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

RAYMOND FLORES, on behalf of the State of
California and other aggrieved persons,

Plaintiff,

v.

FENCE FACTORY, a California Corporation;
FENCE FACTORY dba ELECTRONIC ENTRY
DISTRIBUTORS, a California corporation;
ELECTRONIC ENTRY DISTRIBUTORS, a
California Corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 56-2021-00559015-CU-OE-VTA

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

*[Assigned for all purposes to Hon. Benjamin
F. Coats, Dept. 43]*

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement; Memorandum of
Points and Authorities; the Declarations of
Justin F. Marquez and Raymond Flores; and
[Proposed] Order]*

PRELIMINARY APPROVAL HEARING

Date: September 25, 2023

Time: 8:30 a.m.

Dept: 43

Complaint Filed: October 14, 2021

FAC Filed: July 29, 2022

SAC Filed: June 28, 2023

Trial Date: None Set

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Raymond Flores (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked in California as hourly-paid or non-exempt employees for Defendants during the class period. Defendants specialize in the manufacture, sale, and installation of a wide variety of fencing and related products, including residential, commercial, and industrial fencing, horse corrals, guard rails, bridge railing, gate operators, security systems, wild animal enclosures, portable toilets and much more.

4. On October 14, 2021, Plaintiff filed his Complaint alleging PAGA penalties for the violations against Defendants. Plaintiff sent a notice to Defendants and the California Labor & Workforce Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the PAGA on August 10, 2021. On July 29, 2022, pursuant to a stipulation submitted by the

1 Parties and granted by the Court, Plaintiff filed his First Amended Complaint to correct Defendant
2 entities and submitted an amended PAGA notice to the LWDA on July 15, 2023. On June 28,
3 2023, pursuant to a stipulation submitted by the Parties and granted by the Court, Plaintiff filed his
4 Second Amended Class and Representative Action Complaint (“SAC”) to include Class causes of
5 action for (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2)
6 Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3)
7 Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of
8 California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of
9 California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California
10 Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California
11 Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code
12 § 1174(d) (Failure To Keep Requisite Payroll Records); and (9) Violation of California Business
13 & Professions Code §§ 17200, et seq. On July 21, 2023, Defendants filed an answer to the SAC.

14 DISCOVERY AND INVESTIGATION

15 5. Following the filing of the Complaint, the Parties exchanged documents and
16 information before mediating this action. Defendants produced a sample of time and pay records
17 for class members. Defendants also provided documents of its wage and hour policies and
18 practices during the class period and information regarding the total number of current and former
19 employees in its informal discovery responses.

20 6. After reviewing documents regarding Defendants’ wage and hour policies and
21 practices, and analyzing Defendants’ timekeeping and payroll records, Class Counsel was able to
22 evaluate the probability of class certification, success on the merits, and Defendants’ maximum
23 monetary exposure for all claims. Class Counsel also investigated the applicable law regarding
24 the claims and defenses asserted in the Litigation. Class Counsel reviewed these records and
25 utilized an expert to prepare a damages analysis prior to mediation.

26 SETTLEMENT NEGOTIATIONS

27 7. On October 6, 2022, the Parties participated in private mediation with experienced
28 class action mediator, Steven J. Rottman, Esq. The mediation was conducted via Zoom. The

1 settlement negotiations were at arm's length and, although conducted in a professional manner,
2 were adversarial. The Parties went into the mediation willing to explore the potential for a
3 settlement of the dispute, but each side was also prepared to litigate their position through trial and
4 appeal if a settlement had not been reached.

5 8. After extensive negotiations and discussions regarding the strengths and
6 weaknesses of Plaintiff's claims and Defendants' defenses, the Parties were able to reach a
7 resolution, the material terms of which are encompassed within the Settlement Agreement.
8 Attached as **Exhibit 1** is a true and correct copy of the Class Action and PAGA Settlement
9 Agreement ("Settlement Agreement"), with the SAC attached as **Exhibit A**, and the Notice of
10 Class Action Settlement ("Class Notice") agreed to by the Parties attached as **Exhibit B**.

11 9. Class Counsel submitted the proposed Settlement to the LWDA at the time of the
12 filing of the Motion for Preliminary Approval.

13 10. I requested several bids from experienced class action settlement administrators to
14 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
15 accepted the bid of ILYM Group, Inc. ILYM has multiple years of experience in the field of Class
16 Action Administration, particularly in the wage-and-hour arena. In its bid, ILYM agreed to cap its
17 costs at \$9,890.00 if there are 200 class members. ILYM's bid also accounts for Notice in English
18 and Spanish. A true and correct copy of the bid is attached hereto as **Exhibit 2**.

19 11. Plaintiff does not have any interest, financial or otherwise, in the proposed third-
20 party administrator, ILYM.

21 12. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
22 employed at the law firm) has any interest, financial or otherwise, in the proposed third-party
23 administrator, ILYM.

24 13. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
25 this case.

26 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

27 14. Class Counsel has conducted a thorough investigation into the facts of this case.
28 Based on the foregoing discovery and their own independent investigation and evaluation, Class

Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendants both to certification and on the merits, trial risk, and appellate risk.

15. Based on an analysis of the facts and legal contentions in this case, documents and information from Defendants, I evaluated Defendants' maximum exposure. I took into account the risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are certified. After using the data Defendants provided, including class member timekeeping and payroll records, as well as class member demographics (i.e., the number of class members, workweeks, and average total compensation of the class), with the assistance of a statistics expert, I created a damages model to evaluate the realistic range of potential recovery for the class. The damages model is based on the following benchmarks:

Total Class Members: 176

Total Workweeks: 15,530

PAGA Eligible Employees: 176

PAGA Weekly Pay Periods: 7,503

Avg. Hourly Rate: \$19.66

16. Based on Plaintiff's discovery and investigation, Class Counsel reached the conclusion that Defendants failed to pay class members for all hours worked, including overtime wages, Defendants had a policy and practice of not providing its employees with California compliant meal and rest periods which it did not pay appropriate premiums for, and Defendants required its employees to work "off-the-clock" prior to clocking in for the workday, during meal periods, and after clocking out for the workday, and Defendants denied these claims.

17. Specifically, Plaintiff alleges that Defendants failed to pay for all hours worked, including minimum wages, straight-time wages, and overtime wages. For purposes of calculating Defendants' liability based on a best-case scenario for Plaintiff and the Class, I estimate that Defendants' maximum potential exposure by assuming that all unpaid work time should have been paid at the overtime rate, not minimum or straight time wages, even though my expert found that

1 only 72.2% of all shifts worked by class members were over 8 hours long, and I assumed that
2 Defendants is liable for 1 hour of unpaid work time per week. This results in an estimate of
3 \$457,979.70 (15,530 weeks * \$19.66 hourly overtime rate * 1.5 overtime rate * 1 hour of unpaid
4 work per week), but I discounted this figure by 80% to account for the difficulty of prevailing on
5 a motion for class certification and a trial on the merits, yielding a realistic damage estimate of
6 **\$91,595.94.¹**

7 18. With respect to the meal period claim, Plaintiff alleges that Defendants required him
8 and similarly situated class members to either work in lieu of taking meal periods, or their meal
9 periods were untimely or interrupted. My expert analyzed Defendants' timekeeping records and
10 opined that approximately 68.8 % of all meal breaks had violations of short, missed, or no meal
11 periods. Potential liability for the meal period claim, which includes shifts 5-6 hours long, shifts
12 over six hours long, shifts over ten hours long, and shifts over 12 hours long, is \$1,050,300.11
13 (15,530 weeks * 68.8% * \$19.66 * reasonable estimated 5 shifts a week); however, I discounted
14 this figure by 80% to account for the difficulty of certifying and proving meal period claims,
15 particularly because 50% of the alleged violations occurred during shifts where meal periods were
16 waivable and Defendants had a class-wide meal period waiver agreement, and to account for
17 Defendants' contention that class members voluntarily chose to forego a meal period, yielding a
18 realistic damage estimate of **\$210,060.02.**

19 19. With respect to the rest period claim, Plaintiff alleges that Defendants required him
20 and similarly situated class members to work in lieu of taking rest periods, or their rest periods
21 were untimely or interrupted. Assuming a 50% violation rate for the class period based on
22 Plaintiff's and other class members' experience working for Defendants, Defendants' potential
23 liability for the rest period claim is \$763,299.50 (15,530 weeks * 50% * \$19.66 * reasonable
24 estimated 5 shifts a week); however, I discounted this figure by 90% to account for the difficulty
25

26 ¹ An 80% discount for risk at certification and trial is reasonable because the Judicial
27 Council of California found that only 21.4% of all class actions were certified either as part of a
28 settlement *or* as part of a contested certification motion. See Findings of the Study of California
Class Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-
action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 of certifying and proving rest period claims, particularly because rest periods do not have to be
2 recorded, and to account for the possibility of class members voluntarily choosing to forego a rest
3 period, yielding a realistic damage estimate of **\$76,329.95**.

4 20. Our consultant, in the review of time and payroll sampling provided by Defendants,
5 found that 41.8% of the class members had additional quarterly compensation (affecting 19.3%
6 pay periods) and that there was approximately \$95 in underpayment, and 46.8% of the class
7 members had additional monthly overtime compensation (affecting 27.2% of the pay periods)
8 underpaid at the amount of \$11,513, for a total amount of **\$11,608** in underpayment of overtime
9 that was not paid at the appropriate regular rate of pay.

10 21. Our consultant also found that 64.6% of the class members had sick pay and
11 additional compensation (affecting 0.9% of pay periods, with 12.8% of sick hours during these pay
12 periods with additional compensation), among to approximately **\$4,833** in underpayment of sick
13 pay that was not paid at the appropriate regular rate of pay.

14 22. In sum, I estimated that Plaintiff's maximum recovery for the off-the-clock claim,
15 meal period violations, rest period violations, and regular rate issues is \$2,288,020.31, but, after
16 factoring in the risk and uncertainty of prevailing at certification and trial, I estimate that Plaintiffs'
17 realistic estimated recovery for the non-penalty claims is **\$394,426.91**.

18 23. With respect to Plaintiff's derivative claims for statutory and civil penalties,
19 Plaintiff estimated that Defendants' realistic potential liability is **\$230,020**. Our consultant found
20 that Defendants' maximum potential liability for PAGA penalties as follows: \$225,900 (unpaid
21 wages based on 176 employees), \$322,700 (overtime for 145 employees), \$496,200 (meal breaks
22 for 164 employees), \$617,300 (rest breaks for 176 employees), \$617,300 (wage statements for 176
23 employees), and \$20,800 (sick pay for 114 employees), for a total of \$2,300,200 in maximum
24 potential liability. However, considering Defendants' defenses, the contested nature of Plaintiff's
25 claims, and the discretionary nature of penalties, and considering that the underlying claims are
26 realistically estimated to be \$240,723.26, such a disproportionate award would also raise due
27 process concerns. Weighing these factors and applying a discount of 90% to account for the risk
28 and uncertainty of prevailing at trial, I arrived at \$230,020 for statutory and civil penalties.

1 24. Using these estimated figures, Plaintiff predicted that the realistic maximum
2 recovery for all claims, including penalties, would be **\$624,446.91**. This means that the \$250,000
3 settlement figure represents 40% of the realistic maximum recovery ($\$250,000 / \$694,446.91 =$
4 40%). Considering the risk and uncertainty of prevailing at class certification and at trial, this is
5 an excellent result for the Class.² Indeed, because of the proposed Settlement, class members will
6 receive timely, guaranteed relief, and will avoid the risk of an unfavorable judgment.

7 25. While Plaintiff is confident in the merits of their claims, a legitimate controversy
8 exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due
9 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

10 26. This Settlement avoids the risks and the accompanying expense of further litigation.
11 Although the Parties had engaged in a significant amount of investigation, informal discovery and
12 class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff
13 intended to depose corporate officers and managers of Defendants. Moreover, preparation for class
14 certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a
15 disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the
16 Court certified any claims, Defendants could move to decertify the claims. As a result, the Parties
17 would incur considerably more attorneys' fees and costs through trial.

18 27. The Net Settlement Amount available for Class Member settlement payments is
19 estimated to be \$116,666.67, for a class of 176 persons.³ As a result, each Settlement Class
20 Member is eligible to receive an average net benefit of approximately \$662.88.

21 28. The proposed Settlement of \$250,000, therefore, represents a substantial recovery

22
23 ² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* (E.D. Cal. Aug. 21, 2019)
24 2019 WL 3943859 at *8 (granting preliminary approval where the proposed allocation to settle
25 class claims was between 9.53 percent of Plaintiffs' maximum recovery); *Bravo v. Gale*
26 *Triangle, Inc.* (C.D. Cal. Feb 16, 2017) 2017 WL 708766 at * 10 (finding that "a settlement for
fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision*
Techs., Inc. (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042 (approving settlement amount that "is
just over 9% of the maximum potential recovery asserted by either party.").

27 ³ The Net Settlement Amount is: \$250,000 minus \$83,333.33 for Class Counsel's
28 attorneys' fees, minus \$20,000 for Class Counsel's litigation expenses, minus \$10,000 in
administration costs, minus \$10,000 for the PAGA payment, and minus \$10,000 for the class
representative service award to Plaintiff.

1 when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of
2 litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary
3 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement
4 amount of \$250,000 is within the "ballpark" of reasonableness, and preliminary settlement
5 approval is appropriate.

6 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

7 29. Class Counsel represents that Plaintiff devoted a great deal of time and work
8 assisting counsel in the case, communicated with counsel very frequently for litigation and to
9 prepare for mediation, and was frequently in contact with Class Counsel during the mediation.
10 Plaintiff's requested enhancement award is reasonable, particularly in light of the substantial
11 benefits Plaintiff generated for all class members.

12 30. Throughout this Litigation, Plaintiff, who is a former employee of Defendants, has
13 cooperated immensely with my office and have taken many actions to protect the interests of the
14 class. Plaintiff provided valuable information regarding the off-the-clock, meal period, rest period
15 claims and regular rate claims. Plaintiff also informed my office of developments and information
16 relevant to this action, participated in decisions concerning this action, made himself available to
17 answer questions during the mediation, and provided my office with the names and contact
18 information of potential witnesses in this action. Before we filed this case, Plaintiff provided my
19 office with documents regarding the claims alleged in this action. The information and
20 documentation provided by Plaintiff were instrumental in establishing the alleged wage and hour
21 violations alleged in this action, and the recovery provided for in the Settlement Agreement would
22 have been impossible to obtain without Plaintiff's participation.

23 31. At the same time, Plaintiff faced many risks in adding himself as the class
24 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
25 himself on public record in an employment lawsuit could also very well affect his likelihood for
26 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release
27 of all claims against Defendants.

28 32. In turn, class members will now have the opportunity to participate in a settlement,

1 reimbursing them for alleged wage violations they may have never known about on their own or
2 been willing to pursue on their own. If these class members would have each tried to pursue their
3 legal remedies on their own, that would have resulted in each having to expend a significant amount
4 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the
5 line on behalf of these other class members.

6 33. In the final analysis, this class action would not have been possible without the aid
7 of Plaintiff, who put his own time and effort into this Litigation, sacrificed the value of his own
8 individual claims, and placed himself at risk for the sake of the class members. The requested
9 enhancement award for Plaintiff for his service as the class representative and for his general
10 release of all individual claims is a relatively small amount of money when the time and effort put
11 into the Litigation are considered and in comparison to enhancements granted in other class actions.
12 The requested incentive award is therefore reasonable to compensate Plaintiff for his active
13 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*,
14 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
15 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
16 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
17 class representative incentive award for each named Plaintiffs.

18 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

19 34. The Settlement provides for attorney's fees payable to Class Counsel in an amount
20 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$83,333.33,
21 plus actual costs and expenses not to exceed \$20,000.00. Our costs to date in this matter are
22 \$19,903.62. The proposed award of attorneys' fees to Class Counsel, in this case, can be justified
23 under either method – lodestar or percentage recovery. Class Counsel, however, intends to base
24 the proposed award of fees, costs, and expenses on the percentage method as many of the entries
25 in the time records will have to be redacted to preserve attorney-client and attorney work product
26 privileges.

27 35. I am informed and believe that the fee and costs provision is reasonable. The fee
28 percentage requested is less than that charged by my office for most employment cases. My office

1 invested significant time and resources into the case, with payment deferred to the end of the case,
2 and then, of course, contingent on the outcome.

3 36. It is further estimated that my office will need to expend at least another 50 to 100
4 hours to monitor the process leading up to the final approval and payments made to the class. My
5 office also bears the risk of taking whatever actions are necessary if Defendants fails to pay.

6 37. The risk to my office has been very significant, particularly if we would not be
7 successful in pursuing this class action. In that case, we would have been left with no compensation
8 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
9 that have resulted in thousands of attorney hours being expended and ultimately having
10 certification denied or the Defendants company going bankrupt. The contingent risk in these types
11 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
12 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

13 38. Because most individuals cannot afford to pay for representation in litigation on an
14 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
15 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
16 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
17 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
18 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
19 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
20 that we recover more than our regular hourly rate when we win if we are to remain in practice so
21 as to be able to continue representing other individuals in civil rights employment disputes.

22 MY EXPERIENCE AND QUALIFICATIONS

23 39. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
24 Report as one of the nation's Best Law Firms in 2023 and is comprised of over 55 attorneys and
25 over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in
26 employment litigation, representing employees in both individual and class actions in both state
27 and federal courts throughout California.

28 40. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys

1 are experienced in litigating Labor Code violations in both individual, class action, and
2 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
3 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
4 and data privacy litigation.

5 41. I graduated from the University of California, Los Angeles's College Honors
6 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
7 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
8 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
9 2008.

10 42. My practice is focused on advocating for the rights of consumers and employees in
11 class action litigation and appellate litigation. I am currently the primary attorney in charge of
12 litigating several class action cases in state and federal courts across the United States.

13 43. I have received numerous awards for my legal work. From 2017 to 2020, Super
14 Lawyers selected me as a "Southern California Rising Star," and in 2022 and 2023, I was selected
15 as a "Southern California Super Lawyer." I was selected as one of the "Best Lawyers in America"
16 in 2023. In 2016 and 2017, the National Trial Lawyers selected me as a "Top 40 Under 40"
17 attorney. I am also rated 10.0 ("Superb") by Avvo.com.

18 44. I am on the California Employment Lawyers Association ("CELA")'s Wage and
19 Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced
20 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
21 mentored young attorneys through CELA's mentorship program.

22 45. I am also a past member of the Consumer Attorneys of California ("CAOC"). In
23 2020, I was selected for a position on CAOC's Board of Directors. I am also a past member of
24 CAOC's Diversity Committee, and I helped assist the CAOC in defeating bills that harm
25 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC,
26 in defeating AB 443, which proposed legislation that sought to limit the enforceability of California
27 Labor Code § 226.

28 46. As the attorney responsible for day-to-day management of this matter at the

1 Wilshire Law Firm, PLC, I have over thirteen years of experience with litigating wage and hour
2 class actions. Over the last thirteen years, I have managed and assisted with the litigation and
3 settlement of several wage and hour class actions. In those class actions, I performed similar tasks
4 as those performed in the course of prosecuting this action. My litigation experience includes:

- 5 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
6 million in gross recovery to class members for each year since 2020, including over
7 \$37.5 million in 2022.
- 8 b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*
9 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a
10 data breach class action holding that consumer plaintiffs adequately alleged injury
11 in fact under the benefit of the bargain theory and monitoring-costs theory.
- 12 c. In 2022, Top Verdict recognized Wilshire Law Firm and myself for having one case
13 in the Top 20 Labor & Employment Settlements (including number 19 for the \$1.6
14 million settlement in *Moreno v. Pretium Packaging, L.L.C.*) and four additional
15 cases in the Top 50 Labor & Employment Settlements (numbers 27, 30, 33, and 37).
- 16 d. To my knowledge, I am the only attorney to appear on each of the following Top
17 Verdict lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
18 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 19 e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
20 winning class certification on behalf of hundreds of thousands of consumers for
21 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
22 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 23 f. As lead counsel, I prevailed against Bank of America by: winning class certification
24 on behalf of thousands of employees for California Labor Code violations; defeating
25 appellate review of the court's order certifying the class; defeating summary
26 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
27 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
28 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,

2018).). The decision certifying the class in *Frausto* is also discussed in Class Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call Center Employees for Violation of State Law Wage and Hour Rules, 35 A.L.R. Fed. 3d Art. 8.

g. I was the primary author of the class certification and expert briefs in *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action for over 40,000 class members for off-the-clock, meal period, split shift, and reimbursement claims. *ABM Industries Overtime Cases* is the first published California appellate authority to hold that an employer’s “auto-deduct policy for meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)⁴ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under California’s Private Attorney Generals Act (“PAGA”) cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as Wright & Miller’s Federal Practice & Procedure, and Newberg on Class Actions. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁵ Considering that leading

⁴ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

⁵ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

Supreme Court practitioners from the class action defense bar were very motivated in undermining Yocupicio case, but failed, this demonstrates the national importance of the Yocupicio decision.

- i. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (Id. at p. *10.)
- j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered Defendants to pay for the cost of *Belaire-West* notice.
- k. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (qui tam) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- l. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:
 - m. 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting plaintiff’s motion to strike Defendants’ affirmative defenses based on *Twombly/Iqbal*).
 - n. 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).

- 1 o. 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate
2 judge’s discovery ruling which held that “evidence of other sources of income is
3 irrelevant to the question of whether a plaintiff is an employee within the meaning
4 of the FLSA”).
- 5 p. 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery
6 because “an FLSA plaintiff is entitled to discovery from locations where he never
7 worked if he can provide some evidence to indicate company-wide violations”).
- 8 q. From 2012 to 2013, I was part of a team of attorneys that obtained class certification
9 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*
10 *Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also
11 successfully opposed subsequent appeals to the California Court of Appeal and
12 California Supreme Court.

13 47. Christina M. Le is a Senior Associate Attorney at Wilshire Law Firm. She is
14 admitted to practice in the State of California, the Ninth Circuit Court of Appeals, and the United
15 States District Courts for the Central, Southern, Eastern, and Northern Districts of California. She
16 graduated from Loyola Law School, Los Angeles and attended the University of California,
17 Berkeley for his undergraduate studies, where she obtained a Bachelor of Arts in History. She has
18 over 15 years of litigation experience, which includes the successful handling of numerous
19 employment, wage and hour, and class and representative action matters during the latter half of
20 his career in state and federal court through inception through case resolution. Prior to joining
21 Wilshire Law Firm in November 2021, Ms. Le gained invaluable litigation experience working at
22 various Plaintiffs and defense firms, including Kristensen Weisberg PLC, Jones Bell LLP, Archer
23 Norris PLC, and Lewis Brisbois Bisgaard & Smith LLP, which is a large firm with a national
24 practice. Ms. Le is a member of NELA, CELA, CAALA, LACBA, and the Vietnamese Bar
25 Association of Southern California. Her current contingent billing rate for this case is \$750.00 per
26 hour, which is commensurate with Ms. Le’s years of experience and work in this practice area.

27 48. Arsine Grigoryan is an Associate Attorney at my office. She earned two Bachelor
28 of Arts degrees from the University of California, Berkeley in (1) Political Science with an

1 emphasis on international relations and (2) Media Studies. She obtained her Juris Doctor degree
2 from Southwestern Law School. She is presently admitted to practice in all state courts of
3 California (admitted in 2017) and before all federal district courts in California. The focus of her
4 practice at Wilshire Law Firm is currently on class action wage-and-hour law, including Private
5 Attorneys General Act of 2004 (“PAGA”) matters. Prior to joining Wilshire Law Firm, PLC, she
6 worked at a law firm specializing in wage-and-hour class action cases. She is also handling more
7 than a dozen active class action matters currently pending and prosecuting multiple PAGA
8 collective action matters in various courts throughout the State of California. Her current
9 contingency billing rate for this case is \$600.00 per hour which is commensurate with Ms.
10 Grigoryan’s years of experience and work in this practice area.

11 49. My current contingent billing rate of \$850.00 per hour is consistent with my practice
12 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
13 legal market and accepted hourly rates:

14 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
15 Anymore,” NATIONAL LAW JOURNAL, the following hourly billing rates were
16 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
17 wage-and-hour class actions that I opposed when litigating wage-and-hour class
18 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
19 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
20 8th Year - \$455. I am a 14th year attorney and Senior Partner, with most of my
21 experience in class action litigation as a primary practice area. Having successfully
22 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
23 involving CAFA and PAGA, having experience certifying large class actions
24 (including ABM Industries Overtime Cases, which was decided on appeal), and
25 having received numerous awards for my legal work, my hourly rate should be
26 adjusted upward.

27 b. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court
28 in Puerto Rico approved my \$850 hourly rate when he granted final approval of the

1 class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt.
2 57 (U.S. Dist. Ct. P.R. May 6, 2022).

3 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
4 approved my \$800 hourly rate when he granted final approval of the class action
5 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
6 01066522-CU-OE-CXC.

7 d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
8 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
9 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
10 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
11 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
12 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)

13 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
14 Court approved my \$750 hourly rate when he granted final approval of the class
15 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
16 19STCV32396.

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

19 Executed on August 30, 2023, at Los Angeles, California.

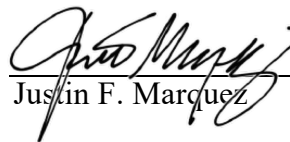
20
21 
22 Justin F. Marquez

Exhibit 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This CLASS ACTION AND PAGA SETTLEMENT AGREEMENT (“Settlement Agreement” or “Settlement”) is made and entered into by and between Defendants Arbee, Inc. and Fence Factory dba Electronic Entry Distributors (“Defendants” or “Fence Factory”) and Plaintiff Raymond Flores (“Plaintiff” or “Settlement Class Representative”) (referred to collectively as “Parties” or individually as “Party”), on his own behalf and on behalf of Participating Settlement Class Members (defined in Paragraph II.1.n) in *Raymond Flores v. Fence Factory, et al.*, Ventura County Superior Court, Case No. 56-2021-00559015-CU-OE-VTA (the “Litigation”).

This Settlement Agreement pertains to a resolution of all Released Claims against the Released Parties and the Litigation, as provided herein. This Settlement Agreement is subject to the terms and conditions hereof and the approval of the Court.

I. RECITALS

On August 10, 2021, Plaintiff provided written notice to the California Labor and Workforce Development Agency (the “LWDA”) and to Fence Factory that Plaintiff believed Fence Factory was violating certain provisions of the California Labor Code (“August 10, 2021 Letter”). The LWDA did not provide a response within sixty-five (65) days of Plaintiff’s submission.

On October 14, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et. seq. (“Original Complaint”) against Fence Factory on behalf of all current and former hourly-paid or non-exempt employees who worked for Fence Factory within the State of California at any time during the period from February 14, 2020 to final judgment.

The case was assigned case number 56-2021-00559015-CU-OE-VTA and assigned to the Honorable Benjamin F. Coats in the Superior Court of the State of California for the County of Ventura.

On October 6, 2022, the Parties engaged in mediation with Steven Rottman with the agreement to attempt to resolve the allegations set forth in the Proposed First Amended Complaint including both the class wage-and-hour claims and the PAGA claim. The Parties reached the settlement that is memorialized in the Memorandum-Of-Understanding dated December 14, 2022 and herein.

Pursuant to the submission of a joint stipulation allowing Plaintiff to file a Second Amended Complaint to add class claims, before the filing of the motion for preliminary approval, Plaintiff filed his Second Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et. seq. (“Proposed First Amended Complaint” or “Operative Complaint”) on June 28, 2023 alleging causes of action for (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Business & Professions Code §§ 17200, et seq.; and (10) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004), attached here as “Exhibit A.”

At all times, the negotiations leading to this Settlement Agreement have been adversarial, non-collusive, and at arm's length.

II. DEFINITIONS

1. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

a. "Attorneys' Fees and Costs" means attorneys' fees approved by the Court for Settlement Class Counsel's litigation and resolution of this Litigation, and all actual costs incurred and to be incurred by Settlement Class Counsel in the Litigation, as set forth in Paragraph IV.7.a below.

b. "Court" means the Superior Court of the State of California for the County of Ventura.

c. "Defendants' Counsel" means Matthew C. Sgnilek, Esq. and Vickie V. Grasu, Esq. of O'Hagan Meyer LLP.

d. "Dispute" means a Settlement Class Member's timely and valid written dispute as to the number of Qualifying Workweeks that are credited to him or her, in accordance with Paragraph IV.14 herein.

e. "Effective Date" means (i) in the event that the Settlement has received final approval by the Court and there were no timely objections filed, or that any timely objections have been withdrawn, then the date the Court's order of final approval of the Settlement; (ii) in the event that one or more timely objections has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the trial court's order of final approval of the Settlement, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of the Court's order of final approval has been filed, then the Settlement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the trial court's final approval without material modification, and

the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.

f. “Employer Taxes” means Defendants’ share of any payroll taxes attributable to the wages portion of the Settlement Shares.

g. “Enhancement Award” means the amount to be paid to Plaintiff Raymond Flores in recognition of her effort and work in prosecuting the Litigation on behalf of Settlement Class Members and in exchange for a general release, as set forth in Paragraph IV.8 below.

h. “Final Approval” means the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

i. “Final Approval Hearing” means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.

j. “LWDA Payment” means the payment of seventy-five percent (75%) of the PAGA Payment to the California Labor and Workforce Development Agency (“LWDA”) as set forth in Paragraph IV.6.

k. “Net Settlement Fund” or “NSF” means the portion of the Settlement Fund that is available for distribution to Participating Settlement Class Members, which is the Settlement Fund less the Court-approved Enhancement Award, Settlement Administration Costs, LWDA Payment, and Attorneys’ Fees and Costs.

l. “Objection” means a Participating Settlement Class Member’s written objection to the Settlement, in accordance with Paragraph IV.13 herein.

m. “PAGA Payment” means the amount of \$10,000 from the Settlement Fund that will be allocated to penalties under the Private Attorneys General, California Labor Code Section 2698, *et seq.*, of which seventy-five percent (75%), or \$7,500, will be paid to the LWDA (i.e., LWDA Payment) and twenty-five percent (25%), or \$2,500, will be distributed to

Participating Settlement Class Members.

n. “Participating Settlement Class Members” means all Settlement Class Members who do not submit a valid and timely Request for Exclusion.

o. “Preliminary Approval” means entry of the Court order granting preliminary approval of the Settlement Agreement.

p. “Request for Exclusion” means a Settlement Class Member’s written request to be excluded from the Settlement, in accordance with Paragraph IV.12 herein.

q. “Released Claims” means any and all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the operative complaint, and any future amendments to the operative complaint, including, but not limited to, state wage and hour claims for any and all violations of California’s Labor Code and Unfair Competition Law based on Defendants’ failure to pay for all hours worked (including minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records, failure to timely pay final wages at termination, failure to furnish accurate itemized wage statements, unfair business practices that could have been premised on the claims, causes of action or legal theories of relief, civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys’ fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders. The Settlement Class members who cash their Settlement Checks further acknowledge they are releasing any claims they have against Defendants under the Fair Labor Standards Act (“FLSA”) (collectively, the “Released Claims”).

r. “Released Parties” means Defendants, their affiliates, current or former subsidiaries, parent companies, predecessors, insurers, agents, managing agents, partners,

members, servants, employees, successors, assigns, officers, officials, directors, employers, attorneys, representatives, accountants, executors, and shareholders, past and present, and all persons acting under, by, through, or in concert with any of them, including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries, as well as the personal representatives or executors of any such persons.

s. "Response Deadline" means the deadline by which Settlement Class Members must submit a Request for Exclusion, Objection, and/or Dispute, which shall be the date that is forty-five (45) calendar days from the initial mailing of the Settlement Class Notice by the Settlement Administrator. The Response Deadline shall be extended by ten (10) calendar days for any mailings returned to the Settlement Administrator by the Response Deadline ("Extended Response Deadline").

t. "Settlement Administrator" means ILYM Group, Inc., or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

u. "Settlement Administration Costs" means the costs payable from the Settlement Fund, subject to Court approval, to the Settlement Administrator for administering this Settlement, as set forth in Paragraph IV.9 below.

v. "Settlement Class Counsel" or "Plaintiff's Counsel" mean Justin F. Marquez, Esq., Christina M. Le, Esq. and Arsiné Grigoryan, Esq. of Wilshire Law Firm, counsel for Plaintiff, who will seek to be appointed counsel for the Class.

w. "Settlement Class Data and List" means a complete list of all Settlement

Class Members that Defendants will diligently and in good faith compile from its records and provide to the Settlement Administrator, in accordance with Paragraph V.1 herein.

x. “Settlement Class Member(s)” or “Settlement Class” mean all current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time during the period from February 14, 2020 through the date of granting of preliminary approval, or 90 days from the date of the settlement on October 6, 2022, whichever occurs first.

y. “Settlement Class Notice” means the Notice of Class Action Settlement that is to be translated into Spanish and mailed to the Settlement Class Members, substantially in the form attached hereto as “**Exhibit B.**”

z. “Settlement Class Period” means the time period from February 14, 2020 through the date of granting of preliminary approval, or 90 days from the date of the settlement on October 6, 2022, whichever occurs first.

aa. “Settlement Fund” means the maximum settlement amount of two hundred fifty thousand dollars (\$250,000) to be paid by Defendants in full resolution of all Released Claims against Released Parties and the Litigation, subject to increase only as provided in Paragraph X. The Settlement Fund includes all Attorneys’ Fees and Costs, Enhancement Award, LWDA Payment, Net Settlement Fund to be paid to the Participating Settlement Class Members (which includes the Participating Settlement Class Members’ portion of the PAGA Payment), and Settlement Administration Costs. The Settlement Fund is exclusive of the Employer Taxes.

bb. “Settlement Payment” means the net payment of each Participating Settlement Class Member’s Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Settlement Share, as provided in Paragraph IV.17 below.

cc. “Settlement Share” means the *pro rata* share of the Net Settlement Fund

that a Participating Settlement Class Member will be eligible to receive under the Settlement Agreement, to be calculated in accordance with Paragraph IV.11.

dd. “Qualifying Workweeks” means the number of weeks during which Settlement Class Members worked for Defendants as hourly-paid or non-exempt employees in California during the Settlement Class Period. Qualifying Workweeks will be calculated by the Settlement Administrator for each Settlement Class Member. Each Settlement Class Member shall be credited with at least one (1) Qualifying Workweek.

III. CLASS CERTIFICATION

1. For the purposes of this Settlement only, the Parties stipulate to the certification of the following Settlement Class: all current and former hourly-paid or non-exempt employees who worked for Defendants in the State of California at any time during the Settlement Class Period.

2. The Parties agree that certification for the purpose of settlement is not an admission that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever reason, the Court not grant Final Approval, the Parties’ stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be inappropriate in a non-settlement context.

IV. TERMS OF THE SETTLEMENT AGREEMENT

1. **Filing of Proposed Amended Complaint:** As part of her anticipated motion for preliminary approval of this Settlement, Plaintiff agrees to and shall seek leave to file a Second Amended Complaint, alleging all causes of action set forth in the Proposed Amended Complaint (Exhibit A), which shall be the subject of this Settlement Agreement, and hereby agree to an open extension of time

for Defendants to file a response to the Second Amended Complaint, subject to any court order which may require the filing of a response.

2. **Entry of Judgment:** Upon final approval of this Settlement Agreement, the Court will enter judgment in the Litigation pursuant to California Rules of Court, Rule 3.769.

3. In the event that the Court denies final approval of the Settlement, (i) this Settlement Agreement shall have no force and effect and the Parties shall be restored to their respective positions prior to entering into it, and no Party shall be bound by any of the terms of this Settlement Agreement, (ii) Defendants shall have no obligation to make any payments to Participating Settlement Class Members or Settlement Class Counsel, (iii) any preliminary approval order will be vacated, and (iv) this Settlement Agreement and all negotiations, statements, proceedings, and data relating thereto shall be deemed confidential mediation settlement communications and not subject to disclosure for any purpose in any proceeding.

4. **Settlement Fund:** Defendants shall pay a total of two hundred fifty thousand dollars (\$250,000) (i.e., the Settlement Fund) upon the occurrence of the Effective Date, on a non-reversionary basis and no part shall go back to Defendants. Payments by Defendants pursuant to this Settlement Agreement shall settle and resolve the Litigation and the Released Claims against the Released Parties (defined in Paragraphs II.1.q & II.1.r) and include all payments to Participating Settlement Class Members of their share

of the Net Settlement Fund (which is inclusive of twenty-five percent (25%) of the PAGA Payment), Settlement Administration Costs to the Settlement Administrator, Attorneys' Fees and Costs to Settlement Class Counsel, the Enhancement Award to Plaintiff, and LWDA Payment to the LWDA, as approved by the Court. Under no circumstances will Defendants be obligated under the terms of this Settlement Agreement to pay any more than two hundred fifty thousand dollars (\$250,000), except for as set forth in Paragraph X. If the Court does not grant final approval of this Settlement, Defendants will not be obligated to fund the Settlement Fund of two hundred fifty thousand dollars (\$250,000). The payments are not being made for any other purpose and will not be construed as compensation for purposes of determining eligibility for any health and welfare benefits or unemployment compensation. In addition, all individuals receiving a payment based on this Settlement shall not be entitled to any additional or increased health, welfare, or retirement benefits as a result of their participation in the Settlement.

5. **Calculation of Net Settlement Fund:** The Net Settlement Fund will constitute the total sum from which Settlement Class Members who do not submit a timely and valid Request for Exclusion (i.e., Participating Settlement Class Members) will be paid. It shall be composed of the Settlement Fund, less the Court-approved Attorneys' Fees and Costs, Settlement Administration Costs, Enhancement Award, and LWDA Payment. The NSF will be used to calculate the Settlement Share that each

Participating Settlement Class Member will receive if this Settlement becomes Final. If the Court awards less than the amount sought for any of these awards, the difference between the amount sought and the amount awarded will be added to the NSF and distributed *pro rata* to Participating Settlement Class Members. An award by the Court of a lesser amount than that sought by Plaintiff and Settlement Class Counsel for the Enhancement Award and/or the Attorneys' Fees and Costs will not constitute a material change to the Settlement. Likewise, an award by the Court of a PAGA Payment greater than the allocation identified in this Settlement Agreement will not constitute a material change to the Settlement.

6. **PAGA Payment:** The PAGA allocation of the Settlement Fund shall be ten thousand dollars (\$10,000) (i.e., the PAGA Payment), subject to the Court's final approval, of which seventy-five percent (75%) (i.e., seven thousand five hundred dollars (\$7,500)) will be paid to the LWDA out of the Settlement Fund (i.e., the LWDA Payment), and the remaining twenty-five percent (25%) (i.e., two thousand five hundred dollars (\$2,500)) will become part of the NSF for distribution *pro rata* to the Participating Settlement Class Members. If the Court or LWDA requires a PAGA allocation that exceeds ten thousand dollars (\$10,000), or a payment to the LWDA that exceeds seven thousand five hundred dollars (\$7,500), the increased amount shall be allocated from the Settlement Fund and the NSF shall be reduced accordingly.

7. **Attorneys' Fees and Costs:**

a. Settlement Class Counsel has asserted a statutory fee claim pursuant to the California Labor Code and other applicable statutes in the Litigation. Settlement Class Counsel shall apply to the Court for an award of attorneys' fees and reimbursement of litigation costs and expenses incurred in connection with the prosecution of this matter, and all work remaining to be performed by Settlement Class Counsel in documenting the Settlement, securing Court approval of the Settlement, ensuring that the Settlement is fairly administered and implemented, and obtaining entry of judgment based on the Settlement. Defendants and its attorneys will not object to a request by Settlement Class Counsel for an award of attorneys' fees in an amount not to exceed 33 and one-third (1/3) % of the Settlement Fund, or eighty-three thousand three hundred thirty three dollars and thirty-three cents (\$83,333.33, and reimbursement of reasonable and actual cost and expenses in an amount not to exceed twenty thousand dollars (\$20,000) (collectively, Attorneys' Fees and Costs) as supported by declaration. Amounts awarded by the Court for Attorneys' Fees and Costs shall be paid from the Settlement Fund.

b. Should the Court approve a lesser percentage or amount of Attorneys' Fees and Costs, the unapproved portion shall be added to the NSF and distributed proportionately to Participating Settlement Class Members. In the event that the Court awards Attorneys' Fees and Costs in an amount less than that requested by Settlement Class Counsel, such award shall not be a basis for rendering the entire Settlement null, void, or unenforceable and will not constitute a material change to the Settlement.

c. With respect to the Attorneys' Fees and Costs to Settlement Class Counsel, the Settlement Administrator may purchase an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Settlement Class Counsel.

Any additional expenses for the purchase of an annuity by the Settlement Administrator shall be paid separately by Settlement Class Counsel and shall not be included within the Settlement Administration Costs. Defendants and Defendants' counsel shall not be liable for any expenses associated with the purchase of an annuity by the Settlement Administrator.

8. **Enhancement Award:** Plaintiff will apply to the Court for, and Defendants will not oppose the application for, an award not to exceed ten thousand dollars (\$10,000) for his role in serving as the Settlement Class Representative (i.e., Enhancement Award). The Enhancement Award is in addition to the Settlement Share to which Plaintiff is entitled along with other Participating Settlement Class Members. An award by the Court of a lesser amount than that sought by Plaintiff for the Enhancement Award will not constitute a material change to the Settlement. Should the Court approve a lesser amount for the Enhancement Award, the unapproved portion shall be added to the NSF and distributed proportionately to Participating Settlement Class Members.

9. **Settlement Administration Costs:** Subject to Court approval, the Parties have selected ILYM Group, Inc., an experienced third-party administrator, to handle the notice and settlement administration process for the Settlement ("ILYM Group, Inc.," or "Settlement Administrator"). This administration duties shall include, without limitation, translating, printing, mailing, and tracking the Court-approved Settlement Class Notice in English and Spanish after having updated the addresses in the Settlement Class

Data List via the United States Postal Service's address search program, performing customary and usual skip-traces on Settlement Class Notices returned as undeliverable, calculating Settlement Shares and Settlement Payments, preparing and mailing of settlement checks, preparing any appropriate tax forms in connection with the settlement payments and remitting those forms to the appropriate governmental agencies, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. All Settlement Administration Costs will be paid out of the Settlement Fund, subject to approval by the Court, and are currently estimated not to exceed ten thousand dollars (\$10,000). In no event shall Defendants be responsible for any costs of administration unless this Settlement becomes Final, except as provided in Paragraph X.

10. **No Claim Form Required:** All Participating Settlement Class Members will automatically receive a share of the NSF as set forth in Paragraph IV.11. All Settlement Class Members will be mailed a Court-approved Settlement Class Notice in English and Spanish describing the terms of the Settlement and an estimate of his or her Settlement Share, setting forth the Parties' best estimate of the amount that each individual Settlement Class Member may be eligible to receive if he or she does not opt out of the Settlement, assuming the Court approves the allocations for Attorneys' Fees and Costs, the Enhancement Award, Settlement Administration Costs, and the LWDA Payment in the amounts requested herein.

11. Calculation of Settlement Shares: Settlement

Class Members will be eligible to receive a *pro rata* share of the NSF (i.e., Settlement Share) based on Qualifying Workweeks. Settlement Shares will be calculated by the Settlement Administrator based on the following formula:

- a. After Preliminary Approval of the Settlement, the Net Settlement Fund will be divided by the total number of Qualifying Workweeks worked by all Settlement Class Members during the Settlement Class Period to determine the base dollar amount per Qualifying Workweek. Then, the resulting base dollar amount per Qualifying Workweek will be multiplied by each Settlement Class Member's Qualifying Workweeks.
- b. After Final Approval of the Settlement, the Net Settlement Fund will be divided by the total number of Qualifying Workweeks worked by all Participating Settlement Class Members during the Settlement Class Period to determine the base dollar amount per Qualifying Workweek. Then, the resulting base dollar amount per Qualifying Workweek will be multiplied by each Participating Settlement Class Member's Qualifying Workweeks.
- c. Each Settlement Share will be subject to reduction for applicable taxes as set forth in Paragraph IV.17. To the extent the total payment under this calculation varies from the NSF, each share shall be adjusted on a *pro rata* basis to equal the Settlement Fund.

12. Requesting Exclusion from the Settlement: If a Settlement Class Member does not want to participate in the Settlement, he or she must submit a timely and valid Request for

Exclusion to the Settlement Administrator, by mail, postmarked by the Response Deadline, or, in the case of a re-mailed Settlement Class Notice, the Extended Response Deadline. The Request for Exclusion must: (a) contain the full name, last-known mailing address, last-known telephone number, and last four (4) digits of the Social Security number of the Settlement Class Member; (b) be signed by the Settlement Class Member; (c) identify the case name and number (*Raymond Flores v. Fence Factory, et al.*, Ventura County Superior Court, Case No. 56-2021-00559015-CU-OE-VTA); and (d) clearly state that the Settlement Class Member wishes to be excluded from the Settlement. Individuals who submit a valid and timely Request for Exclusion will not be bound by the Settlement, will not receive any benefits under the Settlement, and will not have any right to object or appeal to the Settlement.

13. **Objections to Settlement:** The Settlement Class Notice to be sent to all Settlement Class Members will advise each Settlement Class Member of his or her right to object to all or any part of this Settlement Agreement, as long as he or she did not opt out of the Settlement. Any Participating Settlement Class Member who wishes to object to the Settlement may submit a timely and valid Objection to the Settlement Administrator, by mail, postmarked by the Response Deadline, or, in the case of a re-mailed Settlement Class Notice, the Extended Response Deadline. The Objection must: (a) contain the full name, last-known mailing address, last-known telephone number, and last four (4) digits of the Social Security

number of the objector; (b) be signed by the objector; (c) identify the case name and number (*Raymond Flores v. Fence Factory, et al.*, Ventura County Superior Court, Case No. 56-2021-00559015-CU-OE-VTA); (d) clearly state the grounds for the Objection; and (e) attach copies of any papers, briefs, or other documents upon which the objection is based. If a Participating Settlement Class Member submits a timely and valid Objection, he or she may also appear individually or through counsel of his or her choice, paid at his or her own expense, and be heard at the Final Approval Hearing if he or she wishes to do so, but only if he or she indicates in his or her Objection that he or she intends to appear. In the alternative, Participating Settlement Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. If the Court overrules a Participating Settlement Class Member's Objection, he or she will be bound by the terms of this Settlement Agreement and be issued a Settlement Payment. If a Settlement Class Member submits both an Objection and a valid and timely Request for Exclusion, the Request for Exclusion will be accepted and the Objection will be rejected. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to object to the Settlement Agreement or appeal from the Final Approval Order and Judgment.

14. **Dispute to Qualifying Workweeks:** A Settlement Class Member may dispute the number of Qualifying Workweeks that are credited to him or her, as reflected in the Settlement Class

Notice, by submitting a Dispute to the Settlement Administrator, by mail, postmarked by the Response Deadline, or, in the case of a re-mailed Settlement Class Notice, the Extended Response Deadline. The Dispute must: (a) contain the full name, last-known mailing address, last-known telephone number, and last four (4) digits of the Social Security number of the Settlement Class Member; (b) be signed by the Settlement Class Member; (c) identify the case name and number (*Raymond Flores v. Fence Factory, et al.*, Ventura County Superior Court, Case No. 56-2021-00559015-CU-OE-VTA); (d) clearly state the nature of the Dispute and the number of Qualifying Workweeks the Settlement Class Member contends is correct; and (e) attach any records or documentation to support the Dispute. In response to such a Dispute, Defendants will review its records to verify the information contained in the Settlement Class Member's file and Defendants' payment records. Defendants' records will have a rebuttable presumption of correctness. After consultation with the Settlement Class Member, Settlement Class Counsel, and Defendants, the Settlement Administrator will make a determination that will be final, binding on the Settlement Class Member and Defendants, and non-appealable.

15. **Funding of Settlement:** Within thirty (30) business days after the Effective Date, as defined in Paragraph II.1.e, Defendants shall transfer the entire Settlement Fund into a qualified settlement account to be established by the Settlement Administrator.

16. **Payment Procedures:** Within five (5) business days after Defendants' funding of the Settlement Fund, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Settlement Payments to Participating Settlement Class Members; (b) the Attorneys' Fees and Costs to Settlement Class Counsel; (c) the Enhancement Award to Plaintiff; (d) the LWDA Payment to the LWDA; and (e) the Settlement Administration Costs to itself. Payment of Court-approved Attorneys' Fees and Costs and the Enhancement Award need not await distribution of the Settlement Shares to Participating Settlement Class Members.

17. **Tax Treatment of Settlement Shares:**

a. The Parties shall comply with all legal requirements regarding the payments made to Participating Settlement Class Members. Each recipient of any monies paid in accordance with this Settlement Agreement is responsible for any taxes associated with the monies received. Settlement Shares will be considered ten (10) % wages that will be reported on an IRS Form W-2, and ninety (90) % penalties and interest and other non-wages damages that will be reported on an IRS Form 1099. The Settlement Administrator will be responsible for preparing these forms correctly. The Settlement Administrator will withhold employee's share of taxes and withholdings in connection with the wages portion of the Settlement Shares, and issue checks to Participating Settlement Class Members for their Settlement Payment (i.e., payment of their Settlement Share net of these taxes and withholdings). The Settlement Administrator will also be responsible for remitting employee's share of taxes and the Employer Taxes to the relevant taxing authorities.

b. The Parties acknowledge and agree that neither Defendants nor their attorneys have made any representations regarding the tax consequences, if any, of any payments made under this Agreement. Participating Settlement Class Members agree to pay their share of any and all federal, state, or local taxes, if any, which are required by law to be paid with respect to payments made under this Settlement. The Parties further agree that Defendants shall have no legal obligation to pay, on behalf of Participating Settlement Class Members, any taxes, deficiencies, levies, assessments, fines, penalties, interests, or costs that may be required to be paid with respect to the settlement payments.

18. **Tax Treatment of Enhancement Award:** The Settlement Class Representative will receive an IRS Form 1099 for her Enhancement Award, prepared by the Settlement Administrator, and will be responsible for correctly characterizing this additional compensation for tax purposes and for payment of any taxes owing on said amount.

19. **Undistributed Funds:** Each Settlement Payment check will remain valid and negotiable for one hundred eighty (180) calendar days from the date the checks are issued, and shall be cancelled thereafter. Funds associated with such cancelled checks will be transmitted to Legal Aid at Work as the cy pres recipient. If the Court does not approve the cy pres designee, the Parties shall select a new cy pres designee, with approval by the Court. Any Class Member who does not opt-out will be nevertheless bound by the terms of the agreement regardless of whether he or she cashes the check. The Parties, Class Counsel, and Defense Counsel represent

that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

V. NOTICE TO THE CLASS

1. **Compilation of Settlement Class Data List:** The Parties agree that within twenty-one (21) calendar days after Preliminary Approval, Defendants will provide the Settlement Administrator the following most up-to-date information about each Settlement Class Member in an electronic format: (a) full name; (b) last-known mailing address and telephone number; (c) Social Security number; (d) start and end dates of employment during the Settlement Class Period; and (e) such other information as is necessary for the Settlement Administrator to calculate Qualifying Workweeks (collectively, “Settlement Class Data List”). The Settlement Administrator will perform address updates and verifications as necessary prior to the first mailing.

2. **Dissemination of Notice of Class Action Settlement:** Within ten (10) business days of its receipt of the Settlement Class Data List, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available for information to update and correct for any known or identifiable address changes, and will mail the Court-approved Settlement Class Notice (in English and certified Spanish translation) via first-class U.S. mail to all Settlement Class Members, using the most current, known mailing addresses identified by the Settlement Administrator.

3. **Undeliverable Settlement Class Notices:** With respect to Settlement Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Settlement Class Notice within five (5) calendar days.

VI. RELEASE BY THE PARTICIPATING SETTLEMENT CLASS

Subject to final approval by the Court of this Settlement Agreement and without waiving such rights or claims as may be created by this Settlement Agreement, upon the Effective Date, Plaintiff and Participating Settlement Class Members, for themselves and their respective heirs, executors, administrators, affiliates, successors, and assigns, shall be deemed to have, and by operation of the judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, as defined herein.

VII. ADDITIONAL GENERAL RELEASE BY SETTLEMENT CLASS REPRESENTATIVE

Subject to final approval by the Court of this Settlement Agreement and without waiving such rights or claims as may be created by this Settlement Agreement, upon the Effective Date, in addition to the Released Claims set forth in Paragraph VI, Plaintiff and Settlement Class Representative Raymond Flores, for himself alone, hereby agrees to release the Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action, or causes of action, arising from his employment with Defendants, separation of employment from Defendants, and any acts that have or could have been asserted in any legal action or proceeding against Defendants, whether known or unknown, arising under any federal, state, or local law, or statute, including, *inter alia*, those arising under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California Business and Professions Code, California Fair Employment and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment compensation, emotional distress, medical expenses, other economic and non-economic damages, attorney fees, and costs, arising on or before the Effective Date. In

connection therewith, Plaintiff waives the provisions of California Civil Code Section 1542 which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands and agrees that claims or facts in addition to or different from those which are now known or believed by him to exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all claims he now has against the Released Parties, whether known or unknown, suspected or unsuspected. The Enhancement Award shall be paid to Plaintiff specifically in exchange for the general release of the Released Parties from all claims, including those specified in this paragraph and a covenant not to sue the Released Parties. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

VIII. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

The Parties shall seek the Court's approval of this Settlement. Promptly upon execution of this Settlement Agreement, the Settlement Class Representative and Settlement Class Counsel, in cooperation with Defendants' counsel, shall promptly obtain a hearing date for Plaintiff's Motion for Preliminary Approval of the Settlement, and submit this Settlement Agreement to the Court in support of said motion. Settlement Class Counsel will provide Defendants' counsel a draft of the Preliminary Approval Motion at least two (2) business days before the filing deadline. Defendants agree not to oppose the Motion for Preliminary Approval of the Settlement consistent with this Settlement Agreement. Said motion shall apply to the Court for the entry of an order ("Preliminary Approval Order") seeking the following:

- a. Conditionally certifying the Settlement Class for settlement purposes only;
- b. Granting preliminarily approval of the Settlement, subject only to the Objections of Participating Settlement Class Members and final review by the Court;
- c. Preliminarily appointing Plaintiff as representative of the Settlement Class;
- d. Preliminarily appointing Settlement Class Counsel as counsel for the Settlement Class;
- e. Preliminarily approve the Settlement Administrator selected by the Parties to administer the Settlement; and
- f. Approving, as to form and content, the proposed Settlement Class Notice;
- g. Directing the mailing of the Settlement Class Notice by first class U.S. mail to the Settlement Class Members;
- g. Approving the manner and method for Settlement Class Members to request exclusion from the Settlement as contained herein and within the Settlement Class Notice; and
- h. Scheduling a Final Approval Hearing at which the Court will determine whether the Settlement, including payment of Attorneys' Fees and Costs and the Enhancement Award, should be finally approved as fair, reasonable, and adequate as to Participating Settlement Class Members.

IX. DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL

Settlement Class Counsel and Settlement Class Representative, in cooperation with Defendants' counsel, will apply for final approval of the Settlement provided for in this Settlement

Agreement and will submit a proposed order and judgment (“Final Approval Order and Judgment”) that provides for the following:

- a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Approving the application for an award of Attorneys’ Fees and Costs to Settlement Class Counsel;
- c. Approving the application for an Enhancement Award to the Settlement Class Representative;
- d. Barring all Participating Settlement Class Members from prosecuting the Released Claims against the Released Parties upon the Effective Date;
- e. Setting a date when the Settlement Administrator shall report to the Court the completion of the distribution process and the total amount that was actually paid to the Participating Settlement Class Members;
- f. Directing Defendants to fund all amounts due under the Settlement Agreement and ordered by the Court, in accordance with the Settlement Agreement; and
- g. Entering judgment with continuing jurisdiction in conformity with California Rules of Court, Rule 3.769 and the Settlement Agreement.

X. ESCALATOR CLAUSE

The Parties contemplated settlement based on Defendants’ estimate and representation that there are no more than 15,530 workweeks worked by the Settlement Class Members during the Settlement Class Period. In the event the number of workweeks worked by the Settlement Class Members increases by more than 10%, or 1,553, then the Maximum Settlement Amount shall be

increased proportionally by the workweeks worked in excess of 17,083 multiplied by the workweek value. The workweek value shall be calculated by dividing the Maximum Settlement Amount by 15,530 workweeks. The Parties agree that the workweek value is \$16.10 (\$250,000 / 15,530 workweeks).

XI. OPTION TO TERMINATE THE SETTLEMENT

Defendants shall have the option to terminate this Settlement if more than ten percent (10%) of the Settlement Class request exclusion from the Settlement. Defendants shall notify in writing the Settlement Class Counsel of its intention to void this Settlement within ten (10) calendar days from the date the Settlement Administrator provides a final list of all Settlement Class Members who elected not to participate in the Settlement.

XII. PARTIES' AUTHORITY

The signatories hereto hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

XIII. MUTUAL FULL COOPERATION

The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such documents, and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary, by order of the Court or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Settlement Class Counsel shall, with the assistance and cooperation of Defendants and its counsel, take all necessary steps to implement the Settlement.

XIV. NO PRIOR ASSIGNMENTS

The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

XV. NO ADMISSION

Defendants have denied and continues to deny liability for the claims asserted in the Litigation. Neither this Settlement Agreement and any exhibit thereto, nor any other item pertaining to the Settlement contemplated herein, shall be offered in any other case or proceeding as evidence of any admission by Defendants of any liability on any claims for damages or other relief. Any stipulation or admission by Defendants contained herein is made for settlement purposes only. In the event this Settlement is not finally approved, the Parties shall be restored to their respective positions prior to reaching the Settlement. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Defendants specifically deny any liability. Each of the Parties hereto has entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

XVI. CONSTRUCTION

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

XVII. EXHIBITS INCORPORATED BY REFERENCE

The terms of this Settlement Agreement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement.

XVIII. CAPTIONS AND INTERPRETATIONS

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

XIX. MODIFICATION

This Settlement Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto or their counsel of record, subject to any required approval by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto or their counsel of record. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

XX. INTEGRATION CLAUSE

This Settlement Agreement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

XXI. BINDING ON ASSIGNS

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

XXII. SETTLEMENT CLASS COUNSEL SIGNATORIES

It is agreed that because of the large number of Settlement Class Members, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. As such, Settlement Class Counsel is signing on behalf of all unnamed Participating Settlement Class Members. In addition, the Settlement Class Notice will advise all Participating Settlement Class Members of the binding nature of the release of the Released Claims and such shall have the same force and effect as if this Settlement Agreement were executed by each Participating Settlement Class Member.

XXIII. USE AND DISCLOSURE OF SETTLEMENT

1. The Parties, their agents, and their attorneys agree not to publicize the terms of the Settlement or the lawsuit beyond taking those steps necessary to reach a final resolution and implementation of the Settlement, including: (a) filing papers and motions with the Court necessary to obtain settlement approval; (b) court appearances including motion hearings attendant to effectuating the Settlement, class administration, and entry of judgment based thereon; and (c) effectuating and facilitating required notices to the Settlement Class including communications with the Settlement Administrator and Settlement Class Members.

2. Plaintiff Raymond Flores agrees that neither he, nor his spouse or agents, shall publicize the terms of the Settlement or the lawsuit beyond taking the steps necessary to reach a final resolution and entry of judgment.

3. The Parties recognize that any voluntary settlement of a case styled as a class action is necessarily public in that the process involves regularly filed motions and papers in a public forum, public motion hearings, Settlement Class Notice and other mailings, opportunities to opt-out (meaning to exclude themselves from this class action settlement) or object, and the like, consistent with the Parties' rights under applicable law. Notwithstanding these typical steps in the Settlement process, Plaintiff and Defendants agree that neither they nor their attorneys of record, agents, immediate family members, friends, representatives, or others acting on their behalf will publicize or comment on the Settlement regarding information exchanged during the mediated confidential negotiation process and/or the Operative Complaint and facts alleged therein, the identity of the Parties, or the terms of the Settlement by means of the following: websites, blogs, emails, social media, press conferences, print media, or other means of publication that are not part of the typical class administration, Settlement Class Notice, and settlement procedure allowed by statute and applicable law for approval and effectuation of the Court-approved Settlement. This provision does not prevent the Parties' counsel from confirming their representation of their clients in the lawsuit, or the fact of and terms of the Settlement with existing, future, or prospective clients. Neither Parties' counsel shall refer to the Litigation on their respective websites with information identifying the case name or matter. Any Party's counsel of record may refer to the case as a "case involving a putative class in a wage and hour dispute." The Parties acknowledge and agree that nonpublic information about the business practices and business records of Defendants disclosed solely during the scope of privileged mediation proceedings and settlement negotiations ("Confidential Information") will not be disclosed to any third parties and will be returned to Defendants, with no copies retained after the Court issues final approval of the Settlement. The Parties further acknowledge and agree that such Confidential Information has not and will not be used for any purpose other than for evaluating claims for purposes of entering into this Settlement Agreement.

4. Nothing herein will restrict Settlement Class Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding Settlement Class Counsel's qualifications and experience. Furthermore, Plaintiff and Settlement Class Counsel will undertake any and all disclosures required to be made to the LWDA in conformity with PAGA. Neither Plaintiff nor Settlement Class Counsel shall engage in any disparagement of any type related to this Settlement.

XXIV. COUNTERPARTS

This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

XXV. GOVERNING LAW

The Parties agree that California law governs the interpretation and application of this Settlement Agreement and exhibits attached hereto.

XXVI. INTERIM STAY OF PROCEEDINGS

The Parties agree to hold in abeyance all proceedings in the Litigation, except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

XXVII. CONTINUED JURISDICTION

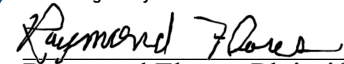
After entry of judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such

post-judgment matters as may be appropriate under court rules or as set forth in this Agreement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Class Action and PAGA Settlement Agreement between Plaintiff and Defendants:

AGREEING TO AND ACCEPTING THE FOREGOING:

Dated: 8/15/2023

DocuSigned by:

Raymond Flores, Plaintiff and
Settlement Class Representative

Dated: _____

Steven Bennett, Vice President
Defendant, Arbee, Inc.

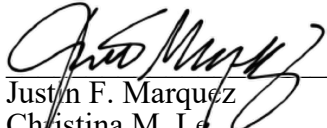
Dated: _____

Steven Bennett, President
Defendant, Fence Factory dba
Electronic Entry Distributors

APPROVED AS TO FORM AND CONTENTS:

WILSHIRE LAW FIRM, PLC

Dated: August 15, 2023


Justin F. Marquez
Christina M. Le
Arsiné Grigoryan, Counsel for
Plaintiff and Settlement Class
Representative, Raymond Flores

O'HAGAN MEYER LLP

Dated: _____

Matthew C. Sgnilek
Vickie Grasu
Samantha Swanson, Counsel for
Defendants, Arbee, Inc. and Fence
Factory dba Electronic Entry
Distributors ("Defendants")

post-judgment matters as may be appropriate under court rules or as set forth in this Agreement.

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AGREEING TO AND ACCEPTING THE FOREGOING:

Dated: _____

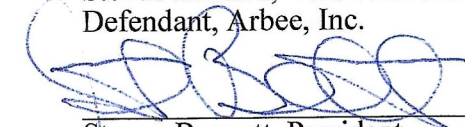
Dated: 8/7/2023

Dated: 8/7/2023

Raymond Flores, Plaintiff and
Settlement Class Representative



Steven Bennett, Vice President
Defendant, Arbee, Inc.



Steven Bennett, President
Defendant, Fence Factory dba
Electronic Entry Distributors

APPROVED AS TO FORM AND CONTENTS:

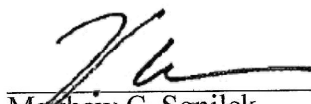
WILSHIRE LAW FIRM, PLC

Dated: _____

Justin F. Marquez
Christina M. Le
Arsiné Grigoryan, Counsel for
Plaintiff and Settlement Class
Representative, Raymond Flores

O'HAGAN MEYER LLP

Dated: August 7, 2023



Matthew C. Sgnilek
Vickie Grasu
Samantha Swanson, Counsel for
Defendants, Arbee, Inc. and Fence
Factory dba Electronic Entry
Distributors ("Defendants")

Exhibit A

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Christina M. Le (SBN 237697)
cle@wilshirelawfirm.com
Arsiné Grigoryan (SBN 319517)
agrigoryan@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

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

RAYMOND FLORES, on behalf of the State of
California and other aggrieved persons,

Plaintiff,

vs.

FENCE FACTORY, a California Corporation;
FENCE FACTORY dba ELECTRONIC ENTRY
DISTRIBUTORS, a California corporation;
ELECTRONIC ENTRY DISTRIBUTORS, a
California Corporation; and DOES 1 through 10,
inclusive,

Defendants.

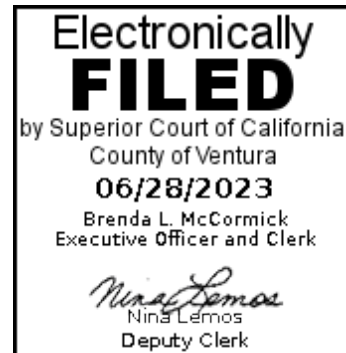
Case No.: 56-2021-00559015-CU-OE-VTA

*[Assigned for all purposes to Hon. Benjamin
F. Coats, Dept. 43]*

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512);
4. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);
5. Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
6. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
7. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties Under PAGA (Cal. Lab. Code § 2699, *et seq.*)

DEMAND FOR JURY TRIAL



1 Plaintiff RAYMOND FLORES (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants FENCE FACTORY, FENCE
6 FACTORY dba ELECTRONIC ENTRY DISTRIBUTORS, ELECTRONIC ENTRY
7 DISTRIBUTORS, and DOES 1 through 10 (FENCE FACTORY, FENCE FACTORY dba
8 ELECTRONIC ENTRY DISTRIBUTORS, ELECTRONIC ENTRY DISTRIBUTORS, and DOES
9 1 through 10 are collectively referred to as “Defendants”) for California Labor Code violations and
10 unfair business practices stemming from Defendants’ failure to pay for all hours worked
11 (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize
12 and permit rest periods, failure to timely pay final wages, and failure to furnish accurate wage
13 statements.

14 2. Plaintiff brings the First through Seventh Causes of Action individually and as a
15 class action on behalf of himself and certain current and former employees of Defendants
16 (hereinafter collectively referred to as the “Class” or “Class Members,” and defined more fully
17 below). The Class consists of Plaintiff and all other persons who have been employed by any
18 Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations
19 period applicable to the claims pleaded here.

20 3. Plaintiff brings the Eight Cause of Action as a representative action under the
21 California Private Attorneys General Act (“PAGA”) to recover civil penalties that are owed to
22 Plaintiff, the State of California, and past and present non-exempt employees by Defendants in the
23 State of California during the statute of limitations period for his PAGA claim (hereinafter referred
24 to as the “Aggrieved Employees”).

25 4. Defendants own/owned and operate/operated an industry, business, and
26 establishment within the State of California, including Ventura County. As such, and based upon
27 all the facts and circumstances incident to Defendants’ business in California, Defendants are
28 subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission

1 (“IWC”), and the California Business & Professions Code.

2 5. Despite these requirements, throughout the statutory period, Defendants maintained
3 a systematic, company-wide policy and practice of:

- 4 (a) Failing to pay employees for all hours worked, including all minimum,
5 straight time, and overtime wages in compliance with the California Labor
6 Code and IWC Wage Orders;
- 7 (b) Failing to provide employees with timely and duty-free meal periods in
8 compliance with the California Labor Code and IWC Wage Orders, failing
9 to maintain accurate records of all meal periods taken or missed, and failing
10 to pay an additional hour’s pay for each workday a meal period violation
11 occurred;
- 12 (c) Failing to authorize and permit employees to take timely and duty-free rest
13 periods in compliance with the California Labor Code and IWC Wage
14 Orders, and failing to pay an additional hour’s pay for each workday a rest
15 period violation occurred;
- 16 (d) Willfully failing to pay employees all minimum, straight time, overtime,
17 meal period premium, and rest period premium wages due within the time
18 period specified by California law when employment terminates; and
- 19 (e) Failing to provide employees with accurate, itemized wage statements
20 containing all the information required by the California Labor Code and
21 IWC Wage Orders.

22 6. On information and belief, Defendants, and each of them were on actual and
23 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
24 unlawful policies. Defendants’ violations, as alleged above, during all relevant times herein were
25 willful and deliberate.

26 7. At all relevant times, Defendants were and are legally responsible for all of the
27 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
28 foregoing paragraphs as the employer of Plaintiff, the Class, and the Aggrieved Employees.

Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior.”

THE PARTIES

A. Plaintiff

8. Plaintiff RAYMOND FLORES is a resident of Ventura County, California, who worked for Defendants in Ventura, California from approximately February 2019 to approximately November 2020.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendants FENCE FACTORY, FENCE FACTORY dba ELECTRONIC ENTRY DISTRIBUTORS, ELECTRONIC ENTRY DISTRIBUTORS were, and at all times herein mentioned, were:

- (a) Corporations qualified to do business and actually conducting business in numerous counties throughout the State of California, including Ventura County; and,
- (b) The former employer of Plaintiff, and the current and/or former employer of the Aggrieved Employees because Defendants FENCE FACTORY, FENCE FACTORY dba ELECTRONIC ENTRY DISTRIBUTORS, ELECTRONIC ENTRY DISTRIBUTORS suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sue said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff, the Class, and the Aggrieved Employees as alleged herein. Plaintiff will amend this

1 complaint to set forth the true names and capacities of these Defendants when they have been
2 ascertained, together with appropriate charging allegations, as may be necessary.

3 12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
4 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or
5 injured a significant number of the Plaintiff, the Class, and the Aggrieved Employees in the State
6 of California.

7 13. Plaintiff is informed and believes and thereon alleges that at all relevant times each
8 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the
9 other employees described in the class definitions below, and the Aggrieved Employees, and
10 exercised control over their wages, hours, and working conditions. Plaintiff is informed and
11 believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent,
12 partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent
13 corporation, successor in interest and/or predecessor in interest of some or all of the other
14 Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for
15 profit, and bore such other relationships to some or all of the other Defendants so as to be liable
16 for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and
17 thereon alleges that each Defendant acted pursuant to and within the scope of the relationships
18 alleged above, that each Defendant knew or should have known about, and authorized, ratified,
19 adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

20 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

21 14. Plaintiff Raymond Flores worked for Defendants in Ventura, California from
22 approximately June 2018 to approximately November 2020. During Plaintiff's employment for
23 Defendants, Defendants paid Plaintiff an hourly wage and classified him as non-exempt from
24 overtime. Defendants typically scheduled Plaintiff to work five days a week from Monday through
25 Friday, from approximately 6:30 a.m. to 3:30 p.m. Therefore, Plaintiff regularly worked more than
26 eight hours in a workday and often worked more than forty (40) hours in a workweek.

27 15. Throughout Plaintiff's, the Class, and the Aggrieved Employees' employment,
28 Defendants failed to pay for all hours worked (including minimum, straight time, and overtime

wages), failed to provide Plaintiff, the Class, and the Aggrieved Employees with legally compliant meal periods, failed to authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take rest periods, failed to timely pay all final wages to Plaintiff, the Class, and the Aggrieved Employees when Defendants terminated their employment and failed to furnish accurate wage statements to Plaintiff, the Class, and the Aggrieved Employees. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

16. Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff, the Class, and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff, the Class, and the Aggrieved Employees worked.

17. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff, the Class, and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period. Defendants regularly required Plaintiff, the Class, and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff, the Class, and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control over Plaintiff, the Class, and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff, the Class, and the Aggrieved Employees permission to take a meal period. Defendants also never informed Plaintiff, the Class, and the Aggrieved Employees of their right to, nor permitted them to take, a second meal period when Plaintiff, the Class, and the Aggrieved Employees worked at least ten hours of work in a workday. Accordingly, Defendants' policy and practice was not to provide meal periods to Plaintiff, the Class, and the Aggrieved Employees in compliance with California law.

18. Throughout the statutory period, Defendants have wrongfully failed to authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take legally compliant rest periods.

Defendants regularly required Plaintiff, the Class, and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff, the Class, and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendants continued to assert control over Plaintiff, the Class, and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff, the Class, and the Aggrieved Employees permission to take a rest period. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take rest periods in compliance with California law.

19. Throughout the statutory period, Defendants willfully failed and refused to timely pay Plaintiff, the Class, and the Aggrieved Employees all final wages due at their termination of employment. In addition, Plaintiff's, the Class', and the Aggrieved Employees' final paychecks did not include payment for all minimum, straight time, overtime, meal period premium, and rest period premium wages owed to him by Defendants at the conclusion of their employment. On information and belief, Defendants' failure to timely pay Plaintiff's, the Class', and the Aggrieved Employees' final wages when their employment terminated was not a single, isolated incident, but was instead consistent with Defendants' policy and practice that applied to Plaintiff, the Class, and the Aggrieved Employees.

20. Throughout the statutory period, Defendants failed to furnish Plaintiff, the Class, and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law). As a result of these violations of California Labor Code § 226(a), Plaintiff, the Class, and the Aggrieved Employees suffered injury because, among other things:

- (a) the violations led them to believe that they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period

premium wages, even though they were entitled;

- (b) the violations led them to believe that they had been paid all minimum, straight time, overtime, meal period premium, and rest period premium wages, even though they had not been;
- (c) the violations led them to believe they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they were entitled;
- (d) the violations led them to believe they had been paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;
- (e) the violations hindered them from determining the amounts of minimum, straight time, overtime, meal period premium, and rest period premium wages owed to them;
- (f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;
- (g) by understating the wages truly due to them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff, the Class, and the Aggrieved Employees were entitled, and Plaintiff, the Class, and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff, the Class, and the Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e) and injunctive relief under California Labor Code § 226(h).

CLASS ACTION ALLEGATIONS

21. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

22. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

23. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years and 178 days before the filing of the initial complaint in this action and ending when notice to the Class is sent.¹

24. At all material times, Plaintiff was a member of the Class.

25. Plaintiff undertakes this concerted activity to improve the wages and working conditions of all Class Members.

26. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

- (a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect

¹ In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby "statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, to October 1, 2020."

the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and,
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

1 27. There are common questions of law and fact as to the Class (and each subclass, if
2 any) that predominate over questions affecting only individual members, including without
3 limitation, whether, as alleged herein, Defendants have:

- 4 (a) Failed to pay Class Members for all hours worked, including minimum,
5 straight time, and overtime wages;
6 (b) Failed to provide meal periods and pay all meal period premium wages to
7 Class Members;
8 (c) Failed to authorize and permit rest periods and pay rest period premium
9 wages to Class Members;
10 (d) Failed to provide Class Members with timely final wages;
11 (e) Failed to provide Class Members with accurate wage statements; and
12 (f) Violated California Business & Professions Code §§ 17200 *et. seq.* as a
13 result of their illegal conduct as described above.

14 28. This Court should permit this action to be maintained as a class action pursuant to
15 California Code of Civil Procedure § 382 because:

- 16 (a) The questions of law and fact common to the Class predominate over any
17 question affecting only individual members;
18 (b) A class action is superior to any other available method for the fair and
19 efficient adjudication of the claims of the members of the Class;
20 (c) The members of the Class are so numerous that it is impractical to bring all
21 members of the class before the Court;
22 (d) Plaintiff, and the other members of the Class, will not be able to obtain
23 effective and economic legal redress unless the action is maintained as a
24 class action;
25 (e) There is a community of interest in obtaining appropriate legal and equitable
26 relief for the statutory violations, and in obtaining adequate compensation
27 for the damages and injuries for which Defendants are responsible in an
28 amount sufficient to adequately compensate the members of the Class for

the injuries sustained;

(f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:

1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or,

2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

(g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

29. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff contemplates the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against All Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours Worked)

30. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 20 in this Complaint.

31. "Hours worked" is the time during which an employee is subject to the control of

1 an employer and includes all the time the employee is suffered or permitted to work, whether or
2 not required to do so.

3 32. At all relevant times herein mentioned, Defendants knowingly failed to pay to
4 Plaintiff and the Class compensation for all hours they worked. By their failure to pay
5 compensation for each hour worked as alleged above, Defendants willfully violated the provisions
6 of California Labor Code § 1194, and any additional applicable Wage Orders, which require such
7 compensation to non-exempt employees.

8 33. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight
9 time wages for all non-overtime hours worked for Defendants.

10 34. By and through the conduct described above, Plaintiff and the Class have been
11 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

12 35. By virtue of the Defendants' unlawful failure to pay additional compensation to
13 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class
14 suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff
15 and the Class and which will be ascertained according to proof at trial.

16 36. By failing to keep adequate time records required by California Labor Code §
17 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
18 compensation due to Plaintiff and the Class.

19 37. Pursuant to California Labor Code § 1194.2, Plaintiff and the Class are entitled to
20 recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

21 38. California Labor Code § 204 requires employers to provide employees with all
22 wages due and payable twice a month. Throughout the statute of limitations period applicable to
23 this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required
24 by law, including minimum and straight time wages. However, during all such times, Defendants
25 systematically failed and refused to pay Plaintiff and the Class all such wages due and failed to
26 pay those wages twice a month.

27 39. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum and
28 straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor

Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against All Defendants for Failure to Pay Overtime Wages)

40. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 20 in this Complaint.

41. California Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, any work in excess of twelve (12) hours in a workday or eight hours on the seventh consecutive workday shall be compensated at a rate of twice the regular rate for an employee.

42. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

43. At all times relevant hereto, Plaintiff and the Class have worked more than eight hours in a workday and/or more than forty (40) hours in a workweek, as employees of Defendants.

44. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code §§ 510 and 1198.

45. By virtue of Defendants' unlawful failure to pay additional premium rate compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

46. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and the Class.

48. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. The Wage Orders also provide that every employer shall pay to each employee, on the established payday for the period involved, overtime wages for all overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class with all compensation due, in violation of California Labor Code § 204.

(Against All Defendants for Failure to Provide Meal Periods)

50. Under California law, Defendants have an affirmative obligation to relieve the Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal periods no later than the start of the eleventh hour of work in the workday. California Labor Code § 512, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least thirty (30) minutes for each five-hour period worked. It is a violation of California Labor Code § 226.7 for an employer to require any employee to work during any meal period mandated under any Wage Order.

51. Despite these legal requirements, Defendants regularly, but not always, failed to provide Plaintiff and the Class with both meal periods as required by California law. By their failure to permit and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted meal periods), Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable Wage Orders.

52. Under California law, Plaintiff and the Class are entitled to be paid one hour of

1 additional wages for each workday he or she was not provided with all required meal period(s),
2 plus interest thereon.

3 **FOURTH CAUSE OF ACTION**

4 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

5 53. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs
6 1 through 20 in this Complaint.

7 54. Defendants are required by California law to authorize and permit breaks of ten
8 uninterrupted minutes for each four hours of work or major fraction of four hours (*i.e.*, more than
9 two hours). California Labor Code § 512, the applicable Wage Orders require that the employer
10 permit and authorize all employees to take paid rest periods of ten minutes each for each 4-hour
11 period worked. Thus, for example, if an employee's work time is six hours and ten minutes, the
12 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself
13 a violation of California's rest break laws. It is a violation of California Labor Code § 226.7 for
14 an employer to require any employee to work during any rest period mandated under any Wage
15 Order.

16 55. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
17 Class to take rest breaks, regardless of whether employees worked more than four hours in a
18 workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as
19 alleged above (or due to the fact that Defendants made it impossible or impracticable to take these
20 uninterrupted rest periods), Defendants willfully violated the provisions of California Labor Code
21 § 226.7 and the applicable Wage Orders.

22 56. Under California law, Plaintiff and the Class are entitled to be paid one hour of
23 premium wages rate for each workday he or she was not provided with all required rest break(s),
24 plus interest thereon.

25 **FIFTH CAUSE OF ACTION**

26 **(Against All Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time**
27 **Penalties)**

28 57. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs

1 through 20 in this Complaint.

58. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

59. Within the applicable statute of limitations, the employment of many other members of the Class ended, *i.e.*, was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code §§ 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

60. Defendants' failure to pay those Class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

61. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

62. The Class is entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to California Labor Code § 203.

63. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, the Class is also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

//

SIXTH CAUSE OF ACTION

**(Against All Defendants for Failure to Provide and Maintain Accurate and
Compliant Wage Records)**

64. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 20 in this Complaint.

65. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (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 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.

66. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list the true “total hours worked by the employee,” the failure to list the true net wages earned, and the failure to list all the applicable pay rates in effect during pay periods.

67. As a result of Defendants’ violation of California Labor Code § 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

68. Specifically, Plaintiff and the members of the Class have been injured by Defendants’ intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

69. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and

1 time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as
2 a result of having to bring this action to attempt to obtain correct wage information following
3 Defendants’ refusal to comply with many of the mandates of California’s Labor Code and related
4 laws and regulations.

5 70. Plaintiff and the Class are entitled to recover from Defendants the greater of their
6 actual damages caused by Defendants’ failure to comply with California Labor Code § 226(a), or
7 an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

8 71. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of
9 attorney’s fees and costs to ensure compliance with this section, pursuant to California Labor Code
10 § 226(h).

11 **SEVENTH CAUSE OF ACTION**

12 **(Against All Defendants for Violation of California Business & Professions Code §§ 17200,**
13 **et seq.)**

14 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs
15 1 through 20 in this Complaint.

16 73. Defendants, and each of them, are “persons” as defined under California Business
17 & Professions Code § 17201.

18 74. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
19 unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks
20 to enforce important rights affecting the public interest within the meaning of Code of Civil
21 Procedure § 1021.5.

22 75. Defendants’ activities, as alleged herein, are violations of California law, and
23 constitute unlawful business acts and practices in violation of California Business & Professions
24 Code §§ 17200, *et seq.*

25 76. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
26 predicated on the violation of any state or federal law. All of the acts described herein as violations
27 of, among other things, the California Labor Code, are unlawful and in violation of public policy;
28 and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby

1 constitute unfair, unlawful and/or fraudulent business practices in violation of California Business
2 & Professions Code §§ 17200, *et seq.*

3 **Failure to Pay Minimum and Straight Time Wages**

4 77. Defendants' failure to pay minimum and straight time wages, and other benefits in
5 violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by
6 California Business & Professions Code §§ 17200, *et seq.*

7 **Failure to Pay Overtime Wages**

8 78. Defendants' failure to pay overtime compensation and other benefits in violation of
9 California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
10 prohibited by California Business & Professions Code §§ 17200, *et seq.*

11 **Failure to Provide Meal Periods**

12 79. Defendants' failure to provide meal periods in accordance with California Labor
13 Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
14 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

15 **Failure to Authorize and Permit Rest Periods**

16 80. Defendants' failure to authorize and permit rest periods in accordance with
17 California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful
18 and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

19 81. By and through their unfair, unlawful and/or fraudulent business practices described
20 herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and
21 all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of
22 valuable rights and benefits guaranteed by law, all to their detriment.

23 82. Plaintiff and the Class Members suffered monetary injury as a direct result of
24 Defendants' wrongful conduct.

25 83. Plaintiff, individually, and on behalf of members of the putative Class, is entitled
26 to, and does, seek such relief as may be necessary to disgorge money and/or property which the
27 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
28 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and

1 the Class are not obligated to establish individual knowledge of the wrongful practices of
2 Defendants in order to recover restitution.

3 84. Plaintiff, individually, and on behalf of members of the putative class, is further
4 entitled to and does seek a declaration that the above-described business practices are unfair,
5 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
6 from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices
7 in the future.

8 85. Plaintiff, individually, and on behalf of members of the putative class, has no plain,
9 speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered
10 as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a
11 result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff,
12 individually, and on behalf of members of the putative Class, has suffered and will continue to
13 suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to
14 engage in said unfair, unlawful and/or fraudulent business practices.

15 86. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
16 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
17 withholdings.

18 87. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and
19 putative Class Members are entitled to restitution of the wages withheld and retained by
20 Defendants during a period that commences four years and 178 days prior to the filing of this
21 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
22 Plaintiff and Class Members; an award of attorneys' fees pursuant to California Code of Civil
23 Procedure § 1021.5 and other applicable laws; and an award of costs.

24 **EIGHT CAUSE OF ACTION**

25 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
26 **2004, Cal. Lab. Code § 2698 *et seq.*)**

27 88. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs
28 1 through 20 in this Complaint.

1 89. At all times herein mentioned, Defendants were subject to the Labor Code of the
2 State of California and the applicable Industrial Welfare Commission Orders.

3 90. California Labor Code § 2699(a) specifically provides for a private right of action
4 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law,
5 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
6 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
7 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
8 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
9 former employees pursuant to the procedures specified in Section 2699.3.”

10 91. Plaintiff has exhausted his administrative remedies pursuant to California Labor
11 Code § 2699.3. He gave written notice by online filing to the LWDA and by certified mail to
12 Defendant of the specific provisions of the Labor Code that Defendant violated against Plaintiff
13 and current and former aggrieved employees, including the facts and theories to support the
14 violations. Plaintiff also paid the filing fee.

15 92. The LWDA has not indicated that it intends to investigate Defendant’s Labor Code
16 violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover
17 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code
18 described in this Complaint. These penalties include, but are not limited to, penalties under
19 California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

20 93. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
21 of civil penalties on behalf of herself, the State of California, and similarly Aggrieved Employees
22 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
23 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

24 94. In addition, Plaintiff seeks an award of reasonable attorney’s fees and costs pursuant
25 to California Labor Code § 2699(g)(1), which states, “Any employee who prevails in any action
26 shall be entitled to an award of reasonable attorney’s fees and costs.”

27 //

28 //

1 **PRAYER FOR RELIEF**

2 Plaintiff, individually, and on behalf of all others similarly situated only with respect to the
3 class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

4 **Class Certification**

5 1. That this action be certified as a class action with respect to the First, Second, Third,
6 Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;

7 2. That Plaintiff be appointed as the representative of the Class; and,

8 3. That counsel for Plaintiff be appointed as Class Counsel.

9 **As to the First Cause of Action**

10 4. That the Court declare, adjudge, and decree that Defendants violated California
11 Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all
12 minimum and straight time wages due;

13 5. For unpaid wages as may be appropriate;

14 6. For pre-judgment interest on any unpaid compensation commencing from the date
15 such amounts were due;

16 7. For liquidated damages;

17 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
18 California Labor Code § 1194(a); and,

19 9. For such other and further relief as the Court may deem equitable and appropriate.

20 **As to the Second Cause of Action**

21 10. That the Court declare, adjudge, and decree that Defendants violated California
22 Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
23 overtime wages due;

24 11. For unpaid wages at overtime wage rates as may be appropriate;

25 12. For pre-judgment interest on any unpaid overtime compensation commencing from
26 the date such amounts were due;

27 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
28 California Labor Code § 1194(a); and,

14. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

15. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16. For unpaid meal period premium wages as may be appropriate;

17. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and,

19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

21. For unpaid rest period premium wages as may be appropriate;

22. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and,

24. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

25. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment;

26. For statutory wage penalties pursuant to California Labor Code § 203 for former employees who have left Defendants' employ;

27. For pre-judgment interest on any unpaid wages from the date such amounts were due;

28. For reasonable attorneys' fees and for costs of suit incurred herein; and,

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

30. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual damages, according to proof;

32. For statutory penalties pursuant to California Labor Code § 226(e);

33. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);

34. For reasonable attorneys' fees and for costs of suit incurred herein; and,

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

36. That the Court declare, adjudge, and decree that Defendants violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, and failing to authorize and permit rest periods.

37. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

38. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

39. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

40. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eight Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated the California

WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010-1137

Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and overtime wages), failing to provide meal periods and pay the correct amount of meal period premium wages, failing to authorize and permit rest periods and pay the correct amount of rest period premium wages, failing to pay all final wages to terminated employees, and failing to furnish accurate wage statements.

43. For all actual, consequential, and incidental losses and damages, according to proof;

44. For all civil penalties pursuant to California Labor Code §§ 2699, *et seq.*, and all other applicable Labor Code provisions;

45. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699; and

For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

46. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: June 28, 2023

WILSHIRE LAW FIRM

By: Christina M. Le
Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

Attorneys for Plaintiff RAYMOND FLORES

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: June 28, 2023

WILSHIRE LAW FIRM

By: Christina M. Le
Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

Attorneys for Plaintiff RAYMOND FLORES

Flores v. Arbee Incorporated Dba Fence Factory, et al.
56-2021-00559015-CU-OE-VTA

[illegible]

I, Sandy S. Sespene, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is ssespene@wilshirelawfirm.com.

On June 28, 2023, I served the foregoing **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Vickie V. Grasu (SBN 224278)
vgrasu@ohaganmeyer.com
 Armando Herrera
aherrera@ohaganmeyer.com
 Angelina Allen-Rothwell
aallen-rothwell@ohaganmeyer.com
O'HAGAN MEYER LLP
 21650 Oxnard Street, Suite 530
 Woodland Hills, California 91367
 Telephone: (213) 306-1610
 Facsimile: (213) 306-1615

Attorneys for Defendants

(X) **BY MAIL:** I enclosed the above documents in a sealed envelope with postage thereon fully prepaid and placed for collection and mailing on the above date in accordance with ordinary business practices. I am readily familiar with this firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service the same day in the ordinary course of business pursuant to Cal. Code Civ. Proc. § 1013(a).

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

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

Executed on June 28, 2023, at Los Angeles, California.


Sandy S. Sespene

Exhibit B

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Raymond Flores v. Fence Factory, et al., Ventura County Superior Court, Case No. 56-2021-00559015-CU-OE-VTA

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendants Arbee, Inc. and Fence Factory dba Electronic Entry Distributors (“Defendants” or “Fence Factory”) for alleged wage and hour violations. The Action was filed by a former employee, Raymond Flores (“Plaintiff” or “Settlement Class Representative”) and seeks payment of back wages and other relief for a class of hourly employees (“Class Members”) who worked for Defendants during the Class Period of February 14, 2020 through the date of preliminary approval on _____;

The proposed Settlement is a Class Settlement requiring Defendants to fund Individual Class Payments.

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding)**. The actual amount you may receive likely will be different and will depend on a number of factors.

The above estimates are based on Defendants’ records showing that **you worked _____ workweeks** during the Class Period. If you believe that you worked more workweeks during this period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against Defendants.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise

notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment. In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement The Opt-out Deadline is [date]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
Participating Class Members Can Object to the Class Settlement Written Objections Must be Submitted by [date]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the [date] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [date]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks Written Challenges Must be Submitted by [date]	The amount of your Individual Class Payment depends on how many workweeks you worked at least one day during the Class Period. The number Class Period Workweeks you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with this number, you must challenge it by [date]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is an employee of Defendants. The Action accuses Defendants of violating California labor laws by failing to pay for damages and penalties for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Business & Professions Code §§ 17200, et seq.; and (10) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004). Plaintiff is represented by attorneys in the Action: Justin F. Marquez, Esq., Christina M. Le, Esq. and Arsiné Grigoryan, Esq. of Wilshire Law Firm (“Class Counsel”).

Defendants strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether the Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating and settling the case rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members. The Court preliminarily approved the proposed Settlement as fair, reasonable, and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$250,000.00 as the Gross Settlement Amount (Gross Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Class Representative Service Payment, Class Counsel’s

attorney's fees and expenses, and the Administrator's expenses. Assuming the Court grants Final Approval, Defendants will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$83,333.33 (33.33 % of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$10,000.00 to the Administrator, ILYM Group, Inc., for services administering the Settlement.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages ("Wage Portion") and 90% to penalties and interest. The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes it owes on the Wage Portion. The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically canceled, and the monies will be irrevocably lost to you because they will be paid to a non-profit organization or foundation ("Cy Pres"), Legal Aid at Work.
6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [date], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [date] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.
7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts

stated in the Operative Complaint and ascertained in the course of the Action including, (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Business & Professions Code §§ 17200, et seq.; and (10) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Workweek Challenges. The number of Class Workweeks you worked during the Class Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until [date] to challenge the number of Workweeks. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as [caption of Action], and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [date], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least [insert] days before the [date] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website **[need details]** or the Court's website **[need details]**.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [date].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action [case caption] and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [date] at [time] in Department 43 of the Ventura Superior Court, located at 800 South Victoria Avenue, Ventura, California 93009. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. Please check the Court's website for information on attending remotely (see <https://www.ventura.courts.ca.gov/>).

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [www.etc.] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to [specify whose] website at [URL of website]. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://www.ventura.courts.ca.gov/CivilCaseSearch/>) and entering the Case Number for the Action, 56-2021-00559015-CU-OE-VTA. You can also make an appointment to personally review court documents in the Clerk's Office by calling 805-289-8525 (Main Number to Ventura Hall of Justice) and asking for the Clerk's Office.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Justin F. Marquez, Esq.
Christina M. Le, Esq.
Arsiné Grigoryan, Esq.
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Telephone: (213) 381-9988

Settlement Administrator:
IYLM Group, Inc.
[Email Address]
[Mailing Address]
[Telephone]
[Fax Number]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

Exhibit 2

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Flores v. Fence Factory

Requesting Attorney:	Justin Marquez
E-Mail:	Justin@wilshirelawfirm.com
ILYM Contact:	Sean Hartranft
E-Mail:	Sean@ilymgroupclassaction.com
Contact Number:	949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	200
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
Certified Spanish Translations	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

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

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	4	\$480.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	0	\$0.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Flat Rate	\$25.00	1	\$25.00
Toll-Free Customer Service	Flat Rate	\$50.00	1	\$50.00
Certified Spanish Translation	Flat Rate	\$1,250.00	1	\$1,250.00
ILYM Group Static Website, Includes Hosting	Flat Rate	\$750.00	1	\$750.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$2,765.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING

Fulfillment of Notice, English & Spanish	Per Piece	\$1.75	200	\$350.00
USPS First Class Postage	Per Piece	\$0.60	200	\$120.00
Re-Mails (Forward/Skiptrace Undeliverables)	Per Piece	\$2.00	40	\$80.00
Storage, Photocopies, Deliveries	Flat Fee	\$260.00	1	\$260.00

Subtotal \$810.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Check Stub & Release - Print & Mail (including W2/1099)	Per Check	\$1.50	200	\$300.00
Check Mailing Postage	Per Piece	\$0.60	200	\$120.00
Re-Mails (Forward/Skiptrace Undeliverables)	Per Piece	\$2.00	20	\$40.00
Preparation of Taxes (Single State Filing)	Hourly	\$120.00	12	\$1,440.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal \$4,225.00

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Processing Unclaimed Funds to State Contorller's Office	Flat Fee	\$750.00	1	\$750.00
Declarations	Hourly	\$125.00	2	\$250.00

Subtotal \$1,440.00

Total Case Estimate: \$9,890.00

Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PROOF OF SERVICE

Flores v. Fence Factory, et al.
56-2021-00559015-CU-OE-VTA

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Sandy Sespene, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is ssespene@wilshirelawfirm.com.

On **August 30, 2023**, I served the foregoing **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Vickie V. Grasu (SBN 224278)
vgrasu@ohaganmeyer.com
Armando Herrera
aherrera@ohaganmeyer.com
Angelina Allen-Rothwell
aallen-rothwell@ohaganmeyer.com
O'HAGAN MEYER LLP
21650 Oxnard Street, Suite 530
Woodland Hills, California 91367
Telephone: (213) 306-1610
Facsimile: (213) 306-1615

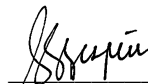
Attorneys for Defendants

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

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

Executed on August 30, 2023, at Los Angeles, California.



Sandy Sespene