
23 derivative, it carries the same risks identified above for Plaintiff's overtime, minimum
24 wage, sick time, and meal and rest period claims. At the time of mediation, the
25 maximum possible damages for this claim based on Defendant's time and payroll records
26 was \$534,758.40. This amount does not take into account any potential risks with respect
27 to Plaintiff proving the merits or damages. This amount was calculated based on an
28 assumption that all 88 former employees within the 3-year statute of limitations ended

1 their employment with wages owing to them. Plaintiff's failure to prevail on any of the
2 above claims would likely reduce the number of former employees with unpaid wages
3 who would be eligible to recover waiting time penalties. Moreover, there is substantial
4 risk that Defendant's policies and records would provide it with a good faith affirmative
5 defense, which would eliminate the value of this claim entirely. *See Diaz v. Grill*
6 *Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Plaintiff's best argument for
7 unpaid wages that might be deemed to avoid a good faith defense was the regular rate of
8 pay overtime claim. However, as noted above this was not without risk and only
9 approximately 37.5% of Class Members were affected by the regular rate of pay claim.
10 As a result, a more realistic range of recovery for this claim is \$0.00-\$200,534.40.

11 h) Failure to Reimburse: This claim is based on allegations that Defendant failed to
12 reimburse Class Members for necessary expenses incurred from personal cellphone use,
13 use of personal tools, and the use of personal vehicles for work. At the time of
14 mediation, the maximum possible damages for this claim based on Defendant's payroll
15 records was \$343,703.00. This calculation is based on \$7.50 owed per week for
16 cellphone use, \$5,000 owed to each of the 60 Class Members who utilized tools at work,
17 and 30 miles per day driven by each Class Member at the IRS rate of 0.575. This amount
18 does not take into account any potential risks with respect to Plaintiff proving the merits
19 or damages. Defendant produced a policy it had to reimburse Class Members for
20 expenses they incurred for work. The policy requires Class Members to submit expense
21 reports and receipts in order to be reimbursed. There is substantial risk in proving this
22 claim, especially in regards to whether, and to what extent, personal tools were required
23 and estimates regarding amounts owed for reimbursement, and why Class Members did
24 not submit for reimbursement of the expenses, or if they did, why no amount was
25 reimbursed. This raises substantial risk regarding manageability. Additionally, the
26 \$5,000 per individual in tool costs was based on the average purchase price of the items
27 rather than the depreciated value for continued use. Identifying the depreciated value may
28 require extensive and contentious dueling experts and would result in only a fraction of

the total purchase price being available as damages. As a result, a more realistic range of recovery for this claim is \$35,000.00-\$110,000.00.

- i) PAGA: This claim is derivative of the Labor Code violations identified above and would be subject to all the same risks as the underlying claims it is based on. Additionally, based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be found for penalty calculation purposes, and the exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if this matter went to trial. Based on Class Members' payroll data, the maximum total exposure for this claim is \$1,189,152.80.³ This amount does not take into account any of the risks in proving the merits of the underlying claims that the PAGA damages are based on. Beyond the risks on the merits, the correct valuation of civil penalty amounts for certain claims under PAGA is in dispute. For example, the calculation valued civil penalties for failure to pay final wages under Labor Code section 256 (which provides the civil penalty amount will not exceed 30 days' pay as waiting time under the terms of Section 203) for a total of \$431,452.80 instead of the \$100 per violation default penalty under Labor Code 2699(f), which results in a reduction to \$7,100.00 for this claim. Similarly, the calculation valued civil penalties for wage statement violations under Labor Code section 226.3 (which provides the civil penalty amount is \$250 per violation) for a total of \$234,000.00 instead of the \$100 per violation default penalty under Labor Code 2699(f), which results in a reduction to \$93,600.00. The calculation also values civil penalties for the overtime claim based on the default 100 per violation for a total of \$93,600.00 instead of the \$50 per violation in Labor Code section 558, which results in a reduction to \$46,800.00. Finally, the calculation values civil penalties for the meal period claim based on the default \$100 per violation for a total of \$93,600.00 instead of the \$50 per violation

³ My declaration previously stated the total exposure for PAGA to be \$1,329,522.80. This amount was based on an inadvertent miscalculation of civil penalties owed for failure to pay minimum wages using \$250 per violation (the penalty applicable for subsequent violations) instead of \$100 (the penalty applicable for initial violations). See Labor Code § 1197.1. The difference is \$93,600.00 versus \$234,000.00.

1 identified in Labor Code section 558, which results in a reduction to \$46,800.00. Using
2 the lowered valuations would reduce the maximum available PAGA penalties to
3 \$530,800.00. In addition to the risks on the merits and disputes regarding the proper
4 valuation of the penalty amounts, I believe the Court may exercise its discretion to reduce
5 PAGA penalties in this case in light of Defendant's financial condition, because a
6 majority of the civil penalties sought would be in addition to amounts owed for
7 substantive violations, some of the violations are due to technical non-compliance with
8 the Labor Code, such as derivative wage statement violations, and Defendant produced
9 legally compliant policies among other documents, that a Court may find demonstrates a
10 good faith attempt at compliance. Courts are statutorily authorized to use discretion to
11 reduce penalties and the range of discretion used varies substantially. *See Thurman v.*
12 *Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
13 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82%
14 reduction). Thus, even if using the maximum values possible and setting aside risks of
15 proving the claims on the merits, the total exposure may be cut to approximately
16 \$214,047.50 (82% reduction) to \$832,406.96 (30%) or lower. Using the lower, disputed
17 PAGA penalty values (\$530,800 total) would lower the potential exposure further to
18 \$95,544.00 (82% reduction) to \$371,560.00 (30%). It is important to note that this
19 discretionary reduction is completely separate and in addition to any risks on the merits.
20 Given Defendant's financial hardship, the importance of ensuring Class Members receive
21 some compensation for unpaid wages, the associated risks, and the disputed nature of the
22 claims, we believe the amount that might ultimately be awarded under this claim would
23 be low. Allocating \$2,500 to the PAGA claims in this case is appropriate, especially in
24 light of amounts that Courts have approved as reasonable valuations in other cases. *See*
25 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the
26 resolution of PAGA claims based on their being disputed and being part of a class
27 settlement which was evaluated based on the terms of the agreement overall); *Davis v.*
28 *Cox Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017)

(preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

10. The Gross Settlement Amount is \$133,065.24. Pursuant to paragraph 10.1 of the Agreement, the Gross Settlement Amount increased from \$110,000 to \$133,065.24 based on an increase in the number of Qualifying Workweeks worked by Class Members during the Class Period. This amount was calculated by determining the number of additional workweeks (4,823 total weeks – 3,987 weeks = 836 weeks), determining the value of an individual workweek based on the original Gross Settlement Amount ($\$110,000 \text{ original Gross Settlement Amount} / 3,987 \text{ weeks} = \27.59), multiplying those values together ($836 \text{ additional weeks} \times \$27.59 = \$23,065.24$), and adding that amount to the original Gross Settlement Amount.

11. Based on my office's analysis and review of all relevant documents and Class Member information, I have determined that the maximum likely damages for the asserted claims is approximately \$3,029,830.56. This amount includes recovery of civil penalties under the PAGA in the amount of \$1,189,152.80. Taking into account the probable discretionary reduction of civil penalties, the maximum likely recovery after a reduction of the PAGA penalties would be approximately \$2,054,725.26. Although these amounts represent the maximum likely damages available without taking into account the risk on the merits, we utilized these numbers in connection with the initial preliminary approval filing to show the strength of the settlement even under the most stringent of

1 circumstances. Taking into account the more realistic range of recovery, the value of the settlement
2 based on the strengths and weaknesses of the case increases substantially. As outlined above, the more
3 likely range of recovery is between \$252,698.10 to \$1,017,695.51. Plaintiff's \$133,065.24 gross
4 recovery under the Agreement represents approximately 4.4% of the maximum likely value in this
5 matter and between 13.1% and 52.7% of the likely recovery. After deducting from the Gross
6 Settlement Amount the proposed allocations for attorneys' fees (\$46,572.83) and costs (\$6,661.23), any
7 Enhancement Payment to the Class Representative (\$10,000), Claims Administrator Costs (\$7,500),
8 and the PAGA Payment (\$2,500), the net recovery under the Agreement, \$59,831.18, represents
9 approximately 2% of the maximum likely value in this matter. The net recovery also represents
10 between 5.9 % and 23.7% of the likely recovery. Based on the final numbers from the Claims
11 Administrator the average recovery for Class Members is approximately \$422.77 and the highest
12 recovery is approximately \$3,243.07. I believe the Agreement represents a reasonable compromise of
13 claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement
14 now and ensure Class Members receive some compensation, rather than proceed to further litigation
15 and potentially recover nothing, was also a motivating factor in reaching this Agreement.

16 12. In agreeing to take on this case, our office agreed to take this case on a contingency
17 basis, meaning that we would take a percentage of any settlement or judgment should we recover a
18 monetary amount. We took a risk that we would not recover any money in this matter if we were
19 unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary
20 judgment ruling. However, we believe it is important to make sure employees are able to find
21 affordable representation in order to ensure that employers are complying with all their legal
22 obligations towards employees and paying employees all their hard-earned wages. We rely on
23 attorneys' fee awards in order to continue working to ensure California wage and hour protections are
24 enforced. Recovery of our full lodestar plus an appropriate multiplier is necessary to compensate for
25 the risk undertaken. Otherwise, we could not continue to represent employees who are denied wages,
26 but whose cases may be time-consuming and difficult to prove. There have been class cases we
27 litigated where ultimately we get zero for our time because we are unable to meet certification
28

1 requirements or the company becomes financially insolvent. Additionally, there have been several
2 occasions, like in this case, where the fee recovered results in a negative multiplier of our lodestar.

3 13. I am a Senior Associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique
4 law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
5 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I
6 received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda &
7 Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working
8 on individual, class action and PAGA employment cases throughout law school. I also participated in
9 an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal
10 consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour,
11 discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation,
12 and wrongful termination, etc.) under the supervision of an attorney, preparing wage claims, and
13 providing representation in wage claims before the California Labor Commissioner. From 2016-2017,
14 I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I
15 obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented
16 clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and
17 defended a client against five misdemeanor charges in a jury trial in the United States District Court for
18 The Eastern District of California. I was also a member of the nationally recognized McGeorge Mock
19 Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law
20 school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with
21 Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I
22 received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure,
23 Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super
24 Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar
25 Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in
26 2021. I have over seven years of experience working on civil litigation and employment law matters.
27 Most of that experience has been specific to analyzing and litigating wage and hour claims. As an
28 associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and

hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition, breach of contract, independent contractor misclassification, and salaried misclassifications. Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include the following:

- *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin Sup. Ct.);
- *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D. Cal.);
- *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- *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.);
- *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.).

14. 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 15. The partners, Justin P. Rodriguez, Esq. and Galen T. Shimoda, Esq., also worked with
2 me on this matter and were critical in assisting with all aspects of the litigation of this case. Mr.
3 Rodriguez attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy
4 and the Departmental Citation for Academic Achievement in the Philosophy program. He was one of
5 only two recipients of this award out of the entire Philosophy Department. After U.C. Davis, Mr.
6 Rodriguez attended the University of the Pacific, McGeorge School of Law, graduating in 2011 and
7 receiving a Juris Doctorate. He graduated in the top 20% of his class and was a member of the Traynor
8 Honor Society at McGeorge. Other academic achievements of his include receiving a Witkin Award
9 (top grade) in his legal research and writing course, a Witkin Award in complex civil litigation, being a
10 member of the Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law*
11 *Review* from 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global*
12 *Business & Development Law Journal* from 2010–2011, and being selected as a Sacramento County
13 Bar Association Diversity Fellow in 2009. Mr. Rodriguez was also a member of the Employment and
14 Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

15 16. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and
16 became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022.
17 Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and
18 ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). Mr.
19 Rodriguez has been a panel speaker and presented a number of seminars covering issues wage and hour
20 litigation in general and complex class and PAGA litigation in particular. These engagements include
21 the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California
22 (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense
23 Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers
24 Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any
25 Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and
26 Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento
27 County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association
28 Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive

committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act (“FLSA”) claims. He is actively involved in most of the complex litigation handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *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. AI 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. 34-2019-00263185 (Sac. Sup. Ct.);
- *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. Ovarions 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.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (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.).

17. 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.

18. Mr. Shimoda graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, he has authored a number of employment law articles for journals and regularly publishes articles on our firm's website.

1 19. He has been a regular panel speaker for the CEB (Continuing Education of the Bar)
2 Employment Review seminars from 2014 to the present. His speaking engagements include the
3 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
4 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
5 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
6 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
7 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
8 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
9 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
10 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
11 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
12 Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance
13 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
14 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
15 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
16 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
17 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
18 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
19 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
20 Venue Roundup (May 17, 2019). He has been AV rated by Martindale Hubbell since 2013, was
21 recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a
22 Super Lawyer from 2014 to present.

23 20. He has practiced law in California since being admitted to the State Bar in 2003,
24 litigating wage and hour class actions and individual wage and hour litigation among other cases. He
25 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.
26 He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour
27 law. He has litigated several class action cases in California State and Federal Courts, including up to
28 certification, settlement, preliminary and final approval, and disbursement of monies, and has been

found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel over the past nineteen (19) years include, but are not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (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.);
- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. 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.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);

- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (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);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *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.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *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.);

- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

22. My office is requesting attorneys' fees pursuant to the common fund doctrine pursuant to *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980). Plaintiff and Plaintiff's Counsel have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. There was substantial risk in agreeing to take this case on a contingency basis and as a class action with the possibility that Plaintiff's Counsel would not receive any compensation their time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. In my experience, the attorney's fee request of thirty-five percent (35%) of the common fund is within

1 ranges typically approved in wage and hour class action litigation. This includes awards in Sacramento
2 County Superior Court. A true and correct copy of a November 2022 order from the Sacramento
3 County Superior Court approving attorneys' fees of 35% of the common fund is being filed with this
4 Motion as Exhibit G.

5 23. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this
6 case. The total lodestar is approximately \$152,260.00 based on approximately 286.4 hours, which
7 includes approximately 10 hours of time for myself preparing for and attending the final approval
8 hearing, ensuring compliance and the disbursement of funds consistent with a final approval order. I
9 have reviewed our firm's billing records with Mr. Shimoda and Mr. Rodriguez and have created a
10 summary chart showing the task categories and hours worked by each billing attorney in each category.
11 A true and correct copy of this summary chart is being filed with this Motion as Exhibit F. In
12 reviewing the entries with Mr. Shimoda and Mr. Rodriguez, I believe the hours reported are accurate.
13 To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to
14 the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the
15 likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time.
16 Our billing software also records time in 1/10 of an hour increments. Our billing software also enables
17 the use of a start/stop timer that can be used to more accurately record how long a particular task takes.
18 A summary of the entries in Exhibit F by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	59.4	\$725	\$43,065.00
Justin P. Rodriguez	63.6	\$625	\$39,750.00
Brittany V. Berzin	163.4	\$425	\$69,445.00
Total:	286.4		\$152,260.00

25 24. I believe the requested rates of \$425 per hour for myself, \$625 per hour for Mr.
26 Rodriguez, and \$725 per hour for Mr. Shimoda are within the prevailing market rates for Sacramento
27 County and elsewhere. We have approximately 4 years, 12 years, and 20 years of experience,
28 respectively, litigating complex wage and hour class and PAGA actions. As far back as May 2016, the

1 Sacramento County Superior Court also approved hourly rates in the amount of \$695 for a partner with
2 approximately 18 years of experience, \$575 for partners with approximately 12 years of experience,
3 and rates for associates with approximately 4 years of experience in the range of \$375-\$425 in a wage
4 and hour class action settlement in *Navarro v. Markstein Beverage Co.*, Case No. 34-2015-00174957.
5 According to the U.S. Bureau of Labor Statistics, the value of goods and services that cost \$575 in May
6 2016 have an equivalent value of \$710.42 in today's dollars as of September 2022. *See*
7 https://www.bls.gov/data/inflation_calculator.htm. In addition, in November 2022, the Sacramento
8 County Superior Court approved Mr. Shimoda, Mr. Rodriguez, and myself at these rates in connection
9 with a motion for final approval of a wage and hour class action settlement in *Strawn v. Bridgestone*
10 *Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). *See* Exhibit G. Awarding fees at
11 the hourly rate in effect at the time of the fee request is an appropriate and judicially approved method.
12 *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the
13 request of \$46,752.83 (35%) for attorneys' fees is justified given the results obtained on behalf of the
14 class.

15 25. Although the Agreement set out a maximum of \$10,000 for potential attorney's costs,
16 the total costs incurred or that will be incurred through a compliance hearing by Class Counsel is
17 \$6,661.23. A true and correct copy of my firm's itemized costs incurred prior to the filing of this
18 Motion and the expected costs incurred through the final approval and compliance hearings is attached
19 to this declaration as Exhibit D. The difference in the actual costs and the maximum amount allocated
20 under the Agreement will be added to the Net Settlement Amount and disbursed to Class Members.

21 26. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
22 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
23 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were
24 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
25 Exhibit E.

26 27. The intended *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. ("CPB") and
27 The Center For Workers Rights ("CFWR"). Only those funds that remain from uncashed settlement
28 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

1 28. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
2 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
3 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
4 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
5 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
6 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
7 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
8 *pres* funds from several jurisdictions in the State of California pursuant to California Code of Civil
9 Procedure section 384, including from Sacramento County Superior Court.

10 29. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
11 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
12 their current or former employment. This assistance regularly includes, but is not limited to, free legal
13 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
14 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
15 forms, and direct representation in administrative hearings, including administrative hearings in front of
16 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
17 who provide assistance, along with experienced employment law attorney volunteers. These services
18 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
19 and continuing through today under CPB.

20 30. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
21 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
22 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
23 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
24 workers and advises them as to the available legal remedies. In addition to individual counseling on
25 employment issues, the CFWR educates workers, unions, and community members about workplace
26 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

27 31. The CFWR provides limited representation for low-wage workers in wage claims before
28 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety

1 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
2 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
3 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
4 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
5 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
6 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
7 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
8 respect to those wage claims.

9 32. I believe the services provided by CPB and the CFWR promote the law consistent with
10 the objective of wage and hour class actions in general and in this case specifically.

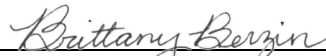
11 33. I have spoken with every other attorney at my firm to determine whether they have any
12 relationship with either of the proposed *cy pres* beneficiaries.

13 34. I have never done any work, volunteer or otherwise with Capital Pro Bono, Inc. During
14 law school, I was a student volunteer for the CFWR for two summers. Since graduating law school, I
15 have volunteered for the CFWR approximately one to two times per year, assisting in the advice clinic.
16 Recently, I volunteered to be on the Board of Directors and am currently the Chair, which is an unpaid
17 position. As Chair, I am one of five Board Members, who are all from different law firms and/or local
18 public and private organizations. No compensation or benefits, monetary or otherwise, are provided to
19 any Board Member or organization a Board Member is associated with. The Executive Director of the
20 CFWR supervises, directs, and controls the day-to-day operations of the CFWR, not myself or the Board
21 of Directors. As Chair, my additional duties include scheduling meetings, drafting meeting agendas and
22 presiding over meetings. Furthermore, CFWR has not, and does not, provide any referrals to Shimoda
23 & Rodriguez Law, P.C. Justin Rodriguez has volunteered for both CPB and the CFWR numerous times
24 over the past several years, either directly in the advice clinics or by presenting seminars on wage and
25 hour laws for law students seeking to also volunteer at advice clinics. He has also volunteered by sitting
26 on CPB's advisory committee. Mr. Rodriguez has never received payment or compensation of any kind
27 in connection with any work he's done with the CPB or CFWR. Galen T. Shimoda has volunteered for
28 both organizations on and off over the past several years through either presenting wage and hour

1 seminars to law students who staff the free advice clinics or helping at the advice clinics themselves.
2 However, Mr. Shimoda has not performed any volunteer work with either organization since
3 approximately March 2020. Mr. Shimoda has never received payment or compensation of any kind in
4 connection with any work he's done with CPB or CFWR.

5 35. Neither my firm, Mr. Rodriguez nor Mr. Shimoda have not received any compensation,
6 direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in connection with any of
7 the volunteer work we have done with the organizations.

8
9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct. Executed May 22, 2023, in Elk Grove, California.

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14 Brittany V. Berzin
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Galen T. Shimoda (Cal. State Bar No. 226752)
 Justin P. Rodriguez (Cal. State Bar No. 278275)
 Brittany V. Berzin (Cal. State Bar No. 325121)
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Attorneys for Plaintiff SILVIANO VASQUEZ

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SILVIANO VASQUEZ, individually and on
 behalf of all other similarly situated
 employees,

Plaintiff,

vs.

CHRISWELL HOME IMPROVEMENTS,
 INC., A California Corporation; and DOES 1
 to 100, inclusive,

Defendants.

Case No. 34-2021-00305938

CLASS ACTION

**DECLARATION OF PLAINTIFF SILVIANO
 VASQUEZ IN SUPPORT OF PLAINTIFF'S
 MOTION FOR FINAL APPROVAL OF
 CLASS ACTION AND PAGA SETTLEMENT**

Date: June 16, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri Damrell

Filed: August 10, 2021

FAC Filed: January 5, 2022

Trial Date: None Set

1 I, Silviano Vasquez, 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 for Final Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant Chriswell Home Improvements, Inc. ("Defendant") from
6 approximately March 15, 2021 to June 1, 2021 as a non-exempt employee. I was subject to all of
7 Defendant's policies and practices that have been alleged as unlawful in the Complaint and the notice
8 sent to the Labor and Workforce Development Agency, including Defendant's failure to pay all hours
9 worked.

10 3. I have actively participated in the litigation of this case for the benefit of all Class
11 Members. Prior to obtaining an attorney, I performed several hours of research over a period of about a
12 month on the potential claims, so I could be sure I could have an informed discussion with the attorneys
13 about the claims and have a better idea of what to expect in litigation and how to help the case proceed.
14 After securing Shimoda & Rodriguez Law, PC, I continued to be actively involved in the case to help
15 ensure a positive outcome.

16 4. My attorneys explained to me the risks and benefits of bringing a class action and a
17 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
18 class and PAGA action meant that it would take substantially longer than pursuing my claims
19 individually, whether in Court or with the California Labor Commissioner and that I risked getting
20 nothing in the end, but I believed it was important to make sure that Defendants followed the law for
21 everyone. I understood that I took on the risk, both professionally and financially, in pursuing the case
22 as a class and PAGA action rather than pursuing my claims individually. As a Class Representative, I
23 also took on the risk of having to pay Defendant's costs if we were unsuccessful in bringing our claims.

24 5. During the course of this litigation, I have given detailed accounts of all the facts related
25 to my employment. I have provided my attorneys with extensive documentation that I believe
26 supported the claims brought against Defendant. I met with and assisted my attorneys in understanding
27 these documents and providing context for Defendant's payroll process as it applied to me and how I
28 believed it applied to Defendant's other employees. I worked for Defendant during two separate periods

1 of time during the class period and in two different job positions, so I was able to discuss the
2 similarities of the wage and hour policies and practices among all Class Members.

3 6. The work I performed for this case included an extensive review of documents and
4 payroll practices to show and explain to my attorneys what was happening and why I thought it was
5 unlawful. For example, I produced excerpts from Defendant's handbook regarding incentive payments,
6 overtime, work assignments, and expense reimbursement, reviewed my text messages and provided a
7 text exchange I had with the owner regarding pay, and time and pay records, including job breakdown
8 sheets. I went over the job breakdown sheets in detail with my attorneys to explain how Defendant's
9 piece rate compensation system worked and how Class Members' pay was calculated by Defendant.
10 This was very important as it helped not only the minimum wage, overtime claims, but also claims
11 related to rest periods, paid sick time, wage statements, and final pay. The review became even more
12 detailed when my attorneys asked me questions about the payroll data sample that was produced as part
13 of informal discovery to engage in mediation. I also spent time identifying and speaking to potential
14 witnesses who could speak to my attorneys to give their own insights and provide declarations.
15 Ultimately, I was able to find 10 witnesses who agreed to be contacted by my attorneys. Since the
16 settlement, I have also fielded questions by Class Members about this case and the process for
17 receiving payment. Overall, I have spent numerous hours of my time assisting in the prosecution of
18 this case. I estimate that I spent about 40 to 45 hours assisting with this case.

19 7. I participated in the negotiations and settlement discussions in this case, including
20 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
21 additional information needed to assist the negotiations, and discussing the potential terms of the
22 Agreement to evaluate its adequacy.

23 8. Throughout the course of this litigation, I have asked questions when I needed
24 clarification about various aspects of this case to make sure there were continually steps taken to
25 advance the interests of Class Members.

26 9. I have not received any benefits as a result of filing this lawsuit. I have, however,
27 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
28 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs

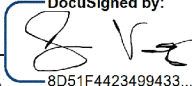
1 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
2 because the costs associated with litigation, in general, are very high and this cost is multiplied many
3 times over in complex litigation like class actions. I have spent a substantial amount of time in this
4 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
5 have the opportunity to receive it. I have been employed full-time during most of the time this case has
6 been pending. As a result, the time I have spent on this case had to occur during my lunch and/or
7 breaks times, after hours, and on my days off. Rather than spend this time with friends and family, I
8 have spent this time for the benefit of Class Members. Finally, as part of the Settlement, I am the only
9 individual providing a general release of all my individual claims and waiving the protections of
10 California Civil Code section 1542 for unknown claims. No other Class Member is subject to such a
11 broad release.

12 10. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
13 Release, discussed the terms with my attorneys, and asked my attorney any questions I had. I believe
14 the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

15 11. I understand that any Class Representative Enhancement Payment I may receive is for
16 my participation as a Class Representative and it is not contingent on my support or approval of the
17 Agreement.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed this 22 of May 2023 in Sacramento, California.

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DocuSigned by:

S 8D51F4423499433

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 SILVIANO VASQUEZ
6
7

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

11 SILVIANO VASQUEZ, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 CHRISWELL HOME IMPROVEMENTS,
16 INC., A California Corporation; and DOES 1
to 100, inclusive,

17 Defendants.
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Case No. 34-2021-00305938

CLASS ACTION

**DECLARATION OF CASSANDRA POLITES
OF ILYM GROUP, INC. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 16, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri Damrell

Filed: August 10, 2021

FAC Filed: January 5, 2022

Trial Date: None Set

1 I, Cassandra Polites declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am a Case
3 Manager for ILYM Group, Inc., (herein after referred to as “ILYM Group”), the professional settlement
4 services provider who has been retained by the parties’ counsel and subsequently appointed by the Court
5 to serve as the Claims Administrator for the above captioned matter. I am authorized to make this
6 declaration on behalf of ILYM Group and myself. I have personal knowledge of the facts herein, and, if
7 called upon to testify, I could and would testify competently to such facts.

8 2. ILYM Group has extensive experience in administering class action settlements, including
9 direct mail services, database management, claims processing and settlement fund distribution services
10 for class actions ranging in size from 26 to 4.5 million settlement class members.

11 3. ILYM Group was engaged by the parties’ counsel and subsequently approved and
12 appointed by the Court to provide notification services and settlement administration, pursuant to the
13 terms of the Agreement, in the above referenced Action. Duties performed to-date and to be performed
14 after Final Approval of the Agreement is granted, include: (a) printing and mailing the *Notice of Proposed*
15 *Class Action and PAGA Settlement, And Hearing Date For Final Approval of Settlement* (referred to as
16 “Notice Packet”); (b) receiving and processing requests for exclusion; (c) resolving Class Members’
17 disputes over the number of workweeks Defendant has record of them working during the Class Period,
18 which was pre-printed on their individualized Notice of Settlement; (d) calculating individual settlement
19 award amounts; (e) processing and mailing settlement award checks; (f) handling tax withholdings as
20 required by the Agreement and the law; (g) preparing, issuing and filing tax returns and other applicable
21 tax forms; (h) handling the distribution of any unclaimed funds pursuant to the terms of the Agreement;
22 (i) maintaining a website with a copy of this Notice Packet, the settlement agreement, and motion papers;
23 and (j) performing other tasks as the parties mutually agree to and/or the Court orders ILYM Group to
24 perform.

25 4. On February 27, 2023, ILYM Group received the class data file from counsel for
26 Defendant, which contained the name, social security number, last known mailing address, and the dates
27 of employment for each Class Member. The data file was uploaded to our database and checked for
28 duplicates and other possible discrepancies. The class list contained 141 individuals.

1 5. As part of the preparation for mailing, all 141 names and addresses contained in the class
2 list were processed against the National Change of Address (“NCOA”) database, maintained by the
3 United States Postal Service (“USPS”), for purposes of updating and confirming the mailing addresses
4 of the Class Members before mailing of the Notice Packet. The NCOA contains requested change of
5 addresses filed with the USPS. To the extent that an updated address was found in the NCOA database,
6 the updated address was used for the mailing of the Notice Packet. To the extent that no updated address
7 was found in the NCOA database, the original address provided by counsel for Defendant was used for
8 the mailing of the Notice Packet.

9 6. On March 13, 2023, the Notice Packet was mailed, via U.S First Class Mail, to all 141
10 individuals contained in the class list. Attached hereto, as **Exhibit A**, is a true and correct copy of the
11 mailed Notice Packet.

12 7. As of the date of this declaration, 12 Notice Packets have been returned to our office
13 without a forwarding address. ILYM Group performed a computerized skip trace on the 12 returned Notice
14 Packets that did not have a forwarding address, in an effort to obtain an updated address for the purpose
15 of re-mailing the Notice Packet. As a result of ILYM Group’s skip tracing efforts, 6 updated addresses
16 were obtained and the Notice Packet was promptly re-mailed to those Class Members, via U.S First Class
17 Mail.

18 8. As of the date of this declaration, a total of 6 Notice Packets have been deemed
19 undeliverable as no updated address was found notwithstanding the skip tracing.

20 9. As of the date of this declaration, ILYM Group has not received any requests for exclusion
21 from the Agreement. The deadline to request exclusion from the Agreement was May 12, 2023.

22 10. As of the date of this declaration, ILYM Group has not received any objections to the
23 Agreement. The deadline to file an objection to the Agreement was May 12, 2023.

24 11. As of the date of this declaration, ILYM Group has not received any workweek disputes.
25 The deadline to submit a dispute was May 12, 2023.

26 12. As of this date of declaration, ILYM has received two requests from self-identified
27 individuals who believe they should be included in the class list. Defendant confirmed that these
28 individuals should be added to the class list. Therefore, the total number of Qualified Claimants who will

1 receive their portion of the Settlement is 143. The 143 Qualified Claimants worked 4,823 weeks in the
2 Class Period.

3 13. Pursuant to the Agreement, Defendant represented that there were 3,987 workweeks
4 during the Class Period. Per paragraph 10.1 of the Agreement, in the event the number of workweeks
5 during the Class Period is more than 4,386 (10% more than 3,987), then the Gross Settlement Amount
6 shall be increased proportionally. ILYM Group informed both parties that the total number of workweeks
7 triggered the escalator provision in paragraph 10.1. Therefore, the Gross Settlement Amount will be
8 increased by \$23,065.24 making the total Gross Settlement Amount \$133,065.24

9 14. The Net Settlement Fund available to Settlement Class Members is \$59,831.18 and was
10 calculated by subtracting the requested attorneys' fees (\$46,572.83), the amount allocated for litigation
11 costs and expenses (\$6,661.23), the requested Enhancement Payment (\$10,000.00), the requested
12 Settlement Administration Costs (\$7,500.00), and the PAGA Payment (\$2,500.00) from the Gross
13 Settlement Amount (\$133,065.24).

14 15. As of this date, there are 143 Qualified Claimants, *i.e.*, Class Members who did not submit
15 requests for exclusion. Each Qualified Claimant's share of the settlement was determined by dividing
16 their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks worked by
17 all Class Members within the Class Period. That fraction was then multiplied by the Net Settlement
18 Amount to arrive at the Class Members' individual share of the Net Settlement Amount. Each Aggrieved
19 Employee's share of the 25% portion of the PAGA Payment was determined by dividing their total
20 Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks worked by
21 all Aggrieved Employees within the PAGA Claim Period. That fraction was then multiplied by the 25%
22 portion of the PAGA Payment to arrive at Aggrieved Employees' individual share.

23 16. The *highest* individual settlement share to a Qualified Claimant is approximately
24 \$3,243.07, the *average* individual settlement share to a Qualified Claimant is approximately \$422.77.

25 17. ILYM Group's total fees and costs for services in connection with the administration of
26 this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and costs for
27 completion of the settlement administration, are \$7,500.00. ILYM Group's work in connection with this
28 matter will continue with the calculation of the settlement award payments, issuance and mailing of the

1 settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that
2 the Parties mutually agree to and/or the Court orders ILYM Group to perform.

3
4 I declare under penalty of perjury under the laws of the State of California and the United States
5 that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed
6 this 18th day of May 2023, at Tustin, California.

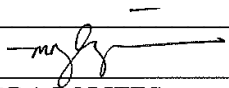
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11 CASSANDRA POLITES
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EXHIBIT “A”

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

SILVIANO VASQUEZ, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

CHRISWELL HOME IMPROVEMENTS, INC., A
California Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00305938

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION AND
PAGA SETTLEMENT, AND HEARING DATE FOR
FINAL COURT APPROVAL OF SETTLEMENT**

ATTENTION: all individuals who have, or continue to, perform work for Defendant in California as non-exempt employees from August 10, 2017 up to September 26, 2022 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on February 3, 2023, you are receiving notice of a proposed class action and Private Attorneys General Act (“PAGA”) settlement between Plaintiff Silviano Vasquez (“Plaintiff” or “Class Representative”) and Chriswell Home Improvements, Inc. (“Defendant”) and its owners Paul C. Cromwell (“Cromwell”) and Chris J. Mesunas (“Mesunas”) on behalf of Class Members as defined above. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked «Class_Weeks» weeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be \$«Estimated_Class_Award». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On August 10, 2021, Plaintiff filed a Complaint against Defendant in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2021-00305938. The Class Period is August 10, 2017 up to September 26, 2022 (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant failed to pay overtime, failed to pay minimum wages, failed to provide meal periods, failed to provide rest periods, failed to provide accurate wage statements, failed to pay final wages, failed to reimburse expenses, and engaged in unfair competition. Defendant has denied Plaintiff’s allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

Page 1 of 6

NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT, AND HEARING DATE FOR FINAL COURT APPROVAL OF SETTLEMENT

Questions? Call: (888) 250-6810

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release (“Agreement” or “Settlement”), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. “Class Member” does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the settlement. This notice is to advise you of how you can either participate in the Settlement or be excluded from the Settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant, Cromwell and Mesunas have agreed to pay a total sum of One Hundred Ten Thousand Dollars and Zero Cents (\$131,878.61) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount which equals \$46,157.51, attorneys’ costs not to exceed \$10,000, Claims Administrator Costs estimated not to exceed \$10,000, Class Representative’s Enhancement Payment of \$10,000, and \$2,500 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant, Cromwell or Mesunas in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$2,500 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all individuals who have, or continue to, perform work for Defendant in California as non-exempt employees from August 10, 2020 up to September 26, 2022.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment (“Claim Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant’s Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendant’s records. Defendant’s records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendant’s records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant’s records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than May

12, 2023. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims contained in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release excludes the release of claims not permitted by law. This release exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any all Private Attorneys General Act claims for civil penalties contained in Plaintiff's letter to the LWDA and/or operative Complaint, through the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, Cromwell, and Mesunas as well as their officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendant, Mesunas and Cromwell agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$46,157.51, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (i.e., "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (i.e. *Vasquez v. Chriswell Home Improvements, Inc.*, 34-2021-00305938); (d) be signed; and (e) be post-marked no later than **May 12, 2023**. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

The request to opt out must be postmarked no later than May 12, 2023. If you submit a request to opt out which is not postmarked by May 12, 2023, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

Page 3 of 4

**NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT, AND HEARING DATE FOR FINAL COURT
APPROVAL OF SETTLEMENT**

Questions? Call: (888) 250-6810

ILYM ID:«ILYMID»
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C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. *Vasquez v. Chriswell Home Improvements, Inc.*, 34-2021-00305938) (e) be signed; and (f) be post-marked no later than May 12, 2023. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendant and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 28, 720 9th Street, Sacramento, California 95814, on June 16, 2023 at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

Copies of all documents filed in this lawsuit may be accessed online at <https://ilymgroup.com/ChriswellHome>. If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant's Counsel as follows:

Justin P. Rodriguez
Brittany V. Berzin
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Brian Coggins
Coggins Law
9001 Foothills Blvd., Ste. 110
Roseville, CA 95747
Telephone: (916) 270-2895
Facsimile: (916) 270-2894
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL (888) 250-6810

BY ORDER OF THE COURT

Vasquez v. Chriswell Home Improvements, Inc.
c/o ILYM Group, Inc. «ILYMID QR Code»
P.O. Box 2031
Tustin, CA 92781

ILYM ID: «ILYMID»
«First_Name» «Last_Name»
«Address_1»
«City», «State» «Zip»

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 SILVIANO VASQUEZ
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**
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11 SILVIANO VASQUEZ, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.
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16 CHRISWELL HOME IMPROVEMENTS,
INC., A California Corporation; and DOES 1
17 to 100, inclusive,

18 Defendants.
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Case No. 34-2021-00305938

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 16, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri Damrell

Filed: August 10, 2021

FAC Filed: January 5, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on June 16, 2023 at 9:00 a.m., in Department 28 before the
4 Honorable Lauri Damrell, presiding. Named Plaintiff Silviano Vasquez (“Plaintiff”) filed this putative
5 class action on August 10, 2021. The operative Complaint alleges that Defendant Chriswell Home
6 Improvements, Inc. (“Defendant”) violated California law by failing to pay overtime, failing to pay
7 minimum wages, failing to provide meal periods, failing to provide rest periods, failing to provide
8 accurate wage statements, failing to pay final wages, failing to reimburse expenses, and engaging in
9 unfair competition. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private
10 Attorneys General Act (“PAGA”) based on these violations. Plaintiff sought attorneys’ fees and costs
11 as part of this Action. Defendant denied all of Plaintiff’s claims and denied that this case was
12 appropriate for class treatment. No class has been certified. The class settlement was preliminarily
13 approved by this Court on February 3, 2023.

14 The parties have agreed to settle the class and PAGA claims. Defendant and its owners, Paul
15 C. Cromwell (“Cromwell”) and Chris J. Mesunas (“Mesunas”), will provide monetary consideration in
16 exchange for a release of claims consistent with the terms of the proposed settlement as set forth in the
17 Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”). Any
18 capitalized terms herein shall have the same meaning as set forth in the Agreement. The Court, having
19 received and considered Plaintiff’s Motion for Final Approval of Class Action and PAGA Settlement,
20 the declarations in support, the Agreement, the proposed Notice of Settlement, and other evidence,
21 HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

22 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
23 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All individuals who have, or continue to, perform work for Defendant in
27 California as non-exempt employees from August 10, 2017 up to
September 26, 2022.

28 The Court recognizes that the foregoing definition is for Class Member identification purposes only and

1 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

2 For settlement purposes only, the Court finds that Class Members meet the ascertainability and
3 numerosity requirements since the parties can identify with a matter of certainty, based on payroll
4 records, individuals who fall within the definition and the number of Class Members would make
5 joinder impractical. The commonality and predominance requirements are met for settlement purposes
6 since there are questions of law and fact common to Class Members. The common questions of law or
7 fact in this case all stem from Plaintiff's contentions that Defendant caused the violations outlined above
8 by 1) failing to pay Class Members for all hours worked; and 2) failing to incorporate the value of
9 nondiscretionary remuneration, such as bonuses into Class Members' regular rates of pay for the
10 purpose of calculating overtime and paid sick time; 3) failing to authorize and permit all meal and rest
11 periods and failing to keep track of whether Class Members' took meal periods; and 4) failing to
12 reimburse Class Members' for the use of personal items for work, such as personal cellphones, vehicles,
13 and tools. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims
14 also derive from these violations. Additionally, Class Members seek the same remedies under state law.
15 The typicality requirement for settlement purposes is also satisfied since the claims of the Class
16 Representative are based on the same facts and legal theories as those applicable to the Class Members.

17 The Court also finds that certifying the settlement class is required to avoid each Class Member
18 from litigating similar claims individually. This settlement will achieve economies of scale for Class
19 Members with relatively small individual claims and conserve the resources of the judicial system.

20 The Court finds that Plaintiff Silviano Vasquez and Plaintiff's counsel, Galen T. Shimoda, Justin
21 P. Rodriguez and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate representatives
22 of the settlement class. The Court appoints them as Class Representative and Class Counsel,
23 respectively.

24 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

25 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
26 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls
27 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
28 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length

1 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
2 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
3 had an opportunity to object to the Agreement and its terms through the administration process and at a
4 fairness hearing or opt-out of being bound by the preliminarily approved Agreement. No objections
5 were made by Class Members and no Class Members opted out of the settlement.

6 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
7 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
8 gives final approval to the Agreement and all terms therein as if stated here in full, including the
9 \$133,065.24 Gross Settlement Amount.

10 The Court approves of the \$2,500 PAGA Payment, which shall be paid from the Gross
11 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
12 claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
13 Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved Employees
14 on a pro rata basis as described in the Agreement. The Court also finds that based on the facts of this
15 case and the disputed issues, the Agreement provides a recovery that creates an effective substantial
16 deterrent to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

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

21 The releases and waivers for Class Members who did not opt out of being bound by the
22 Agreement (*i.e.*, Qualified Claimants), Aggrieved Employees, and the Class Representative are also
23 approved by the Court as set forth in the Agreement.

24 Class Counsel sought an award of attorneys' fees of 35% of the Gross Settlement Amount,
25 \$46,572.83, attorneys' costs of \$6,661.23, an Enhancement Payment to the Class Representative in the
26 amount of \$10,000, and for Claims Administrator Costs in the amount of \$7,500. Defendant does not
27 oppose these requests. The Notice of Settlement sent to Class Members included information regarding
28 these amounts and that they would be requested in connection with final approval of the Agreement.

1 Class Members have been given the opportunity to object to these amounts and no objections have been
2 submitted. The Court has reviewed the evidence submitted by Class Counsel regarding their hourly
3 rates, including a prior fee award in Sacramento County Superior Court at the requested rates, and the
4 amount of time expended in the litigation for the benefit of Class Members. The Court finds that the
5 rates requested and hours expended are reasonable. The Court has also reviewed the updated itemized
6 costs submitted by Class Counsel, the information provided by the Class Representative regarding the
7 efforts and burdens undertaken for the benefit of the class, and the cost information provided by the
8 Claims Administrator in the declaration of Cassandra Polites. The Court finds that these amounts
9 requested for attorneys' fees and costs, the Enhancement Payment, and the Claims Administrator Costs
10 are fair and reasonable, and awarded as requested and deducted from the gross settlement amount. This
11 finding is further supported by the lack of objection by Class Members to these amounts. The difference
12 between the actual attorneys' costs and Claims Administrator Costs awarded and the originally allocated
13 \$10,000 under the Agreement for each payment will be added to the Net Settlement Amount pursuant to
14 the terms of the Agreement.

15 **III. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF**
16 **SETTLEMENT, OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE**
17 **SETTLEMENT**

18 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
19 Exhibit A to the Declaration of Cassandra Polites, fairly and adequately advised Class Members of the
20 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
21 of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how
22 to participate in the settlement, how to file documentation in opposition to the proposed settlement, and
23 when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and
24 proposed distribution of such notice by first class mail to each identified Class Member at his or her
25 most recent address based on a National Change of Address database search from the Class Members'
26 last known address and a skip trace on any Class Members who have the Notice of Settlement returned
27 as "undeliverable" or "not at this address" comported with all constitutional requirements, including
28 those of due process.

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IV. IMPLEMENTATION SCHEDULE

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

Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant, Cromwell, and Mesunas to fund settlement	Within 30 calendar days after the Effective Date
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after funding
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Qualified Members and 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

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1 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
2 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
3 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
4 Agreement.

5 **IT IS SO ORDERED.**

6
7 Date: _____

By: _____

Judge of the Superior Court

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121)
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Attorneys for Plaintiff SILVIANO VASQUEZ

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SILVIANO VASQUEZ, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

CHRISWELL HOME IMPROVEMENTS,
INC., A California Corporation; and DOES 1
to 100, inclusive,

Defendants.

Case No. 34-2021-00305938

CLASS ACTION

PROOF OF SERVICE

Date: June 16, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri Damrell

Filed: August 10, 2021

FAC Filed: January 5, 2022

Trial Date: None Set

Vasquez v. Chriswell Home Improvements, Inc.
Sacramento County Superior Court, Case No. 34-2021-00305938

**PROOF OF SERVICE — CCP §§ 1013a and 1015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Shaniya Baird, 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 May 22, 2023, I served the following documents on the party below:

- **Plaintiff's Notice of Motion and Motion for Final Approval of Class Action and PAGA Settlement**
- **Memorandum of Points and Authorities In Support of Plaintiff's Motion for Final Approval of Class Action And PAGA Settlement**
- **Declaration of Brittany V. Berzin In Support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement**
- **Declaration of Plaintiff Silviano Vasquez In Support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement**
- **Declaration of Cassandra Polites In Support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement**
- **Exhibit List and Exhibits In Support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement**
- **Proposed Order Granting Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement**

Brian Coggins (SBN: 239481)

COGGINS LAW

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David M. Daniels (SBN 170315)

ElGuindy, Meyer & Koegel, APC

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sandrade@emklawyers.com

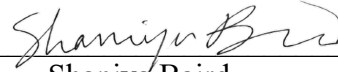
[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth 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.

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

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

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

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct, and that this declaration was executed on May 22, 2023, at Salt Lake City, Utah.

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Shaniya Baird