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Attorneys for Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

NORBERTO BURCIAGA, on behalf of the
State of California and other aggrieved persons,

Plaintiff,

v.

ATI RESTORATION, LLC, a Limited Liability
Company; AMERICAN TECHNOLOGIES,
INC., a corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2021-00047609-CU-OE-CTL

PAGA REPRESENTATIVE ACTION

*[Assigned for all purposes to: Hon. Richard S.
Whitney, Dept. C-68]*

**JOINT STIPULATION REGARDING
APPROVAL OF SETTLEMENT UNDER
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT; [PROPOSED] ORDER**

*[Filed concurrently with: Declaration of Justin
F. Marquez in Support of Joint Stipulation
Regarding Approval of Settlement Under
California Private Attorneys General Act]*

Complaint filed: November 9, 2021
Trial date: Not set

1 **IT IS HEREBY STIPULATED AND AGREED BY THE BELOW PARTIES,**
2 **THROUGH THEIR RESPECTIVE COUNSEL OF RECORD, AS FOLLOWS:**

3 **WHEREAS**, on November 9, 2021, Plaintiff Norberto Burciaga (“Plaintiff”) filed a Private
4 Attorneys General Act (“PAGA”) action against Defendant ATI Restoration, LLC (“Defendant
5 ATI”) and Defendant American Technologies, Inc. (“Defendant American Tech.,” and together
6 with Plaintiff and Defendant ATI, the “Parties”) in the Superior Court of California, County of San
7 Diego (the “Action”). (Declaration of Justin F. Marquez [“Marquez Decl.”], ¶ 2);

8 **WHEREAS**, Defendants deny the aforementioned allegations;

9 **WHEREAS**, on September 8, 2022, the Parties reached a resolution through private
10 mediation with Kelly Knight, Esq. (Marquez Decl., ¶ 3);

11 **WHEREAS**, the Parties entered into a Memorandum of Understanding setting forth the
12 material terms of the Parties’ settlement on or around September 15, 2022. (Marquez Decl., ¶ 4);

13 **WHEREAS**, California Labor Code (“Cal. Lab. Code”) section 2699(1)(2) requires judicial
14 review and approval of any proposed settlement involving a PAGA claim. On April 24, 2023, the
15 Parties fully executed a long-form settlement agreement which includes an explanatory letter
16 which will be mailed out to the Aggrieved Employees¹ by the Settlement Administrator. (Marquez
17 Decl., ¶ 5, Ex. A [“Settlement” or “Settlement Agreement”]);²

18 **WHEREAS**, Plaintiff and Plaintiff’s counsel concluded, after taking into account the
19 sharply disputed factual and legal issues involved in the Action, the risks associated with further
20 prosecution, and the substantial benefits received and to be received pursuant to the Settlement,
21 that the Settlement is in the best interest of all interested parties and beneficiaries. (Marquez
22 Decl., ¶ 6);

23 **WHEREAS**, Plaintiff’s PAGA claim is based on Defendants’ failure to pay for all hours
24 worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to
25 authorize and permit rest periods, failure to pay all earned wages twice per month, failure to
26

27 ¹ The “Aggrieved Employees” consist of all persons within the State of California who are or were employed by
28 Defendant ATI in the State of California as hourly-paid or non-exempt during the PAGA Period.

² Plaintiff is also concurrently submitting the Settlement Agreement to the California Labor & Workforce
Development Agency (“LWDA”) in compliance with Cal. Lab. Code section 2699(1)(2).

maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify for necessary business expenditures. (Marquez Decl., ¶ 2.) Plaintiff and Plaintiff's counsel have balanced their evaluation of the validity and strength of these asserted allegations against the problems of proof, collectability, and the legal standards governing said allegations, and found significant risk in proceeding. Based on this evaluation, Plaintiff's counsel believes that the Settlement satisfies the public policies of PAGA and is fair to all parties and beneficiaries. (Marquez Decl., ¶ 7);

WHEREAS, similarly, Defendants and Defendants' counsel concluded there were benefits associated with settling. Although Defendants dispute the various allegations in the Action, Defendants took into account the risk attending further defense, the expense, time, and burden of protracted litigation, and the desire to put the controversy to rest, and based on these factors, Defendants and Defendants' counsel agreed to the Settlement without any admission of fault or liability;

WHEREAS, as part of the Settlement, Defendant ATI has agreed to pay a sum of \$460,000.00 (the "Gross Settlement Amount"), which includes payments to all Aggrieved Employees (25% of the Net Settlement Amount [as defined in Section I(9) of the Settlement Agreement and in accordance with Cal. Lab. Code section 2699(i)]), payment to the LWDA (75% of the Net Settlement Amount, in accordance with Cal. Lab. Code section 2699(i)), payment of Plaintiff's counsel's fees and costs, payment to Plaintiff for service as the PAGA representative and in exchange for executing a general release of claims, and payment to the Settlement Administrator for administration costs. (Marquez Decl., ¶ 8);

WHEREAS, the fee award requested here is \$153,333.33, representing one third (33.3333%) of the Gross Settlement Amount. The requested fee award is justified because Plaintiff's counsel achieved a significant monetary recovery for the Aggrieved Employees and the LWDA in an uncertain and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with market rates. Plaintiff's counsel expended significant time and resources in litigating this case, which resulted in a favorable

1 result for the LWDA, Plaintiff, and the Aggrieved Employees. Plaintiff's counsel elected to
2 bear the contingency risk of this litigation for the benefit of the Aggrieved Employees, as well
3 as for the State of California (who elected not to take the case after receiving the PAGA notice³).
4 (Marquez Decl., ¶ 9);

5 **WHEREAS**, Plaintiff's counsel has dedicated substantial resources to this litigation,
6 including approximately \$14,879.74 in costs as of June 14, 2023, without receiving any
7 compensation. All of Plaintiff's counsel's litigation costs are documented and reasonably
8 incurred. Additionally, Plaintiff anticipates incurring \$300.00 in anticipated future costs for
9 filing fees, messenger costs, and copying costs following the Court's Order regarding the
10 Parties' Joint Stipulation, and requests reimbursement of such as well. (Marquez Decl., ¶ 10,
11 Ex. C [Expense Summary]);

12 **WHEREAS**, Plaintiff requests an enhancement fee of \$10,000.00 for his service as the
13 PAGA representative and in exchange for executing a general release of all claims. The
14 requested enhancement fee is intended to recognize: (1) the substantial time and effort that
15 Plaintiff has expended on behalf of the State and Aggrieved Employees; (2) the risks faced by
16 Plaintiff as a result of bringing this Action; (3) the fact that Plaintiff put the interests of the State
17 of California and other Aggrieved Employees ahead of his own; and (4) the substantial benefit
18 conferred upon the State and the Aggrieved Employees as a result of Plaintiff's actions.
19 (Marquez Decl., ¶ 11);

20 **WHEREAS**, the Settlement Administrator's, ILYM Group, Inc., costs are estimated to
21 be \$9,795.00. (Marquez Decl., ¶ 12, Ex. D [Settlement Administrator Bid]);

22 **WHEREAS**, the Parties jointly stipulate and request that the Court approve the
23 Settlement Agreement in accordance with the terms outlined above.

24 ///

25 ///

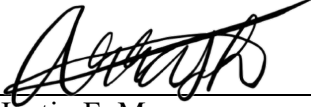
26 ///

27
28 ³ Plaintiff's PAGA notice is attached to the Declaration of Justin F. Marquez as Exhibit B.

1 Dated: June 14, 2023

Respectfully submitted,

2 **WILSHIRE LAW FIRM**

3
4 By: 

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

6 Attorneys for Plaintiff

7
8 Dated: June 9, 2023

FISHER & PHILLIPS LLP

9
10 By: */s/ Lauren Bushman*

Danielle Moore
Lauren Bushman

12 Attorneys for Defendants

[PROPOSED] ORDER

The Court, having reviewed the Parties' Joint Stipulation Regarding Approval of Settlement Under California Private Attorneys General Act, orders as follows:

1. Defendant ATI shall pay the Gross Settlement Amount of \$460,000.00 according to the terms of the Settlement;
2. The Net Settlement Amount means the Gross Settlement Amount minus the following: (a) \$153,333.33 allocated to Attorneys' Fees; (b) \$15,179.74 allocated to litigation costs; (c) \$9,795.00 allocated to the Settlement Administrator Costs; and (d) \$10,000.00 allocated to Plaintiff as a Service Award;
 - a. The Court approves payment to Plaintiff's counsel, Wilshire Law Firm, of Attorneys' Fees in the amount of \$153,333.33, to be paid from the Gross Settlement Amount;
 - b. The Court approves payment to Plaintiff's counsel, Wilshire Law Firm, of litigation costs in the amount of \$15,179.74, to be paid from the Gross Settlement Amount;
 - c. The Court approves payment to the Settlement Administrator, ILYM Group, Inc., for its reasonable costs and fees to administer the Settlement, in the amount of \$9,795.00, to be paid from the Gross Settlement Amount;
 - d. The Court approves \$10,000.00 to be paid to Plaintiff as a Service Payment for his efforts as a named plaintiff and representative for the Aggrieved Employees and the State of California, to be paid from the Gross Settlement Amount.
3. Of the Net Settlement Amount, 75% is allocated to the LWDA and 25% is allocated to the Aggrieved Employees;
4. The "PAGA Period" is defined as the period from September 1, 2020 to November 7, 2022;
5. The "Aggrieved Employees" consist of all persons within the State of California who are or were employed by Defendant ATI in the State of California as hourly-

1 paid or non-exempt employees during the PAGA Period;

2 6. "Effective Date" means the date upon entry of an Order by the Court approving this
3 Settlement;

4 7. The Court directs Defendant ATI to fully fund the Gross Settlement Amount by
5 transmitting the funds to the Settlement Administrator within 30 calendar days after
6 the Effective Date;

7 8. The Court directs the Parties and the Settlement Administrator to carry out the terms
8 of the Settlement;

9 9. Under California Code of Civil Procedure section 664.6, the Court retains
10 jurisdiction over the Parties to enforce the Settlement until performance in full of
11 the Settlement's terms;

12 10. Plaintiff's counsel shall submit a copy of this Order to the LWDA within seven (7)
13 days of the entry of the Order;

14 11. All claims asserted by Plaintiff, individually and in a representative capacity,
15 against Defendant ATI are hereby dismissed, with prejudice.

16 12. All claims asserted by Plaintiff, individually and in a representative capacity,
17 against Defendant American Tech. are hereby dismissed, without prejudice.

18 **IT IS SO ORDERED.**

19
20 Dated: _____, 2023

By: _____
Honorable Richard S. Whitney
Judge of the Superior Court

Burciaga v. ATI Restoration, LLC, et al.
37-2021-00047609-CU-OE-CTL

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Ashley Narinyans, 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 anarinyans@wilshirelawfirm.com.

On **June 14, 2023**, I served the foregoing **JOINT STIPULATION REGARDING APPROVAL OF SETTLEMENT UNDER CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT; [PROPOSED] ORDER**, 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:

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Facsimile: (858) 597-9601

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.

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

Executed this **June 14, 2023** at Los Angeles, California.

Ashley Narinyans
Type or Print Name


Signature