

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

5 Attorneys for Plaintiff TRAVIS BLAIR
6
7

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

11 TRAVIS BLAIR, individually and on behalf
of all other similarly situated employees,

12 Plaintiff,

13 vs.
14

15 CLARK WAGAMAN DESIGNS, a California
Corporation; and DOES 1 to 100, inclusive,

16 Defendants.
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19
20
21
22

Case No. 34-2021-00313156

CLASS ACTION

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

Date: January 13, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: December 22, 2021

FAC Filed: March 10, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on January 13, 2023, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 28 of the above-entitled Court, Plaintiff Travis Blair, individually
4 and on behalf of all other similarly situated individuals, hereby moves for entry of an Order for the
5 following:

- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff Travis Blair as class representative for purposes of settlement;
- 8 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed class action and Private Attorneys General Act settlement, in the
10 gross amount of \$220,000, which is incorporated herein by reference;
- 11 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
12 \$77,000;
- 13 6. Approving the application for payment to Class Counsel of reasonable costs in the amount of
14 \$6,104.53;
- 15 7. Approving the Class Representative Enhancement Payment of \$15,000 to Plaintiff Travis
16 Blair;
- 17 8. Approving the appointment of ILYM Group, Inc. as the Claims Administrator and for
18 payment to ILYM Group, Inc. for administering said class action settlement in the amount of
19 \$6,750.00;
- 20 9. Approving the settlement of claims under the Private Attorneys General Act for the total
21 amount of \$10,000, 75% of which will be paid to the Labor and Workforce Development
22 Agency and 25% of which will be paid to Aggrieved Employees;
- 23 10. Determining that the class notification procedure and process complied with Class Members'
24 due process rights;
- 25 11. Directing that any residue from settlement checks that were not cashed by the check cashing
26 deadline be donated equally, *i.e.*, 50/50, to Capital Pro Bono, Inc., and the Center for
27 Workers' Rights under the doctrine of *cy pres*; and
28

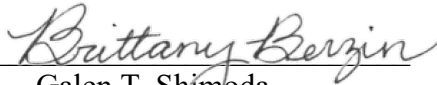
12. Approving and adopting the Proposed Order and its implementation schedule, which is filed herewith and incorporated by reference.

This Motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the preliminarily approved class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members and should be approved by the Court. This motion will be based on the notice of motion, memorandum of points and authorities, the Declaration of Brittany V. Berzin, the Declaration of Travis Blair, the Declaration of Krystal Quiroz, exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the hearing of this motion.

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

Dated: December 16, 2022

Shimoda & Rodriguez Law, PC

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

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

Attorneys for Plaintiff TRAVIS BLAIR

SUPERIOR COURT OF CALIFORNIA
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TRAVIS BLAIR, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

CLARK WAGAMAN DESIGNS, a California
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Defendants.

Case No. 34-2021-00313156

CLASS ACTION

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

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

2 This Motion is brought seeking final approval of a wage and hour class action settlement in the
3 gross amount of \$220,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and
4 PAGA Settlement and Release). Plaintiff Travis Blair (“Plaintiff”) brought this class action individually
5 and on behalf of other similarly situated employees employed by Defendant Clark Wagaman Designs
6 (“Defendant”). Plaintiff worked for Defendant in California from about July 7, 2020 to December 3,
7 2020 and then again from about May 17, 2021 to November 9, 2021, and was subject to all the same
8 policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B
9 (Plaintiff’s Operative Complaint); Declaration of Travis Blair (“Decl. Blair”) ¶ 2.

10 Plaintiff has alleged that Defendant failed to pay overtime wages, failed to provide meal periods
11 or pay premiums in lieu thereof, failed to provide rest periods or pay premiums in lieu thereof, failed to
12 provide accurate wage statements, failed to pay all final wages, failed to reimburse expenses, and
13 engaged in unfair competition. *See generally* Exhibit B. Plaintiff has also alleged Defendant is liable
14 for civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. *See*
15 *id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding
16 PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendants violated
17 California law 1) failing to pay the correct regular rates of pay by failing to account for the value of
18 non-discretionary bonuses being paid in the same workweek as overtime premiums and paid sick time;
19 2) failing to pay overtime wages to employees paid under a piece rate compensation system prior to
20 January 2020; 3) failing to authorize and permit all meal periods and keep track of whether employees
21 took meal periods; 4) failing to compensate for rest and recovery periods; and 5) failing to reimburse
22 employees for the use of personal items for work, such as personal cellphones and tools. *See* Exhibit B.
23 Plaintiff has contended that this is a meritorious class action lawsuit and that this case is appropriate for
24 class certification for settlement purposes as the requisites for class certification in this case can be
25 satisfied. *See* Exhibit B.

26 Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or
27 wrongdoing of any kind. *See* Declaration of Brittany V. Berzin (“Decl. Berzin”), ¶ 5. Defendant has
28 denied that this case is appropriate for class certification other than for purposes of settlement and that

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

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

22 II. PROCEDURAL AND LITIGATION HISTORY

23 Plaintiff filed a class action complaint on approximately December 22, 2021, in the Sacramento
24 County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the
25 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
26 2699.3(a), (c); Decl. Berzin, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
27 approximately March 10, 2022 to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
28 motion for certification or trial in this matter. *See* Decl. Berzin, ¶ 4.

1 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

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

15 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

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

17 The final settlement occurred only after extended, and sometimes contentious, arm's length
18 negotiations. Over the course of approximately five months, Plaintiff has been investigating the claims
19 and discussing with Defendant's counsel the merits of the claims and certification issues present in this
20 case. *See id.* at ¶¶ 6-11. The parties exchanged substantial amounts of information and legal analysis
21 regarding the asserted claims. *See id.* Then, only after nearly five months of litigation and negotiation,
22 which included a full day mediation with David L. Perrault, Esq., the parties were able to reach a
23 mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties
24 agreed to a Gross Settlement Amount of \$220,000. *See* Exhibit A.

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

26 Under the Agreement, Defendant and its owner Clark Wagaman have agreed to the following:

- 27 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶
28 1.2, 1.8):

1 Aggrieved Employees: all non-exempt, hourly employees who have, or
2 continue to, work for Defendant and its owner Clark Wagaman in
California from December 22, 2020 up to August 27, 2022.

3 Class Members: all non-exempt, hourly employees who have worked, or
4 continue to work, for Defendant and its owner Clark Wagaman in
California from December 22, 2017, up to August 27, 2022.

5 2. Pay the Gross Settlement Amount of \$220,000 to resolve and release the claims alleged
6 in the Complaint. *See id.* at ¶¶ 5.1, 5.2. No portion of the Gross Settlement Amount will revert to
7 Defendant or its owner. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the
8 PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at 7.5.1.

9 3. The parties agree that up to \$15,000 for Plaintiff Travis Blair will be paid as a Class
10 Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be
11 entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

12 4. The parties agree that the cost of administering this class action settlement shall be paid
13 from the settlement proceeds. Subject to Court approval, the parties have selected ILYM Group, Inc. to
14 act as the Claims Administrator, whose final costs are \$6,750. *See Decl. Quiroz*, ¶ 14. The difference
15 between the actual administration costs and the originally allocated \$10,000 under the Agreement, will
16 be added to the Net Settlement Amount and paid to Class Members on a pro rata basis. *See Exhibit A*,
17 ¶ 5.3.

18 5. The parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
19 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
20 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See id.* at ¶ 5.5.
21 Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts by
22 Defendant to maintain compliant policies and take corrective action, the presence of what may likely be
23 deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff believes
24 the \$10,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-
25 compliance given the facts of this case. *See Decl. Berzin*, ¶¶ 9-11; *see also Nordstrom Com. Cases*,
26 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on
27 their being disputed and being part of a class settlement which was evaluated based on the terms of the
28 agreement overall); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D.

Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

6. The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount (\$77,000) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the parties agree that Plaintiff will be entitled to the actual litigation costs in the amount of \$6,104.53. *See* Exhibit D (Plaintiff's Counsel's Itemized Costs). The difference between the actual costs and the originally allocated \$10,000 will be redistributed to Class Members on a pro rata basis. *See* Exhibit A, ¶ 5.2.

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

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

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

5 **c. Allocation of Settlement Funds**

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

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

20 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
21 Court, in its entirety, on September 1, 2022. To comply with the class members' due process rights, the
22 parties enlisted an exhaustive method to ensure the best practical means possible was used to provide
23 notice to the class. The parties provided the class action administrator the names, last known address,
24 and social security numbers for the class. The class action administrator then updated this information
25 by doing an address trace for each individual using this information. See Decl. Quiroz, ¶¶ 5-6. If the
26 Notice Packets were returned as undeliverable, further investigation was performed and they were re-
27 mailed using updated information. See *id.* at ¶ 8. Of the 93 Notice Packets mailed, only 2 were
28 undeliverable after use of these methods. See *id.* at ¶ 9. The Notice Packets included information

1 regarding the requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax
2 allocations. *See* Decl. Quiroz, Exh. A. The average distribution to participating class members is
3 approximately \$1,055.79, the maximum distribution is approximately \$5,909.74. *See id.* at ¶ 13. No
4 objections to the preliminarily approved settlement have been made and no Class Members opted out.
5 *See* Decl. Quiroz, ¶¶ 10-11.

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

22 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice
23 contains all information necessary for a Class Member to assess the litigation, the settlement, and
24 whether they wanted to participate, object, or opt-out. *See* Decl. Quiroz, Exh. A. The Claims
25 Administrator utilized a national change of address database, forwarding notices, and skip tracing in an
26 effort to ensure that all reasonable means were exhausted in attempting to provide Class Members
27 notice of this settlement. *See* Decl. Quiroz, ¶¶ 6-9. Additionally, the entire motion for preliminary
28 approval, the Notice, and all filings in this matter were available, free of charge, on a web page

accessible to all Class Members. *See id.* at ¶ 7. The content of the notice provided and the manner in which it was provided to Class Members was the best practicable notice to satisfy due process.

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

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

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

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

¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

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

the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed settlement is fair. "A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.* at 1802; *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (C.D. Cal. June 10, 2005) ("It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members").

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

Settlement in this case was reached only after litigation and extensive arm's length negotiations lasting nearly five months, which included a full day mediation with David L. Perrault, Esq. *See Decl. Berzin*, ¶¶ 6-11. At all times, the negotiations were adversarial and contentious, although still professional in nature. *See id.* Further, while Plaintiff contends he would ultimately prevail on the claims and the issue of certification, this is not a certainty and there is substantial risk in proceeding to further litigation. *See id.* The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this settlement. *See id.*

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

The parties were in possession of all necessary information during the negotiations. The parties engaged in substantial informal discovery and exchange of documents, including a representative

sampling of employee data, such as timecard data, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the class claims and helped thoroughly vet the extent of Plaintiff's claims against Defendant and create an accurate damages model. *See id.* at ¶ 6-11. Plaintiff was in possession of this information prior to calculating the potential damages in this case. *See id.* As a result, Plaintiff was able to make a reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the settlement now before the Court was reached at a stage where "the parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

iii. Plaintiff's Counsel are Experienced in Similar Litigation

Plaintiff's counsel has considerable experience in class and PAGA actions and wage and hour litigation. Plaintiff's counsel has brought and are currently bringing several wage and hour class and/or PAGA actions. Thus, Plaintiff's counsel are qualified to evaluate the class claims, value of settlement versus moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl. Berzin*, ¶¶ 12-21. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to the class. *See id.* at ¶¶ 6, 9-11.

iv. No Class Members Objected or Opted Out

The reaction by Class Members to the Agreement and all the terms and allocations stated therein is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement and zero have opted out. *See Decl. Quiroz*, ¶¶ 10-11. This provides strong evidence that the settlement is fair, reasonable, and adequate. *In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 ("It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members"); *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("That unanimous, positive reaction to the Proposed Settlement is compelling evidence that the Proposed Settlement is fair, just, reasonable, and adequate").

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

A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on the records and facts of this case, Plaintiff has secured a gross recovery of approximately 10% and a net recovery of approximately 4.7% of the claims' maximum likely value. *See id.* at ¶¶ 9-11. Additionally, the average net award per class member is approximately \$1,055.79 and the highest recovery is approximately \$5,909.74. *See* Decl. Quiroz, ¶ 13. This settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total available damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorney's fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected maximum damages available and a net recovery of approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum recovery); *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class Members will receive an average of approximately \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the results achieved in this case were very favorable. Class members are provided with immediate monetary relief, with an average award of around several hundred dollars and a minimum award of \$50").

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

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

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

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

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

4 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
5 defined community of interest in the questions of law and fact involved affecting the parties to be
6 represented.” *Dunk*, 48 Cal.App.4th at 1806. The “community of interest” element “embodies three
7 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
8 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
9 Here, the Court conditionally certified the settlement class on September 1, 2022, and nothing has
10 happened in the interim that would warrant changing that decision. *See Garcia v. City of King City*,
11 2017 WL 363257, *4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, *4
12 (N.D. Cal. 2017). Here, the parties agree that, for the purposes of settlement, these prerequisites are
13 met. *See* Exhibit A.

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

15 The proposed settlement class is ascertainable because all putative class members can be readily
16 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th
17 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
18 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 93 individuals
19 who fall within the definition of Class Member, which makes joinder of all members impracticable.
20 *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531
21 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to
22 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
23 these requirements are satisfied.

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

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

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

7 The common questions of law and fact in this case stem from Plaintiff's contention that
8 Defendant 1) failing to pay the correct regular rates of pay by failing to account for the value of non-
9 discretionary bonuses being paid in the same workweek as overtime premiums and paid sick time; 2)
10 failing to pay overtime wages to employees paid under a piece rate compensation system prior to
11 January 2020; 3) failing to authorize and permit all meal periods and keep track of whether employees
12 took meal periods; 4) failing to compensate for rest and recovery periods; and 5) failing to reimburse
13 employees for the use of personal items for work, such as personal cellphones and tools. *See Exhibit B.*
14 The waiting time penalties, unfair competition, and PAGA claims are derivative of these violations.
15 *See id.* Plaintiff and the Class Members seek the same remedies under state law. Under these specific
16 circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality
17 requirement, Plaintiff contends he suffered from the same unlawful policies, treatment, and
18 circumstances as Class Members did, will request the same remedies, and will rely on the same
19 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
20 satisfied for settlement purposes.

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

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

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 number of workweeks they worked for Defendants. *See* Exhibit A. Finally, any settlement class
2 member who wished to opt-out of the settlement was able to do so, and he or she was also able to
3 dispute the number of workweeks stated in the Notice of Settlement.

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

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

15 The Notice of Settlement sent to Class Members specifically identified the allocations for
16 attorney's fees and costs, the Class Representative Enhancement Payment, and Claims Administrator
17 Costs. *See* Decl. Quiroz, Exh. A. The reaction of Class Members to these requested amounts provides
18 useful evidence of whether they are reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403,
19 *21 ("The absence of objections or disapproval by class members to Class Counsel's fee request further
20 supports finding the fee request reasonable"). As noted above, there were no objections raised to the
21 Agreement or any term or allocation therein whatsoever. *See* Decl. Quiroz, ¶¶ 10-11. In addition to
22 Class Members' reactions supporting the requested amount, the facts and applicable case law also
23 support awarding these amounts in full.

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

awards in common fund cases, it did not adopt such a benchmark for California cases”). Instead, “[t]he benchmark in determining attorney fees is reasonableness.” *Karton v. Ari Design & Constr., Inc.*, 61 Cal.App.5th 734, 744 (2021).

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

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

To the extent there may be some Courts that have granted fees at a percentage less than 35%, that does not justify an arbitrary cap on Class Counsel’s fees in this case. First, in many instances, the treatises or cases discussing these percentages are relying on federal decisions guided by a “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See Emmons*, 2017 WL 749018, at *7. This artificially lowers the average percentage of fees awarded. Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement

1 fund to begin with, which will generally correspond to a lower percentage of fees being deemed
2 reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an
3 appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of
4 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on
5 any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as
6 the lodestar method is a tool to cross check the reasonableness of the requested percentage. *See Kartan*,
7 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot rationally apply any particular
8 percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference
9 to all the circumstances of the case”).

10 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the
11 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of
12 attorney’s fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at
13 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind
14 normally billed to a fee-paying client). To date, Class Counsel has spent approximately 220.3 hours
15 performing tasks that would normally be billed to any fee playing client in complex litigation and
16 estimate that this number will increase to approximately 230.3 after monitoring the disbursement of all
17 funds and compliance hearing(s). *See Decl. Berzin*, ¶ 23; Exhibit F; *Syers Props. III, Inc. v. Rankin*,
18 226 Cal.App.4th 691, 699 (2014) (“Because time records are not required under California law ... ,
19 there is no required level of detail that counsel must achieve.”) (internal quotations omitted).

20 At the prevailing market rates for Class Counsel’s level of experience and this type of complex
21 litigation, this equates to a lodestar of approximately \$123,417.50. *See Decl. Berzin*, ¶¶ 23-24; Exhibit
22 G; Exhibit H; *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates
23 were reasonable where they were “within the range of reasonable rates charged by and judicially
24 awarded comparable attorneys for comparable work”).

25 The reasonableness of Class Counsel’s fee request is also demonstrated by the fact that the
26 amount requested would not require any multiplier of the lodestar. Multipliers are typically awarded in
27 contingent fee litigation to compensate counsel for the risk of non-payment:
28

1 It is an established practice in the private legal market to reward attorneys
2 for taking the risk of non-payment by paying them a premium over their
3 normal hourly rates for winning contingency cases. *See Richard Posner,*
4 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent
fees that may far exceed the market value of the services if rendered on a
non-contingent basis are accepted in the legal profession as a legitimate
way of assuring competent representation for Plaintiff who could not
afford to pay on an hourly basis regardless whether they win or lose.

5 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th
6 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their
7 winning the case, must make up in compensation in the cases they win for the lack of compensation in
8 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the
9 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive
10 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither
11 unexpected nor fortuitous”); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or
12 even higher”). Yet, Class Counsel’s requested fee of \$77,000.00 would actually result in a negative
13 multiplier. As a result, a lodestar cross check validates the common fund percentage requested and the
14 Court should grant Plaintiffs’ Counsel’s fee request. *See Decl. Berzin*, ¶¶ 22-24.

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

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

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

27 A service payment to a named plaintiff is intended to recognize their time and effort on behalf
28 of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the

1 services they provide and the risks they incurred during the course of the class action litigation. *See*
2 *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved
3 incentive awards of \$300,000.00 to each named Plaintiff in recognition of the services they provided to
4 the class by responding to discovery, participating in the mediation process, and taking the risk of
5 stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*,
6 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone*
7 *Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010) (approving \$10,000 awards to each of the
8 four (4) named plaintiffs); *See* Exhibit G (awarding class representative service fee enhancements
9 ranging from \$20,000 to \$10,000); Exhibit H (awarding class representative enhancement payments of
10 \$15,000).

11 In this case Plaintiff provided substantial support in helping to secure payment to Class
12 Members. Plaintiff provided and explained a substantial number of documents critical to helping
13 establish important facts central to this case and participated in substantial amount of informal
14 discovery. *See* Decl. Blair, ¶¶ 5-7. Plaintiff is also subject to a much broader release of claims than
15 Class Members, including a Civil Code section 1542 release. *See* Decl. Blair, ¶ 8. Payment of
16 \$15,000.00 to Plaintiff is appropriate given the risk, assistance, time required, and burden experienced
17 in bringing and resolving this case, especially since this amount was identified in the Notice of
18 Settlement and no objections to it have been received. *See West v. Circle K Stores, Inc.*, 2006 U.S.
19 Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative
20 enhancement where 10,000 class members were to receive a gross award of approximately \$500 each
21 from the \$5,000,000 settlement); *Dent v. ITC Serv. Croup*, 2013 U.S. Dist. LEXIS 139359, at *9-*10,
22 *15-*16 (D. Nev. 2013) (awarding a \$15,000 representative enhancement out of a \$150,000 settlement
23 for approximately 530 class members).

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

25 Since being preliminarily approved as the Claims Administrator, ILYM Group, Inc., has carried
26 out its duties as set forth in the Court's order and the Agreement. *See generally See* Decl. Quiroz.
27 Under the Agreement, a maximum of \$10,000 was set aside for potential Claims Administrator Costs.
28 ILYM Group, Inc.'s final costs are \$6,750, well under the potential maximum Class Members were

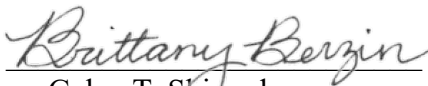
1 given notice of. Plaintiff requests that the Court approve payment to the Claims Administrator in the
2 amount of \$6,750.00 to compensate it for the costs of administration as part of the final order approving
3 the Settlement.

4 **VIII. CONCLUSION**

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

11
12 Dated: December 16, 2022

Shimoda & Rodriguez Law, PC

13
14
15 By: 
16 Galen T. Shimoda
17 Justin P. Rodriguez
18 Brittany V. Berzin
19 Attorneys for Plaintiff
20
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24
25
26
27
28

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

5 Attorneys for Plaintiff TRAVIS BLAIR
6
7

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

11 TRAVIS BLAIR, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 CLARK WAGAMAN DESIGNS, a California
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.
18
19
20
21
22

Case No. 34-2021-00313156

CLASS ACTION

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

Date: January 13, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: December 22, 2021

FAC Filed: March 10, 2022

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission to LWDA
F	Summary of Plaintiff's Counsel's Hours
G	Sacramento County Superior Court May 2016 Minute Order
H	Strawn, et. al. v. Bridgestone Retail Operations, LLC, Final Approval Order

Dated: December 16, 2022

Shimoda & Rodriguez Law, PC

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

EXHIBIT A

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

Attorneys for Plaintiff TRAVIS BLAIR

Laura C. McHugh - SBN 180930
Ryan LaRocca – SBN 343635
DUGGAN MCHUGH LAW CORPORATION
641 Fulton Avenue, Suite 100
Sacramento, CA 95825
Telephone: 916.550.5309
Facsimile: 916.404.5900

Attorneys for Defendant CLARK WAGAMAN DESIGNS

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

TRAVIS BLAIR, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

CLARK WAGAMAN DESIGNS, a California
Corporation; and DOES 1 to 100, inclusive,
Defendants.

Case No.: 34-2021-00313156

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

Filed: December 22, 2021

FAC Filed: March 10, 2022

Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Travis Blair (“Plaintiff”), on behalf of himself, the Labor and Workforce
3 Development Agency, Class Members, and Aggrieved Employees, and Defendants Clark Wagaman
4 Designs and Clark Wagaman, individually, (“Defendants”). This Agreement is subject to the terms and
5 conditions set forth below and the approval of the Court.

6 **1. DEFINITIONS**

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

8 1.1 “Action” means the above stated lawsuit, *Blair v. Clark Wagaman Designs*, Sacramento
9 County Superior Court, Case No. 34-2021-00313156, filed December 22, 2021.

10 1.2 “Aggrieved Employee(s)” means all non-exempt, hourly employees who have, or continue
11 to, work for Defendants in California during the PAGA Claim Period.

12 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
13 Regarding Class Action and PAGA Settlement and Release.

14 1.4 “Claim Amount” means an individual Qualified Claimant’s and Aggrieved Employee’s
15 allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21,
16 1.25, 5.5, and 5.8.

17 1.5 “Claims Administrator” means and refers to ILYM Group, Inc., the third-party entity that
18 will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action
19 settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of
20 administering this Agreement. The Parties each represent that they do not have any financial interest in
21 the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create
22 a conflict of interest.

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

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

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

1.8 "Class Member(s)" means all non-exempt, hourly employees who have worked, or continue to work, for Defendants in California during the Class Period. The estimated number of Class Members is 86.

1.9 "Class Period" means from December 22, 2017, up to the Preliminary Approval Date or August 27, 2022, whichever is earlier.

1.10 "Class Representative" means Plaintiff Travis Blair.

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

1.12 "Court" means the Sacramento County Superior Court.

1.13 "Defendants" means Clark Wagaman Designs and Clark Wagaman, individually.

1.14 "Defendants' Counsel" means Duggan McHugh Law Corporation.

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

1.16 "Effective Date" means (a) the 60th calendar day after a signed order granting final approval of this settlement has been filed provided no appellate proceeding having been filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been finally

1 dismissed with no material change to the terms of this settlement and there is no right to pursue further
2 remedies or relief, whichever is later.

3 1.17 “Final Approval Date” means the date a signed order granting final approval of this
4 Agreement is filed with the Court.

5 1.18 “Gross Settlement Amount” is the sum of Two Hundred Twenty Thousand Dollars
6 (\$220,000).

7 1.19 “LWDA” means the California Labor and Workforce Development Agency.

8 1.20 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
9 distribution to Qualified Claimants, as described in this Agreement, after deduction of Class Counsel’s
10 attorneys’ fees and litigation costs, employer taxes, Claims Administrator Costs, the PAGA Payment, and
11 Enhancement Payment to the Class Representative.

12 1.21 “Notice of Settlement” means the document substantially in the form attached hereto as
13 Exhibit 1.

14 1.22 “Notice Period” means forty-five (45) calendar days from the initial mailing of the Notice
15 of Settlement to Class Members and Aggrieved Employees.

16 1.23 “PAGA” means Private Attorneys General Act.

17 1.24 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
18 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

19 1.25 “PAGA Claim Period” means December 22, 2020 up to the Preliminary Approval Date or
20 August 27, 2022, whichever is earlier.

21 1.26 “Parties” mean Defendants and Plaintiff.

22 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
23 of this Agreement is filed with the Court.

24 1.28 “QSF” means a Qualified Settlement Fund set up by the Claims Administrator for the
25 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this
26 Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain
27 the property of Defendants until the payments required under the Agreement are made.

28 //

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

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

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

1.32 “Released PAGA Claims” means any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the operative Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

1.33 “Released Parties” means Defendants, as well as Defendants’ past and present owners, parents, affiliated or related companies, officers, shareholders, directors, agents, employees, attorneys, insurers, successors and assigns, and any individual that could have been jointly or severally liable with Defendants.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about December 22, 2021, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime wages, failure to provide meal periods

1 or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof, failure to
2 provide accurate wage statements, failure to pay final wages, failure to pay reimbursements for expenses,
3 failure to maintain accurate records, failure to provide paid sick leave, and violation of Labor Code section
4 558 and 558.1. The LWDA did not respond to the notice within the statutorily required time frame and,
5 as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

6 2.2 On or about December 22, 2021, Plaintiff filed a class action Complaint in Sacramento
7 County Superior Court on behalf of himself and Class Members alleging claims for failure to pay overtime
8 wages, meal period violations, rest period violations, wage statement violations, waiting time penalties,
9 failure to reimburse expenses, and unfair competition. Plaintiff filed a First Amended Complaint on
10 approximately March 10, 2022 to add a PAGA cause of action based on the violations alleged in the
11 December 22, 2021 notice to the LWDA on behalf of himself and Aggrieved Employees.

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

17 2.4 On May 18, 2022, the Parties participated in a lengthy mediation with private mediator
18 David L. Perrault, Esq. Approximately two weeks later, the Parties were able to come to a resolution after
19 a mediator's proposal. At all times, the Parties' settlement negotiations have been non-collusive,
20 adversarial, and at arm's length.

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

25 2.6 In the Action, Plaintiff contends that Defendants violated California law by 1) failing to
26 pay the correct regular rates of pay by failing to account for the value of non-discretionary bonuses being
27 paid in the same workweek as overtime premiums and paid sick time; 2) failing to pay overtime wages to
28 employees paid under a piece rate compensation system prior to January 2020; 3) failing to authorize and

1 permit all meal periods and keep track of whether employees took meal periods; 4) failing to compensate
2 for rest and recovery periods; and 5) failing to reimburse employees for the use of personal items for work,
3 such as personal cellphones and tools. Defendants have denied each of Plaintiff's claims and Defendants
4 have denied that this Action is appropriate for class certification for anything other than settlement
5 purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories
6 of potential exposure for the underlying claims and the class data supporting these claims. The Parties,
7 with the assistance of the mediator, also assessed appropriate discounts to the potential liability based on
8 Defendants' factual and legal contentions and defenses.

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

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

20 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
21 of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
22 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
23 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
24 conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the
25 Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement
26 shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or
27 utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain
28

subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

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

4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

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

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

1 more than two business days) transmit the data requests to Defendants' Counsel and request that
2 Defendants review their records.

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

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

20 **5. TERMS OF THE SETTLEMENT**

21 The Parties agree as follows:

22 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
23 Section 6, Defendants shall pay the Gross Settlement Amount (\$220,000). Funding of the Gross
24 Settlement Amount will be completed in (3) installment payments. The first installment in the amount of
25 \$75,000 shall be paid within 30 days after the Preliminary Approval Date to be held in trust in a QSF by
26 the Claims Administrator. The second installment in the amount of \$75,000 shall be paid within 30 days
27 after the Final Approval Date, but no earlier than 90 days after the first payment, to be held in trust in a
28 QSF by the Claims Administrator. The third installment of \$70,000 shall be paid within 90 calendar days

1 following the second installment payment, to be held in trust in a QSF by the Claims Administrator. The
2 Gross Settlement Amount includes payments to Qualified Claimants, payments to Aggrieved Employees,
3 all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such
4 fees and costs incurred in documenting the Agreement, administering the Agreement (including Claims
5 Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the
6 Class Representative, any monies necessary to satisfy Defendants' tax obligations (*e.g.* employer FICA,
7 FUTA and SDI contributions on wage payments) on any monies distributed to Qualified Claimants, and
8 the PAGA Payment.

9 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of
10 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants
11 have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the
12 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not
13 to exceed \$10,000, which shall be paid from the Gross Settlement Amount. Defendants have agreed to
14 not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they
15 do not exceed the \$10,000 threshold. The Claims Administrator will issue Class Counsel an IRS Form
16 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less
17 than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
18 Counsel shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro
19 rata basis.

20 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
21 Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
22 allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Qualified Claimants
23 on a pro rata basis.

24 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
25 an Enhancement Payment to the Class Representative in an amount not to exceed Fifteen Thousand
26 Dollars (\$15,000) to compensate for the risks, time, and expense of his involvement in the Action and
27 securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to
28 the Claim Amount Plaintiff would otherwise be due under the Agreement as a Qualified Claimant.

Defendants have agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the Class Representative shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

5.5 PAGA Payment: Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

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

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

1 5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved
2 Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement
3 Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved
4 attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims
5 Administrator Costs, employer taxes, and the PAGA Payment. Each Class Member's share will be
6 determined by dividing their total Qualifying Workweeks within the Class Period by the total Qualifying
7 Workweeks by all Class Members. That fraction will then be multiplied by the Net Settlement Amount
8 to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved
9 Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total
10 Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all
11 Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25%
12 portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

13 5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified
14 Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages.
15 The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to
16 Qualified Claimants as wages as well as calculating all required withholdings and deductions from said
17 wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved
18 Employees are as follows:

19 5.9.1 One third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for
20 payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall
21 receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

22 5.9.2 Two thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated for
23 disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of
24 the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive
25 an IRS Form 1099-MISC.

26 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
27 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
28

1 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the
2 Aggrieved Employees shall receive an IRS Form 1099-MISC.

3 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting
4 and payment of their share of any federal, state and/or municipal income or other taxes on payments made
5 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants' Counsel free and
6 harmless from any claims resulting from treatment of such payments as non-taxable, including the
7 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.
8 No party has made any representation to any of the other Parties as to the taxability of any payments
9 pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved
10 Employees, the payments to Class Counsel, the payments to the Class Representative, the payroll tax
11 liability of Defendants, or the allocation of the Net Settlement Amount or PAGA Payment to wage and
12 non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this
13 Agreement.

14 5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this
15 Agreement is limited to the Gross Settlement Amount. All other costs and expenses arising out of or in
16 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount,
17 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and
18 void as described in Section 3 because the Court, in its independent determination, finds that the
19 Agreement does not meet the standards for settlement approval, then Defendants and Plaintiff shall be
20 equally responsible for the costs of the Claims Administrator incurred between the date the Agreement
21 was executed and the date of such event.

22 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
23 only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for
24 establishing class certification have been met and are met.

25 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
26 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
27 Aggrieved Employees.

28 //

1 **6. RELEASE**

2 6.1 Release of Claims by Plaintiff and Qualified Claimants: Upon the Effective Date, Plaintiff
3 and all Qualified Claimants will be deemed to fully, finally and forever release Qualified Claimant's
4 Released Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and all Qualified
5 Claimants and their successors in interest will be permanently enjoined and forever barred from
6 prosecuting any of Qualified Claimant's Released Claims against any of the Released Parties.

7 6.2 Release of Claims by Plaintiff and Aggrieved Employees: Upon the Effective Date,
8 Plaintiff and all Aggrieved Employees will be deemed to fully, finally and forever release the Released
9 PAGA Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and all Aggrieved
10 Employees and their successors in interest will be permanently enjoined and forever barred from
11 prosecuting any of the Released PAGA Claims against any of the Released Parties.

12 6.3 General Release and 1542 Waiver of Plaintiff Travis Blair, Individually:

13 Upon the date the Court enters an order granting final approval of the settlement and Defendant
14 fully funds the Gross Settlement Amount, in addition to the claims being released by all Class Members
15 and Aggrieved Employees, Plaintiff Travis Blair, individually, will provide the following additional
16 general release ("General Release"): Plaintiff Travis Blair fully and finally releases the Released Parties
17 claims, grievances, rights, demands, debts, damages, actions, obligations, liabilities, and causes of action
18 of any and every kind, nature, and character whatsoever, known or unknown, which Plaintiff Travis Blair
19 may now have or has ever had against the Released Parties, related in any way to the transactions,
20 occurrences, acts, or omissions occurring prior to the execution of this Agreement, or arising from or in
21 any way related to Plaintiff Travis Blair's employment with the Defendants and separation therefrom.
22 This release is intended to be interpreted broadly to apply to all transactions and occurrences between
23 Plaintiff Travis Blair and any other Released Party related to Plaintiff Travis Blair's employment,
24 including the employment conditions with the Defendants' compensation, commissions, work scheduling,
25 any meal, rest break, or overtime violations, and all other losses, liabilities, claims, charges, demands and
26 causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in
27 any way connected with Plaintiff Travis Blair employment with the Defendants, or arising from or in any
28 way related to Plaintiff Travis Blair separation therefrom, including, without limitation, any claim based

1 in tort, contract, common law, claims pursuant to the state or federal Constitutions, or claims pursuant to
2 state or federal statutes (including, without limitation, the California Fair Employment and Housing Act,
3 the California Civil Code, the California Government Code, California Labor Code (including but not
4 limited to failure to furnish compliant wage statements, misclassification, failure to timely pay wages,
5 failure to pay earned wages or minimum wage, meal and rest period violations, overtime violations, and
6 waiting time penalties), Labor Code section 132a, the Americans with Disabilities Act, and Title VII of
7 the Civil Rights Act of 1964), the Age Discrimination in Employment Act, the California Family Rights
8 Act of 1991, the Federal Family and Medical Leave Act, the National Labor Relations Act, Title VII of
9 the Civil Rights Act of 1964, as amended any claim filed with any administrative agency (including,
10 without limitation, the Labor Commissioner), Unfair Competition, any and all state and federal wage and
11 hour claims, as well as all claims for physical injuries, illness or damage, and all claims for attorneys'
12 fees, costs and expenses, as well as all claims, grievances, claims and/or appeals under Employers' internal
13 administrative review procedures, but excluding any claims that cannot lawfully be waived or released by
14 private agreement.

15 This General Release includes any unknown claims Plaintiff Travis Blair does not know or suspect
16 to exist in his favor at the time of this General Release, which, if known by him, might have affected his
17 settlement with, and release of, the Released Parties or might have affected his decision not to object to
18 this Settlement or this Release. To the extent the foregoing releases are releases to which Section 1542 of
19 the California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly
20 waives any and all rights and benefits conferred upon them by the provisions of Section 1542 of the
21 California Civil Code or similar provisions of applicable law which are as follows:

22 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR**
23 **RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
24 **FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY**
25 **HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
26 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**
27
28

1 The significance of this release and waiver of Civil Code Section 1542 has been explained to
2 Plaintiff Travis Blair by his counsel.

3 **7. SETTLEMENT ADMINISTRATION**

4 7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1)
5 receiving Class Member and Aggrieved Employee contact information and confirming addresses are
6 valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts,
7 including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members
8 and Aggrieved Employee whose address or contact information as provided to the Claims Administrator
9 is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification
10 to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving,
11 independently reviewing, and resolving any challenges (in consultation with Class Counsel and
12 Defendants' Counsel) from Class Members or Aggrieved Employees, including any associated
13 documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class
14 Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out
15 statements; 7) establishing a toll free telephone line and responding to inquiries and requests for
16 information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
17 determining and paying the final amounts due to be paid under the Agreement after resolution of all
18 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA
19 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
20 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late
21 opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual
22 funds from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the
23 statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the
24 number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the
25 number of total undeliverable Notice of Settlements; (e) the number of address traces performed for
26 undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced
27 addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the
28 number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court

1 regarding the final statistics of the administration and compliance with all payment obligations under the
2 Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to
3 Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to
4 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims
5 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which
6 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and
7 obligations contemplated by the Agreement have been fully executed.

8 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will
9 provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the
10 Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the
11 individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement
12 will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net
13 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,
14 proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the
15 class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class
16 Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
17 regarding Class Member's and Aggrieved Employee's estimated Claim Amount. The Notice of
18 Settlement will provide information on how to access electronic copies online of the Notice of Settlement,
19 any motions for approval of the Agreement, any motions for approval of attorneys' fees and costs, and
20 any other documents as the Court directs.

21 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
22 Preliminary Approval Date, Defendants shall provide the Claims Administrator with the name, last known
23 mailing address, last known telephone number, Social Security Number, start and end date of employment
24 (if any) of each Class Member and Aggrieved Employee, and any other information the Claims
25 Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined herein.
26 The Claims Administrator shall review the data to determine the number of Qualifying Workweeks for
27 each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days after receipt of
28 such address information, the Claims Administrator will perform a national change of address ("NCOA")

1 search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement,
2 substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved Employee by first-
3 class mail, postage prepaid. The Claims Administrator shall maintain all information received from
4 Defendants confidential to itself, and Defendants' Counsel. However, Class Counsel shall be able to
5 review the breakdown of Qualified Workweeks and estimated Claim Amounts for Class Members and
6 Aggrieved Employees prior to mailing for quality assurance provided the personal identifying information
7 is redacted and/or omitted.

8 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
9 is returned to the Claims Administrator as undeliverable on or before the conclusion of the Notice Period,
10 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar
11 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to
12 determine a correct address using a skip-trace, computer or other search using the name, address and/or
13 Social Security number of the individual involved, and shall then perform a single re-mailing within five
14 (5) calendar days to any more recent address found as a result of the search. Following each search that
15 does not result in a corrected address, for those Class Members who appear to be current employees of
16 Defendants at the time of the Preliminary Approval Date, the Claims Administrator shall contact
17 Defendants' Counsel for assistance and Defendants shall cooperate in good faith with the Claims
18 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
19 are active employees of Defendants. In the event the Notice of Settlement is forwarded to a new address
20 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
21 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
22 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
23 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
24 be bound by all terms of the Agreement, including the releases contained in Section 6.

25 7.5 Responses to Notice of Settlement:

26 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish
27 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.
28 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that

he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (i.e. Blair v. Clark Wagaman Designs, 34-2021-00313156); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final judgment thereon, regardless of whether they otherwise have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member.

7.5.2 Objection Procedures: Any Class Member who does not opt-out but who wishes to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written objections to the Claims Administrator and also serve copies of the objections on Class Counsel and Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. Blair v. Clark Wagaman Designs, 34-2021-00313156) (e) be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the Court and serve the notice on Class Counsel and Defendants' Counsel, if they intend to appear at the final approval hearing.

7.5.3 Dispute Procedures: Any Class Member who disputes the number of Qualifying Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)

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

15 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
16 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator
17 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If
18 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency
19 shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever
20 is later.

21 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
22 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
23 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
24 Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

25 7.7 Claims Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar
26 days after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and
27 Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed
28

report regarding the statistics and responses of settlement administration to date and all the Claims Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff:

Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel. Defendants shall wire the Gross Settlement Amount to fund the Settlement as described in Section 5.1. Within seven (7) calendar days after Defendants fully fund the settlement, the Claims Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Claims Administrator Costs, and payment to Qualified Claimants and/or Aggrieved Employees as required under this Agreement and approved by Court.

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

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

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

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

7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred twenty (120) calendar days of issuance. After one hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

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

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

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

Last day for Defendants to provide Claims Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants

Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
Last day for Defendants to fund settlement	As described in Section 5.1
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after Defendants fully fund the settlement
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class

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

14 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
15 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
16 Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily
17 appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving
18 settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving
19 the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment
20 of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
21 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
22 approved as fair, reasonable and adequate as to the Class Members.

23 9.1.2 Defendants shall not oppose Plaintiff's motion for approval of the proposed
24 Agreement.

25 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during
26 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
27 appropriate to assure effective communication to individual Class Members of information about their
28 rights and obligations under this Agreement.

1 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
2 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
3 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
4 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice
5 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of
6 the Claim Administrator's mailings including tracing and re-mailing efforts.

7 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which
8 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,
9 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the
10 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
11 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)
12 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
13 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

14 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
15 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
16 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
17 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
18 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and
19 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and
20 assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each
21 other and assist the Claims Administrator as needed or requested in completing the distribution of any
22 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with
23 the Claims Administrator, will certify to the Court completion of all payments required to be made by this
24 Agreement.

25 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
26 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
27 and PAGA Settlement and Final Judgment.
28

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

3 **10. MISCELLANEOUS TERMS**

4 10.1 Defendants’ Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
5 15% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
6 with the provisions of the Agreement, Defendants may rescind the Agreement and all actions taken in its
7 furtherance will be thereby null and void. Defendants must exercise this right of rescission, in writing, to
8 Class Counsel, within seven (7) calendar days after the Claims Administrator notifies the Parties of the
9 total number of opt-outs. If the option to rescind is exercised, then any Claims Administrator Costs shall
10 be paid by Defendants. Defendants have represented that there are no more than 4,305 workweeks
11 during the Class Period. In the event the number of workweeks during the Class Period is more than
12 5,166 (*i.e.*, greater than 20% more than 4,305), then the Gross Settlement Amount shall be increased
13 proportionally by the workweeks in excess of 4,305, multiplied by the pay period value. For example,
14 if there were 11,900 workweeks represented to exist during the Class Period, but there are actually
15 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per workweek,
16 Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 workweeks –
17 11,900 workweeks = 3,100 workweeks x \$5.00/workweek).

18 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
19 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
20 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
21 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
22 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
23 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
24 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
25 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
26 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
27 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
28 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS

1 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
2 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
3 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
4 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
5 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
6 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
7 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
8 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
9 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
10 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
11 BY THIS AGREEMENT.

12 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
13 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
14 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
15 and discharged in this Agreement.

16 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
17 signing this Agreement Defendants are waiving any rights to appeal from the Court's approval of the
18 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
19 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

20 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
21 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
22 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

23 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment
24 will be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
25 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
26 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of
27 the Agreement after default by the other party may recover reasonable attorney's fees and costs related
28 thereto.

1 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
2 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
3 execution of such other documents and the taking of such other action as may reasonably be necessary to
4 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
5 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
6 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

7 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
8 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
9 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
10 Complaint, the representative character of the Action, the validity of any of the claims that were or could
11 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
12 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
13 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,
14 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or
15 wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered
16 into this Stipulation with the intention to avoid further disputes and litigation.

17 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
18 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
19 the third business day after mailing by United States certified mail, return receipt requested, addressed as
20 follows:

21 To Plaintiff and the Class:

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

28 To Defendants:

 Laura C. McHugh
 Ryan LaRocca
 Duggan McHugh Law Corporation
 641 Fulton Avenue Suite 100

Sacramento, CA 95825
Telephone: (916) 550-5309
Facsimile: (916) 404-5900

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

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

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

10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement.

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

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

1 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
2 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
3 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
4 with, and governed by, the substantive laws of the State of California without giving effect to that State's
5 choice of law principles.

6 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
7 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
8 this Agreement, or any provision thereof.

9 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could
10 be construed as retaliation against any Class Members for participating or seeking to participate in this
11 class action settlement. The Parties will not discourage any class member from participating or seeking
12 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
13 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
14 shall be entitled to further attorneys' fees and costs.

15 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
16 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
17 Each party acknowledges that there is no representation, inducement, promise or agreement which has
18 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
19 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
20 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

21 10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
22 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

23 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
24 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
25 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

26 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
27 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
28 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

10.23 Disputes: Any post-mediation disputes shall be submitted to the mediator, David Perrault, Esq., for resolution, with any payment being split by Plaintiff and Defendants 50/50.

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

For Plaintiff:

Date: 7/27/2022

DocuSigned by:

35B59BCD207B48B...
Travis Blair

For Defendants:

Date: _____

By: _____
For Clark Wagaman Designs

Date: _____

Clark Wagaman

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: 7/28/2022

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

1 APPROVED AS TO FORM

DUGGAN MCHUGH LAW
CORPORATION

2
3 Dated: _____

4 By: _____

5 Laura C. McHugh
6 Ryan LaRocca
7 Attorney for Defendants
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10.23 Disputes: Any post-mediation disputes shall be submitted to the mediator, David Perrault, Esq., for resolution, with any payment being split by Plaintiff and Defendants 50/50.

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

For Plaintiff:

Date: _____

Travis Blair

For Defendants:

Date: 7/20/22

By:
For Clark Wagaman Designs

Date: 7/20/22

Clark Wagaman

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: _____

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

1 APPROVED AS TO FORM

DUGGAN MCHUGH LAW
CORPORATION

2
3 Dated: July 22, 2022

4 By: 

Laura C. McHugh
Ryan LaRocca
Attorney for Defendants

EXHIBIT 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

TRAVIS BLAIR, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

CLARK WAGAMAN DESIGNS, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. **34-2021-00313156**

CLASS ACTION

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

ATTENTION: All non-exempt, hourly employees who have, or continue to, work for Defendants in California from December 22, 2017 up to [REDACTED] (the "Class Members").

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

Pursuant to an order from the Sacramento County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on [REDACTED], you are receiving notice of a proposed class action and Private Attorneys General Act ("PAGA") settlement between Plaintiff Travis Blair ("Plaintiff" or "Class Representative") and Defendants Clark Wagaman Designs and Clark Wagaman, individually ("Defendants") on behalf of Class Members as defined above. You are receiving this notice because Defendants' records indicate you fall within the definition of "Class Member." Defendants' records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

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

I. BACKGROUND OF THE CASE

On December 22, 2021, Plaintiff filed a Complaint against Defendants in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term "Action" means this putative class action pending in Sacramento County Superior Court, Case No. 34-2021-00313156. The Class Period is December 22, 2017 up to [REDACTED] (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendants 1) failed to pay overtime wages; 2) failed to provide meal periods or pay premiums in lieu thereof; 3) failed to provide rest periods or pay premiums in lieu thereof; 4) failed to provide accurate wage statements; 5) failed to timely pay final wages; 6) failed to reimburse expenses; 7) engaged in unfair competition; 8) failed to maintain accurate records; 9) failed to provide all paid sick leave; and 10) violated Labor Code section 558 and 558.1. Defendants have denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Defendants deny all alleged violations and deny that they owe Class Members and Aggrieved Employees any remedies. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation. The Court has not made a ruling on the merits of the case.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement" or

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

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants have agreed to pay a total sum of Two Hundred Twenty Thousand Dollars (\$220,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount which equals \$77,000, attorneys’ costs not to exceed \$10,000, Claims Administrator Costs not to exceed \$10,000, Class Representative’s Enhancement Payment of \$15,000, employer taxes attributable to payments allocated as wages, and \$10,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all non-exempt, hourly employees who have, or continue to, work for Defendants in California during the PAGA Claim Period, *i.e.*, from December 22, 2020 up to [REDACTED].

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

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

Defendants will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to taxation as specified in this notice. Defendants do not make any representations regarding the taxability of payments made pursuant to this settlement. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as two-thirds (2/3) for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and one-third (1/3) for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

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

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

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

Administrator's decision on all disputes will be final and binding.

D. Release of Claims

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

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

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the operative Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendants, as well as Defendants' past and present owners, parents, affiliated or related companies, officers, shareholders, directors, agents, employees, attorneys, insurers, successors and assigns, and any individual that could have been jointly or severally liable with Defendants.

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

E. Attorneys' Fees and Costs

Defendants have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$77,000, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

The Parties and their counsel believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

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

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e.*, *Blair v. Clark Wagaman Designs*, 34-2021-00313156); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

ILYM Group, Inc.
PO Box 2031
Tustin, CA 95781

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

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e.*, *Blair v. Clark Wagaman Designs*, 34-2021-00313156) (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendants at the addresses identified in section VI of this notice.

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

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

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

V. FINAL SETTLEMENT APPROVAL HEARING

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

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendants' Counsel as follows:

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

Laura C. McHugh
 Ryan LaRocca
 Duggan McHugh Law Corporation
 641 Fulton Avenue Suite 100
 Sacramento, CA 95825
 Telephone: (916) 550-5309
 Facsimile: (916) 404-5900
On behalf of Defendants

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

BY ORDER OF THE COURT

EXHIBIT B

FILED
Superior Court Of California,
Sacramento
03/10/2022
rsanmiguel
By _____, Deputy
Case Number:
34-2021-00313156

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

Attorneys for Plaintiff TRAVIS BLAIR

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

TRAVIS BLAIR, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

CLARK WAGAMAN DESIGNS, a California
Corporation; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00313156

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

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

DEMAND FOR JURY TRIAL

1 Plaintiff TRAVIS BLAIR ("Plaintiff"), on behalf of himself and all other similarly situated
2 employees, hereby files this Complaint against Defendants CLARK WAGAMAN DESIGNS, a
3 California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
4 "Defendants"). On information and belief, Plaintiff allege the following:

5 INTRODUCTION

6 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
7 Plaintiff for failure to pay overtime, meal period violations, rest period violations, failure to reimburse
8 expenses, waiting time penalties, wage statement violations, and unfair competition.

9 JURISDICTION AND VENUE

10 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
11 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
12 Labor Code, California Business and Professions Code, and Wage Order No. 16.

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

18 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
19 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
20 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
21 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
22 approximately December 22, 2021. Plaintiff provided facts and legal bases for his claims within the
23 notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
24 Plaintiff submitted the \$75.00 filing fee. The December 22, 2021 notice was also sent via certified mail
25 to Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not
26 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
27 believes that he has exhausted all administrative remedies pursuant to the Private Attorneys General Act
28 and may bring this action on behalf of himself and all Aggrieved Employees. *See* Cal. Labor Code §

1 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
2 (2005). Aggrieved Employees includes all non-exempt, hourly employees who have, or continue to,
3 perform work for Defendants in California as non-exempt employees from December 22, 2020 to the
4 present.

5 **PARTIES**

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

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

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

18 8. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
19 were members of and/or engaged in a joint employment, joint venture, partnership and common
20 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
21 joint venture, partnership and common enterprise.

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

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

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CLASS ALLEGATIONS

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

All non-exempt, hourly employees who have worked, or continue to work, for Defendants in California from December 22, 2017 to the present.

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

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

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

- (1) Whether Defendants failed to incorporate the value of nondiscretionary remuneration, such as incentive bonuses into putative class members' regular rates of pay for the purpose of calculating overtime wages;
- (2) Whether Defendants failed to incorporate the value of nondiscretionary remuneration, such as incentive bonuses into putative class members' regular rates of pay for the purpose of paying paid sick time;
- (3) Whether Defendants authorized and permitted putative class members to take a duty-free thirty (30) minute meal period for every five (5) hours of work;

- 1 (4) Whether Defendants authorized and permitted putative class members to take
2 duty-free ten (10) minute break for every four (4) hours or major fraction thereof
3 of work;
4 (5) Whether Defendants required putative class members to use their personal
5 cellphones for work;
6 (6) Whether Defendants had any policy or practice to reimburse putative class
7 members for the use of their personal cellphones for work;
8 (7) Whether as a result of Defendants' policies and practices putative class members
9 received all wages, due and owing, at the time of their termination or separation;
10 and
11 (8) Whether Defendants provided putative class members with wage statements that
12 complied with Labor Code section 226.

13 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
14 class. The putative class also sustained damages arising out of Defendants' common
15 course of conduct in violation of the law as complained of herein. Plaintiff and all
16 members of the putative class were non-exempt hourly employees who received
17 nondiscretionary remuneration, such as incentive bonuses, but were not paid the correct
18 overtime wages and paid sick time due to Defendants' failure to incorporate the value of
19 nondiscretionary remuneration into putative class members' regular rates of pay.
20 Moreover, Defendants failed to provide all meal and rest periods to Plaintiff and putative
21 class members due to Defendants pressuring Plaintiff and putative class members to
22 complete jobs quickly and setting deadlines for jobs to be completed that did not allow
23 sufficient time for meal and rest periods to be taken. Defendants also required Plaintiff
24 and putative class members to use their personal cellphones for work and download apps
25 on their personal cellphones for work without reimbursing them. Additionally,
26 Defendants issued Plaintiff and all members of the putative class wage statements that
27 did not comply with Labor Code section 226. As a result, Plaintiff and each member of
28

1 the putative class will have suffered the same type of harm and seek the same type of
2 recovery based on the same legal theories.

3 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
4 putative class. For all relevant times, Plaintiff resided in California and worked for
5 Defendants in California. Moreover, Plaintiff is an adequate representative of the
6 putative class as Plaintiff has no interests that are adverse to those of putative class
7 members. Additionally, Plaintiff has retained counsel who has substantial experience in
8 complex civil litigation and wage and hour matters.

9 (e) Superiority: A class action is superior to other available means for the fair and efficient
10 adjudication of the controversy since individual joinder of all members of the putative
11 class is impracticable. Class action treatment will permit a larger number of similarly
12 situated persons to prosecute their common claims in a single forum simultaneously,
13 efficiently, and without the unnecessary duplication of effort and expense that numerous
14 individual actions would engender. Further, as damages suffered by each individual
15 member of the class may be relatively small, the expenses and burden of the individual
16 litigation would make it difficult or impossible for individual members of the class to
17 redress the wrongs done to them, and an important public interest will be served by
18 addressing the matter as a class action. The cost to the court system of adjudication of
19 such individualized litigation would be substantial. Individualized litigation would also
20 present the potential for inconsistent or contradictory judgments.

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

23 GENERAL ALLEGATIONS

24 14. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 13 as though fully
25 set forth herein.

26 15. Plaintiff worked for Defendants from approximately July 7, 2020 to December 3, 2020
27 and then again from May 17, 2021 to November 5, 2021 as a non-exempt employee. From May to
28

1 November 2021 Plaintiff installed patio covers for Defendants' customers. Plaintiff and similarly
2 situated employees regularly worked over eight (8) hours in a day and forty (40) hours in a week.

3 16. Defendants paid Plaintiff and similarly situated employees hourly wages in addition to
4 non-discretionary remuneration, such as incentives bonuses. The incentive bonus amounts were based
5 on a calculation of the total dollar amount of items completed per job breakdown sheet (*i.e.*, par sheet)
6 less an employee's hourly wages. However, Defendants failed to incorporate the value of the
7 nondiscretionary remuneration into Plaintiff's and similarly situated employees' regular rates of pay for
8 the purpose of paying overtime wages and paid sick time. For example, Defendant's pay records reflect
9 that during the 8/16/21-8/29/21 pay period, Plaintiff worked 7.6 hours of overtime, used 8 hours of paid
10 sick time, and earned an incentive bonus in the amount of \$800.36. Defendants paid the 7.6 overtime
11 hours at 1.5x Plaintiff's base hourly rate and the 8 hours of paid sick time at Plaintiff's base hourly rate
12 failing to account for the value of his incentive bonus. Plaintiff is informed and believed that similarly
13 situated employees regularly worked similar schedules earning overtime, using paid sick time and
14 earning incentive bonuses and other non-discretionary remuneration within the same workweek and/or
15 pay period and were not paid all overtime and paid sick time wages they were entitled to.

16 17. Defendants did not authorize and permit Plaintiff and similarly situated employees to take
17 a duty-free meal period for every five (5) hours worked and ten (10) minute duty-free rest periods every
18 four (4) hours or major fraction thereof. Defendants pressured Plaintiff and similarly situated employees
19 to complete as many installation jobs as they could as quickly as possible and set deadlines to complete
20 patio installations that prevented Plaintiff and similarly situated employees from being able to take all
21 meal and rest periods. Defendants also did not keep track of whether Plaintiff and similarly situated
22 employees took meal periods.

23 18. Defendants required Plaintiff and similarly situated employees to download an app,
24 Buddy Punch, on their personal cellphones to record their hours worked. Plaintiff is informed and
25 believes that Defendants also tracked Plaintiff and similarly situated employees through this app using
26 GPS. Defendants also required Plaintiff and similarly situated employees to download an app on their
27 personal cellphone called i360. Plaintiff and similarly situated employees used i360 to submit photos
28 they took of the job using their cellphones and to review line drawings for the job. Plaintiff and

1 similarly situated employees also used their cellphones to speak with the project manager and owner
2 while on jobsites and to report to the company when jobs were complete so that an inspection could be
3 scheduled. Defendants did not have any policy or practice to reimburse Plaintiff and similarly situated
4 employees for the use of their personal cellphones although Defendants required their personal
5 cellphones to be used for work.

6 19. Defendant did not provide Plaintiff and similarly situated employees with all the tools
7 necessary to complete their work. Defendant provided very limited hand tools, did not provide any
8 demolition tools, and would sometimes only provide one ladder or saw horse when more were need to
9 complete the job. As a result, Plaintiff and similarly situated employees were required to purchase tools
10 for work including but not limited to sawzalls, skill saws, saw horses, ladders, and toolboxes. Defendant
11 did not reimburse Plaintiff and similarly situated employees for purchasing these tools and did not pay
12 them hourly rates equivalent to two (2) times the minimum wage.

13 20. Defendants issued Plaintiff and similarly situated employees wage statements that did not
14 accurately itemize the total hours worked, accurate regular and overtime rates of pay, accurate missed
15 meal and rest period premiums owed, and accurate gross and net wages earned. As a result, Plaintiff
16 and similarly situated employees were not able to determine the total wages owed to them from their
17 wage statements alone.

18 21. As of the filing of this Complaint, Defendants have not paid Plaintiff and similarly
19 situated employees overtime wages, paid sick time, and meal and rest period premiums owed to them.

20 **CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION** 22 **FAILURE TO PAY OVERTIME WAGES** 23 **(As to all Defendants)**

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

26 23. During the period Plaintiff was employed by Defendants, Defendants were required to
27 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
28 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for

1 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 16, section*
2 (3)(A); Cal. Lab. Code §§ 510, 1194.

3 24. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
4 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
5 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
6 worked at their correct regular rate of pay.

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

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

12 **SECOND CAUSE OF ACTION**
13 **MEAL PERIOD VIOLATIONS**
14 **(As to all Defendants)**

15 27. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 as though fully
16 set forth herein.

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

19 29. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section
20 10(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
21 minutes for each work period of more than five (5) hours.

22 30. California Labor Code section 512 and Wage Order No. 16 section 10(B) further
23 provide that employers may not employ employees for a work period for more than ten (10) hours
24 per day without providing the employee with a second meal period of at least thirty (30) minutes.
25 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
26 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
27 (1) hour of pay at their regular rate of compensation for each meal period not provided.

28 31. Defendants employed Plaintiff and similarly situated employees for periods of more
than five (5) hours without providing meal breaks of at least thirty (30) minutes. Defendants also

1 failed to allow Plaintiff and similarly situated employees to take their first meal period before the
2 completion of their fifth hour of work. Plaintiff and similarly situated employees did not waive their
3 rights to all meal periods throughout their employment.

4 32. Defendants further failed to pay Plaintiff and similarly situated employees the
5 applicable meal period premiums for any such missed meal breaks.

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

9
10 **THIRD CAUSE OF ACTION**
REST PERIOD VIOLATIONS
(As to all Defendants)

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

13 35. An employer must provide an employee a rest period in accordance with the
14 applicable Wage Order and California Labor Code section 226.7.

15 36. California Labor Code section 226.7 and Wage Order No. 16, section 11(A) require
16 an employer to provide a rest period of not less than ten (10) minutes for each work period of more
17 than four (4) hours or a major fraction thereof.

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

21 38. Defendants further failed to pay Plaintiff and similarly situated employees the
22 applicable rest period premiums for any such missed rest periods.

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

26 //

27 //

28 //

FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though fully set forth herein.

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

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

42. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular and overtime hours worked and corresponding rates of pay, and gross and net wages earned. Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

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

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

44. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 43 as though fully set forth herein.

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

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

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

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

49. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees earned nondiscretionary remuneration, worked overtime, and used paid sick leave in the same workweeks or pay periods but failed to correctly calculate their regular rates of pay. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

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

SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

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

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

6 53. Defendants required Plaintiff and similarly situated employees to use their personal
7 cellphones to take photos, download and use apps for work, and contact the owner, project manager, and
8 other employees about their work but failed to reimburse them for such use. Defendant also required
9 Plaintiff and similarly situated employees to purchase their own tools for work but did not reimburse
10 them.

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

14 **SEVENTH CAUSE OF ACTION**
15 **UNFAIR COMPETITION**
16 **(As to CLARK WAGAMAN DESIGNS and DOES 1 to 100)**

17 55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as though fully
18 set forth herein.

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

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

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

1 59. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
2 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
3 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
4 sections 17203, 17208, violations of California Labor Code sections 226.7, 246, 510, 512, and 1194 all
5 in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this
6 Action.

7 **EIGHTH CAUSE OF ACTION**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **(As to all Defendants)**

10 60. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 60 as though fully
11 set forth herein.

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

- 15 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay
16 Overtime Wages)
- 17 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
18 Statements)
- 19 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 20 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
21 Work in Any Industrial Welfare Commission Order)
- 22 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order 16, §§ 11(A) and 11(B)
23 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 24 • Violation of Labor Code § 226.7; IWC Wage Order 16, § 12(A) (Failure to Provide
25 Rest Periods or Pay Premiums in Lieu Thereof)
- 26 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 27 • Violation of Labor Code § 226.3, 1174, 1198; IWC Wage Order 16, § 6 (Failure to
28 Maintain Accurate Records)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

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

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

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
 - b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

6. As to the Sixth Cause of Action:

- a. An amount to be proven at trial;
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

7. As to the Eighth Cause of Action:

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

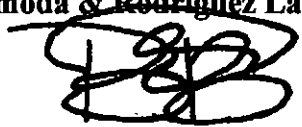
8. For such other and further relief as this Court may deem just and proper, including, but not limited to:

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

Dated: March 9, 2022

Shimoda & Rodriguez Law, PC

By: _____


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

1 *Blair v. Clark Wagaman Designs*
2 *Sacramento County Superior Court of California 34-2021-00313156*

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

5 I, Erika F. Collazo, declare that:

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

8 On March 9, 2022, I served the following documents on the party below:

- 9 • First Amended Complaint for Damages

10 Laura C. McHugh (SBN: 180930) 11 Christina M. Bucci Hamilton (SBN: 292047) 12 Duggan McHugh Law Corporation 13 641 Fulton Avenue Suite 100 14 Sacramento, CA 95825 15 Phone: (916) 550-5309 16 Facsimile: (916) 404-5900 17 Email: laura@dugganmchugh.com 18 christina@dugganmchugh.com 19 jason@dugganmchugh.com	
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20 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
21 processing of correspondence for mailing with the United States Postal
22 Service and that each day's mail is deposited with the United States Postal
23 Service that same day in the ordinary course of business. On the date set forth
24 above, I served the aforementioned document(s) on the parties in said action
25 by placing a true copy thereof enclosed in a sealed envelope with postage
26 thereon fully prepaid, for collection and mailing on this date, following
27 ordinary business practices, at Elk Grove, California, addressed as set forth
28 above.

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

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

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

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is
28 true and correct, and that this declaration was executed on March 9, 2022, at Elk Grove, California.

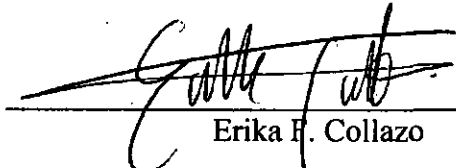

Erika F. Collazo

EXHIBIT C



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

December 22, 2021

For Online Filing:

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

Re: *Blair v. Clark Wagaman Designs*

Dear Labor Commissioner,

As counsel for Travis Blair (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

Clark Wagaman Designs
3500 Power Inn Road, Suite C
Sacramento, CA 95826

Clark Wagaman
801 Cristina Ct
Folsom, CA 95630

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

A. FACTS

Plaintiff worked for Defendants from approximately July 7, 2020 to December 3, 2020 and then again from May 17, 2021 to November 5, 2021 as a non-exempt employee. From May to November 2021 Plaintiff installed patio covers for Defendants’ customers. Plaintiff and



Aggrieved Employees regularly worked over eight (8) hours in a day and forty (40) hours in a week.

Defendants paid Plaintiff and Aggrieved Employees hourly wages in addition to non-discretionary remuneration, such as incentives bonuses. The incentive bonus amounts were based on a calculation of the total dollar amount of items completed per job breakdown sheet (*i.e.*, par sheet) less an employee's hourly wages. However, Defendants failed to incorporate the value of the nondiscretionary remuneration into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages and paid sick time. For example, Defendant's pay records reflect that during the 8/16/21-8/29/21 pay period, Plaintiff worked 7.6 hours of overtime, used 8 hours of paid sick time, and earned an incentive bonus in the amount of \$800.36. Defendants paid the 7.6 overtime hours at 1.5x Plaintiff's base hourly rate and the 8 hours of paid sick time at Plaintiff's base hourly rate failing to account for the value of his incentive bonus. Plaintiff is informed and believed that Aggrieved Employees regularly worked similar schedules earning overtime, using paid sick time and earning incentive bonuses and other non-discretionary remuneration within the same workweek and/or pay period and were not paid all overtime and paid sick time wages they were entitled to.

Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take a duty-free meal period for every five (5) hours worked and ten (10) minute duty-free rest periods every four (4) hours or major fraction thereof. Defendants pressured Plaintiff and Aggrieved Employees to complete as many installation jobs as they could as quickly as possible and set deadlines to complete patio installations that prevented Plaintiff and Aggrieved Employees from being able to take all meal and rest periods. Defendants also did not keep track of whether Plaintiff and Aggrieved Employees took meal periods.

Defendants required Plaintiff and Aggrieved Employees to download an app, Buddy Punch, on their personal cellphones to record their hours worked. Plaintiff is informed and believes that Defendants also tracked Plaintiff and Aggrieved Employees through this app using GPS. Defendants also required Plaintiff and Aggrieved Employees to download an app on their personal cellphone called i360. Plaintiff and Aggrieved Employees used i360 to submit photos they took of the job using their cellphones and to review line drawings for the job. Plaintiff and Aggrieved Employees also used their cellphones to speak with the project manager and owner while on jobsites and to report to the company when jobs were complete so that an inspection could be scheduled. Defendants did not have any policy or practice to reimburse Plaintiff and Aggrieved Employees for the use of their personal cellphones although Defendants required their personal cellphones to be used for work.

Defendant did not provide Plaintiff and Aggrieved Employees with all the tools necessary to complete their work. Defendant provided very limited hand tools, did not provide any demolition tools, and would sometimes only provide one ladder or saw horse when more were needed to complete the job. As a result, Plaintiff and Aggrieved Employees were required to



purchase tools for work including but not limited to sawzalls, skill saws, saw horses, ladders, and toolboxes. Defendant did not reimburse Plaintiff and Aggrieved Employees for purchasing these tools and did not pay them hourly rates equivalent to two (2) times the minimum wage.

Defendants issued Plaintiff and Aggrieved Employees wage statements that did not accurately itemize the total hours worked, accurate regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and net wages earned. As a result, Plaintiff and Aggrieved Employees were not able to determine the total wages owed to them from their wage statements alone.

As of this date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees overtime wages, paid sick time, and meal and rest period premiums owed to them.

B. ALLEGATIONS AND CHARGES

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

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 10(A) and 10(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

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



failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

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

Labor Code section 226.7 and Wage Order No. 16, section 11(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

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

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

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

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

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

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct



consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for personal cellphone use and tools purchases by Plaintiff and Aggrieved Employees. This was in violation of the law.

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

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants’ agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Clark Wagaman is an officer, director, shareholder, and/or managing agent of Clark Wagaman Designs responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Eight – Violation of Labor Code §§ 226.3, 1174, 1198 and Wage Order No. 16, § 6(A) (Failure to Maintain Accurate Records)

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

Labor Code section 1198 provides the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The records requirement in Wage Order No. 16, § 6(A) is a “standard condition of labor fixed by the commission.” See Cal. Labor Code § 1198. It provides, “Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including ... time records showing when the employee begins and ends each work period. Meal periods, split



shift intervals, and total daily hours worked shall also be recorded ... Total hours worked during the payroll period and applicable rates of pay..." See Wage Order No. 16, § 6(A)(1)-(3). Defendants failed to keep accurate records in compliance with Wage Order No. 16, § 6(A) and Labor Code § 1198. This was against the law.

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

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

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

Very truly yours,

Shimoda Law Corp.

By: _____

Brittany V. Berzin

cc: Client via e-mail

1 *Blair v. Clark Wagaman Designs*

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

4 I, Erika F. Collazo, declare that:

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

7 On December 23, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9
10 Clark Wagaman Designs
3500 Power Inn Road, Suite C
11 Sacramento, CA 95826

Clark Wagaman
801 Cristina Ct
Folsom, CA 95630

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

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

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

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct, and that this declaration was executed on December 23, 2021, at Elk Grove,
22 California.

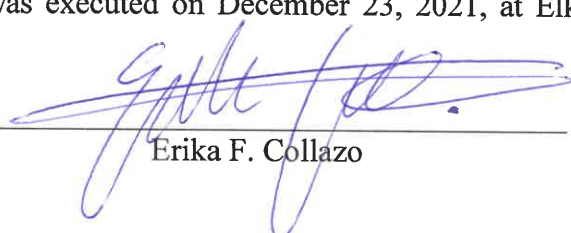
23 
24 Erika F. Collazo
25
26
27
28

EXHIBIT D

Plaintiff Travis Blair - Shimoda & Rodriguez Law, PC Costs

<u>Date</u>	<u>Description</u>	<u>Amount</u>
12/24/2021	Payment to LWDA - PAGA Filing Fee	\$75.00
12/24/2021	Certified Mail - PAGA Ltr to Employers	\$8.96
12/24/2021	Payment to Court - Complaint Fee	\$435.00
12/24/2021	Service Fee to Court - Complaint	\$40.00
1/1/2022	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research	\$500.00
2/4/2022	Service Fee to Court - Notice of Firm Name Change	\$40.00
2/15/2022	Service Fee to Court - POSOS	\$40.00
3/9/2022	Service Fee to Court - First Amended Complaint for Damages	\$40.00
4/14/2022	Mediation Fee	\$3,000.00
5/3/2022	Payment to Court - Complex Fees	\$1,000.00
5/3/2022	Service Fee to Court - Complex Fees	\$40.00
8/9/2022	Payment to Court - Preliminary Approval Motion	\$60.00
8/9/2022	One Legal Fee - Filing Preliminary Approval Motion	\$211.79
9/1/2022	One Legal Fee - Filing Proposed Order Granting Motion For Preliminary Approval	\$61.26
10/14/2022	One Legal Fee - Joint Case Management Conference Statement	\$61.26
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	One Legal Fee - Filing Final Approval Motion	\$300.00
Anticipated	One Legal Fee - Filing Joint Case Management Conference Statement	\$61.26
Anticipated	One Legal Fee - Compliance Declarations	\$70.00
		<u>\$6,104.53</u>

EXHIBIT E

EXHIBIT F

<u>TASK CATEGORY</u>	<u>Galen Shimoda</u>	<u>Justin Rodriguez</u>	<u>Brittany Berzin</u>
Pre-filing investigation, Pleadings, Admin Exhaustion. Includes time spent speaking with potential client. Initial client meeting and review of claims and documents, pre-filing investigation/research. Public record searches and review of public record documents. Drafting pleadings, tolling agreements, stipulations, administrative filings and court filings and communications with opposing counsel regarding same regarding same, internal communications regarding same (email or otherwise), communications with client regarding same.	10.7	11.5	18.4
Case Review, Management, Strategy Meetings. Includes time spent discussing general plan of action updates and strategies in weekly meetings, research and analysis regarding claims, case management conferences and related meet/confer, drafting of statements, and attendance for hearings. Communications with opposing counsel regarding same, communications with client regarding same.	4.5	13.1	12.3
Discovery (Non-Mediation Related). Includes time spent preparing discovery requests, Belaire Notices, Protective Orders, and meet and confer efforts. Reviewing Witness Information. Communicate with client regarding same, communicate with opposing counsel regarding same. Includes legal research regarding same.	4.0	3.7	6.5
Discovery / Investigation for Mediation. Includes time spent preparing informal/formal discovery specifically geared towards mediation, reviewing informal mediation productions, including data, analyses, documents, public records, working with expert to analyze sample, and communications with client and opposing counsel regarding same.	-	13.2	18.1
Mediation / Settlement Conference. Includes time spent drafting mediation brief and accompanying exhibits, prepare for and attending mediation, drafting damages analysis, drafting notes for mediation, communications with client and mediator, communications with opposing counsel regarding same, solicit bids from settlement administrators, prepare MOU. Includes legal research relating to issues on day of mediation.	1.3	24.5	16
Drafting Settlement Agreements. Includes time spent preparing long form agreements and exhibits, revisions relating thereto, research regarding any approval procedures or issues regarding disputed terms. Communicating with client regarding same, communicating with opposing counsel regarding same.	-	9	7.8
Settlement Approval and Administration. Includes time spent drafting motion for preliminary approval and supporting declarations and order, supplemental briefing regarding approval, class data review, speaking with Settlement Administrator regarding calculations and distributions, analyze calculations and estimated disbursements, review notice updates and class member responses, drafting motion for final approval and supporting declarations and order, communicate with opposing counsel regarding same, communicate with client regarding same. Includes 10 hours for Brittany Berzin supervising final distributions and compliance with Court final approval order and compliance hearings	0.7	20.9	34.1
Total Per Billing Party:	21.2	95.9	113.20

EXHIBIT G

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 05/05/2016

TIME: 09:00:00 AM

DEPT: 35

JUDICIAL OFFICER PRESIDING: Alan Perkins

CLERK: G. Toda

REPORTER/ERM: E. Teklinsky CSR# 7895

BAILIFF/COURT ATTENDANT: T. Elder

CASE NO: **34-2015-00174957-CU-OE-GDS** CASE INIT.DATE: 02/09/2015

CASE TITLE: **Navarro-Salas vs. Markstein Beverage Co**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion for Final Approval of Class Action Settlement - Complex

ASSOCIATED CASES: 34-2015-00181859-CU-OE-GDS

APPEARANCES

Galen T Shimoda, counsel, present for Plaintiff(s).

Kenneth H Yoon, counsel, present for Plaintiff(s).

Jennifer G Redmond, counsel, present for Defendant(s).

Douglas Han, attorney for Dimes-Williams, Richard (Plaintiff)

Justin Rodriguez, attorney for Dimes-Williams, Richard (Plaintiff)

The following is a copy of the tentative ruling for the hearing on May 5, 2016, at 09:00 a.m.

The Court's ruling tentatively indicates that it will give its final approval to the class action settlement conditioned upon further arguments to be made during the final fairness hearing. While no class member indicated any intent to appear at the hearing, this does not relieve the parties from appearing at the final fairness hearing or otherwise render the instant ruling final in the event oral argument is not requested. The Court will not render a final ruling until it holds the final fairness hearing.

Motion for Final Approval of Class Action Settlement

The Court issues the following tentative ruling for the hearing on May 5, 2016, at 09:00 a.m. regarding the motion for final approval of class action settlement, and related relief filed by Plaintiffs Mario Navarro-Salas, Antjuan Nichols, Richard Dimes-Williams, and Michael Sliskevics individually and on behalf of all others similarly situated and as aggrieved employees on behalf of themselves and other current and former employees ("Plaintiffs"). No written objections to the motion have been filed.

This is a wage-and-hour class action. The Defendant is Markstein Beverage Co. of Sacramento, a California Corporation ("Defendant" or "Markstein"). In the operative Second Amended Complaint ("SAC"), Plaintiffs allege that Defendant owes them damages for meal period and rest break wages, overtime wages and minimum wages, vested vacation pay, and penalties. Plaintiffs worked for Defendant as delivery drivers and warehouse supervisors and were all classified as non-exempt employees. (SAC at 4.)

The Court certified the Plaintiff class for settlement purposes only on December 16, 2015. The class was defined as follows:

"All persons in the Covered Positions during the Class Period." "Covered Positions is defined as "an

hourly paid or non-exempt position working for Markstein Beverage Co. of Sacramento within the state of California." Class period is defined as February 9, 2011 to December 15, 2015.

(Order dated December 16, 2015.)

The Court previously appointed attorneys the Law Offices of Kenneth H. Yoon, Justice Law Corporation, and Shimoda Law Corporation to serve as class counsel for purposes of settlement.

The Court previously appointed Plaintiffs Mario Navarro-Salas, Antjuan Nichols, Richard Dimes-Williams, and Michael Sliskevics as class representatives for purposes of settlement.

The Court previously appointed CPT Group, Inc. as the third-party administrator for mailing notices and claims administration.

Before final approval of a class action settlement, notice must be given to the class. (See California Rules of Court, Rule 3.769(e), (f).) Here, the 535 class members received the best practicable notice, as the notice was personally mailed to each of them by claims administrator CPT Group, Inc. (Declaration of Abel E. Morales ("Morales Decl.") ¶¶ 5-20.) One additional individual self-identified as being a class member, and that individual was approved by defense counsel and added, making the final class size 536. (*Id.* ¶ 5.) No objections were received. (*Id.* ¶ 16.) There was one request for exclusion (by "Michael Goucher"). (*Id.* ¶ 11.)

Discussion

Before approving a class action settlement, the Court must find that the settlement is "fair, adequate, and reasonable." (*Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 244, 245.) "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802.) The Court considers such factors as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement." (*Id.* at 1801.)

The papers before the Court reflect that a \$4,000,000.00 settlement fund was created on behalf of the class (including attorneys' fees, litigation cost and expenses, Settlement Administration Costs, employer's share of payroll taxes, PAGA Payment and enhancement payments) to be paid by Defendant. (See *e.g.*, P&As at 10.)

There were four hundred forty five (445) valid claim forms submitted (83.02% of total class members) and representing approximately 45,421 class weeks (93.85% of total class weeks). (Morales Decl. ¶¶ 17-20.) The 445 valid claim forms represent a claimed amount of approximately \$2,325,251.34, which is 93.85% of the Net Settlement Amount. (*Id.* ¶ 19.) The average settlement payment to each claiming Class Member is \$5,225.28, with a high payment of \$13,003.10. (*Id.* ¶ 20.) The 445 claimants will receive \$2,325,251.34, a raw average of \$5,225.28. (P&As at 1.) In total, 93.85% of the Net Settlement Amount has been timely claimed by 80.02% of the Class. (P&As at 1; Morales Decl. ¶ 17-20.)

The named plaintiffs shall also receive reasonable service payments in addition to their claim shares. (P&As at 14-15; see *also* Declarations of Navarro-Salas, Nichols, Sliskevics and Dimes-Williams.) The payment to Navarro-Salas shall be \$20,000, the payment to Nichols shall be \$20,000, the payment to

Sliskevics shall be \$15,000, and the payment to Dimes-Williams shall be \$10,000. (P&As at 1-2; see also Declarations of Navarro-Salas, Nichols, Sliskevics and Dimes-Williams.) These are appropriate awards. (See *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-1395.)

The Settlement provides for a PAGA Payment totaling \$20,000, with \$15,000 awarded to the State of California and \$5,000 awarded to Qualified Claimants. (P&As at 2.) These are appropriate awards. (Cal. Labor Code §§ 2698 *et seq.*)

Class counsel seeks attorneys' fees in the amount of \$1,400,000.00, which represents 35% of the \$4,000,000.00 settlement fund created on behalf of the class. (P&As at 2.) Based on the attorney time expended on this matter, the fees incurred total \$1,139,969. (P&As at 13.) Given the requested fees of \$1,400,000.00, class counsel is essentially requesting a modifier of 1.23. (*Id.*) The case was litigated on a contingent basis. (*Id.* at 9.) This settlement encompasses two class actions that were separately litigated and were only recently consolidated, such that they necessarily gave rise to separate attorneys' fees up until consolidation. The requested total reflects fees incurred by three separate law firms and their respective lead partners, as well as the associates from each firm working on the matter. Given these particular circumstances, the Court finds that the hours and rates requested (Shimoda Decl. ¶¶ 9-19 (lead partner hourly rate of \$575, associate hourly rates of \$425 and \$375, paralegal rates of \$150 and below); Yoon Decl. ¶¶ 12-22; Han Decl. ¶¶ 4-15) see generally Declaration of Richard M. Pearl ¶ 9 (chart stating lead partner Yoon's hourly rate of \$695, his associate's hourly rate of \$450, and lead partner Han's hourly rate of \$575 and his associate's hourly rate of \$450) and ¶¶ 1-11), all of which underlie the requested \$1,400,000.00 in fees, were reasonable and hereby approves them under the "lodestar" analysis and under the "percentage of the fund" analysis as described in the moving papers. The Court finds that, considering the amount of fees requested, the work performed, and the risks incurred, these requested fees are reasonable and should be awarded.

Class counsel also incurred actual litigation costs of \$31,244.47. (P&As at 13; Shimoda Decl. ¶ 18, Exh. B.) Class counsel seeks only \$30,000.00 of that amount, however, so as to stay within the "not to exceed" amount contained in the Class Notice and Settlement. (P&As at 13; Shimoda Decl. ¶ 18.) There is nothing before the Court that indicates that any requested costs were anything other than fair and reasonable.

The Claims Administrator's actual costs were \$14,276. (P&As at 17; Morales Decl. ¶ 21.) This is a fair and reasonable amount.

The Court tentatively finds, subject to arguments to be made at the hearing, that the settlement is entitled to a presumption of fairness and that all relevant factors support preliminary approval. The moving papers demonstrate that the settlement was the product of arms-length bargaining between the parties and was reached after sufficient discovery which allowed the parties, and therefore, this Court, to act intelligently with respect to the settlement. (P&As at 5-6; Han Decl. ¶¶ 8-9.) The settlement is entitled to a presumption of fairness. (*Dunk*, 48 Cal.App.4th at 1802.) There is nothing before the Court which would overcome the presumption of fairness. Indeed, the settlement provides value to the class members as it provides them with monetary compensation in a manner approximately commensurate with the potential value of their individual claims in light of the risks of continued litigation. It also provides value to those employees continuing to work for Defendant (P&As at 8), as Defendant changes its "auto deduct practices," and revamped its meal/rest period policies and incentive pay procedures and practices by the time of mediation. (Yoon Decl. ¶ 10.)

For all the foregoing reasons, the Court concludes that the settlement is entitled to final approval, such that Plaintiffs' motion is **granted**.

The Court anticipates that it will sign the proposed order of final approval and judgment at the conclusion

of the final fairness hearing in the event that it adopts the findings set forth above. Conditioned upon further arguments to be made at the final fairness hearing, the Court will sign the Proposed Order filed with the moving papers.

Also conditioned upon further arguments to be made at the final fairness hearing, the Court will sign the Proposed Judgment filed with the moving papers. (Cal. Rule of Court 3.769(h) ("Judgment and retention of jurisdiction to enforce: If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment.").)

The Court hereby sets a post-Final Approval status conference for November 17, 2016 at 9 a.m., in Department 35, so that Class Counsel can advise the Court as to whether Defendant's payments were completed, distribution checks were issued and cashed, status of the PAGA payment, and the status of any uncashed checks.

Notice:

Parties requesting services of a court reporter shall advise the court at (916) 874-7885 no later than 4:00 p.m. the court day before the hearing. Please be advised there is a \$30.00 fee for court reporting services, which must be paid at the time of the hearing, for each civil proceeding lasting less than one hour. (Govt. Code § 68086(a)(1)(A).)

The Court Reporter will not report any proceeding unless a request is made and the requisite fees are paid in advance of the hearing.

Court Ruling:

The tentative ruling is affirmed and the Court signed the Judgment and Order Granting Motion for Final Approval of Class Action Settlement.

The Court sets a compliance hearing for 11/17/16 at 9:00 a.m. in Department 35.

Case Management Statements are due 14 days before the hearing, and no need to follow Judicial Counsel form.

The Order to Show Cause Re: Compliance - Complex is scheduled for 11/17/2016 at 09:00 AM in Department 35.

EXHIBIT H

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

5 Attorneys for Plaintiff BRIAN STRAWN

6 [additional parties continued on next page]

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

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

14 Plaintiffs,

15
16 vs.

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

24
25 Defendants.
26
27
28

Case No. 34-2018-00242049

CLASS ACTION

Assigned to the Honorable Jill H. Talley for all purposes

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

Date: November 15, 2022

Time: 1:30 p.m.

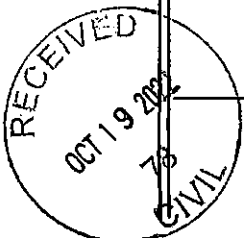
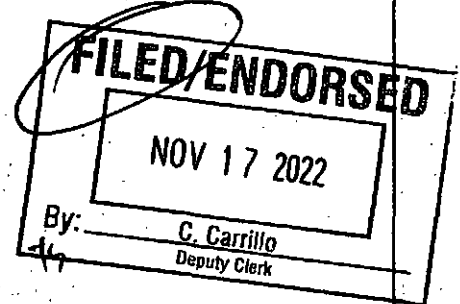
Dept.: 25

Judge: Hon. Jill H. Talley

Filed: October 5, 2018

FAC Filed: April 21, 2022

Trial Date: None Set



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

8 Raphael A. Katri, Esq. (#221941)
9 LAW OFFICES OF RAPHAEL A. KATRI
10 8549 Wilshire Boulevard, Suite 200
11 Beverly Hills, CA 90211-3104
12 Tel.: (310) 940-2034 / Fax: (310) 733-5644
13 Email: RKatri@socalaborlawyers.com

14 Attorneys for Plaintiffs ESTEBAN ESTRADA and ADRIAN PULIDO

15 **PIMENTEL LAW, P.C.**
16 Gabriel J. Pimentel, Esq. (SBN 265328)
17 gpimentel@pimentellawfirm.com
18 30 N. Raymond Ave., Ste. 210
19 Pasadena, CA 91103
20 Tel: (626) 765-6505
21 Fax: (626) 628-3036

22 Attorney for Plaintiff DOMINADOR DAUZ

23 Reuben D. Nathan, Esq. (SBN: 208436)
24 rnathan@nathanlawpractice.com
25 **NATHAN & ASSOCIATES, APC**
26 2901 W. Coast, Suite 200
27 Newport Beach, California 92663
28 TEL: (949) 270-2798
FAX: (949) 209-0303

Ross Cornell, Esq. (SBN: 210413)
LAW OFFICES OF ROSS CORNELL, APC
P.O. Box 1989 #305
Big Bear Lake, CA 92315
rc@rosscornelllaw.com
TEL: (562) 612-1708
FAX: (562) 394-9556

Attorneys for Plaintiffs BRANDON NELSON and MATTHEW FARWELL

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 IT IS SO ORDERED.

16 Dated: _____

11/17/22



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

5 Attorneys for Plaintiff TRAVIS BLAIR
6
7

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

11 TRAVIS BLAIR, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 CLARK WAGAMAN DESIGNS, a California
Corporation; and DOES 1 to 100, inclusive,

16 Defendants.
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21
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Case No. 34-2021-00313156

CLASS ACTION

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

Date: January 13, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: December 22, 2021

FAC Filed: March 10, 2022

Trial Date: None Set

1 I, Brittany V. Berzin, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Travis Blair (“Plaintiff”) herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s
5 Motion for Final Approval of Class Action and PAGA Settlement (“Motion”). A true and correct copy
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) in
7 this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Defendant Clark Wagaman Designs (“Defendant”) failed to pay overtime wages, failed to provide
10 meal periods or pay premiums in lieu thereof, failed to provide rest periods or pay premiums in lieu
11 thereof, failed to provide accurate wage statements, failed to pay all final wages, failed to reimburse
12 expenses, and engaged in unfair competition. Plaintiff also alleged liability for civil penalties under the
13 Private Attorneys General Act (“PAGA”). These claims were based allegations that Defendant violated
14 California law by 1) failing to pay the correct regular rates of pay by failing to account for the value of
15 non-discretionary bonuses being paid in the same workweek as overtime premiums and paid sick time;
16 2) failing to pay overtime wages to employees paid under a piece rate compensation system prior to
17 January 2020; 3) failing to authorize and permit all meal periods and keep track of whether employees
18 took meal periods; 4) failing to compensate for rest and recovery periods; and 5) failing to reimburse
19 employees for the use of personal items for work, such as personal cellphones and tools. The PAGA,
20 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
21 violations.

22 3. Plaintiff is the only named representative in this matter. From our initial investigations
23 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
24 class action. We filed the action on or about December 22, 2021. Plaintiff exhausted administrative
25 remedies through the Labor and Workforce Development Agency (“LWDA”) prior to amending the
26 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on December 22, 2021,
27 setting forth the facts and theories of liability. A true and correct copy of the notice filed with the
28 LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant

1 via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no
2 response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for
3 more than 65 days. As such, Plaintiff became authorized to commence a civil action under the PAGA
4 and filed a First Amended Complaint on March 10, 2022. A true and correct copy of Plaintiff's
5 operative Complaint is filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to
6 the LWDA on April 15, 2022, after we received an endorsed copy back from Court.

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

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

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

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

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

1 8. Throughout this litigation our office had numerous communications with Defendant's
2 Counsel discussing our respective positions. The parties engaged in mediation on May 18, 2022, using
3 an experienced mediator, David L. Perrault, Esq. It was only after approximately five months of
4 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
5 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
6 professional in nature.

7 9. In analyzing the sample data and relevant policies and comparing them against
8 Plaintiff's allegations and theories of liability, the following represents the potential maximum recovery
9 for each asserted claim and the risks associated with each such claim:

- 10 • Overtime Wages: This claim is based on allegations that, prior to January 2020, Class
11 Members were paid piece rate compensation in addition to non-discretionary bonuses
12 without being compensated for overtime hours worked, and, after January 2020, that
13 Class Members were paid hourly in addition to non-discretionary bonuses, but that the
14 value of non-discretionary bonuses were not incorporated into Class Members' regular
15 rates of pay for the purpose of calculating overtime wages owed. Based on Class
16 Members' time and payroll data, only approximately 28% of the total workweeks were
17 affected and the total exposure for this claim is \$106,074.04. This amount does not take
18 into account the potential risks associated with this claim on the merits and in proving
19 damages. Defendant had a written policy requiring Class Members to accurately record
20 their hours worked. Additionally, Defendant contended that to the extent Class
21 Members worked any overtime hours that were not recorded, the actual hours worked
22 would have been miniscule, whereas Plaintiff's calculation is based on a consistent 7.39
23 unpaid overtime hours being worked per week. Even if Defendant was unsuccessful in
24 establishing no liability, if it were able to prove a lesser amount of unpaid overtime
25 worked per week, the claim could have been reduced to around \$11,000 to \$23,000.
26 Defendant further contended that the bonuses paid to Class Members were discretionary
27 based on an assessment of the profitability of the job rather than non-discretionary. If
28

the bonus payments Class Members received were discretionary, that would eliminate the value of this overtime claim entirely from January 2020 to the present.

- Meal Periods: This claim is based on allegations that Defendant did not provide Class Members with all meal periods they were entitled to. Based on Class Members' time and payroll data, the total exposure for this claim is \$676,229.40. This amount does not take into account any potential risks associated with this claim. For instance, Defendant had a written policy providing for meal periods and contends that to the extent Class Members did not take a meal period it was a personal choice because they were responsible for setting their own meal and rest period schedule throughout the day. Defendant also produced time records showing meal clock in/out times for Class Members that would likely have substantially reduced the total damages at issue even if Plaintiff was able to establish liability on these claims.
- Rest Periods: This claim is based on allegations that, for the period of time Class Members were paid piece rate compensation, Defendant did not pay Class Members for time spent during rest periods. Based on Class Members' time and payroll data, the total exposure for this claim is \$596,673.00. This number does not account for the risks associated with this claim. For example, the value of this claim depends on Class Members actually taking every rest period they were entitled to based on the time records. If Class Members chose not to take a rest period, then there would be no unpaid rest period time violation. Based on the testimony received and expected further testimony regarding inability to take meal periods, there was also a substantial risk that there was a substantial number of Class Members who did not take rest periods.
- Sick Time: This claim is based on allegations that post January 2020 Defendant failed to pay Class Members the correct amount of paid sick time because it failed to incorporate the value of non-discretionary bonuses into Class Members' regular rates of pay. Based on Class Members' time and payroll data, the total exposure for this claim is \$49,585.54. This amount does not take into account the risk associated with this claim. If Defendant

1 prevailed on its argument that the bonus payments to Class Members were discretionary,
2 then this claim would not have any value.

- 3 • Waiting Time: This claim is derivative of Plaintiff's overtime, meal period, rest period,
4 and unpaid sick time claims. Based on Class Members' time and payroll data, the total
5 exposure for this claim is \$514,483.20. This amount does not take into account the
6 potential risks associated with this claim. Because this claim is derivative, the same
7 risks mentioned above also apply to this claim. In addition, there is substantial risk that
8 because Defendant maintained legally compliant policies throughout the Class Period it
9 would have a good faith affirmative defense to this claim.
- 10 • Wage Statement: This claim is based on allegations Defendant failed to provide accurate
11 wage statements by failing to include the accurate amount of gross and net wages and
12 accurate hourly rates in effect on wage statements. Based on Class Members' payroll
13 data, the total exposure for this claim is \$28,800.00. This amount does not take into
14 account the potential risks associated with this claim. Because this claim is derivative of
15 Plaintiff's other claims, the same risks identified above for Plaintiff's overtime, meal
16 period, and sick time claims equally apply here. Additionally, this calculation assumes
17 there was at least one type of violation in each of the pay periods. However, several of
18 the claims have a small violation rate, affecting only 28% of the workweeks. To the
19 extent that Plaintiff would have been unable to prove all claims on the merits, this would
20 have also reduced the number of pay periods that potential wage statement violations
21 could occur in. Moreover, Defendant contends that Class Members did not suffer any
22 injury as a result of the wage statements and therefore would not be able to recover any
23 penalties.
- 24 • Cellphone/Tool Reimbursement: This claim is based on allegations that Defendant
25 required Class Members to use personal cellphones and tools for work without being
26 reimbursed. The total exposure for this claim is \$30,125.00. This amount does not take
27 into account any potential risks associated with this claim. For example, Defendant
28 contends that it provided all necessary tools and that to the extent Class Members used

1 their owns tools it was a personal choice and not required. Defendant further contends
2 that employees were told to notify Defendant if additional tools needed to be purchased.

3 • PAGA: This claim is derivative of the Labor Code violations identified above. Based on
4 Class Members' payroll data, the total exposure for this claim is \$547,315.20. This
5 amount does not take into account any of the potential risks associated with this claim.
6 Because this claim is derivative it carries all the same risks identified in the claims
7 above. For example, if Defendant were able to demonstrate that all bonus payments
8 were discretionary, all claims that depending on the regular rate of pay theory of liability
9 would have been eliminated, including the derivative PAGA claims based thereon.

10 Additionally, the correct valuation of civil penalties under the PAGA was disputed. For
11 example, Plaintiff valued civil penalty claims for failure to pay final wages under Labor
12 Code section 256 (similar to how statutory waiting time penalties are calculated) for a
13 total of \$115,315.20 instead of the \$100 per violation default penalty, which would have
14 resulted in a total of \$1,300. A similar valuation dispute existed with respect to wage
15 statement violations, which could swing the civil penalty calculation from \$144,000.00
16 to \$57,600.00. Further, I believe the PAGA penalties in this case may be reduced due to
17 the fact that the penalties would be in addition to amounts owed for substantive
18 violations and much of the penalties are based on violations due to technical non-
19 compliance with the Labor Code. Furthermore, Defendant produced a substantial
20 number of documents and written policies and handbooks, that a Court may find
21 demonstrates a good faith attempt at compliance that merits the reduction of civil
22 penalties. Courts regularly cut civil penalties on PAGA claims where statutory penalties
23 for the same violations are assessed as well. Courts are statutorily authorized to use
24 discretion to reduce penalties and the range of discretion used varies substantially. *See*
25 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30%
26 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal.
27 2011) (82% reduction). Thus, civil penalties may be cut to approximately \$164,194.56
28 (30%) to \$98,516.74 (82% reduction) or lower given the derivative recovery. It is

important to note that this discretionary reduction is completely separate and in addition to any risks on the merits. Given the facts and highly disputed nature of the claims, we felt the amount that might ultimately be awarded under this claim would be low, especially in light of amounts that Courts have approved as reasonable valuations in similar cases. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

10. Based on the time and payroll data produced and without taking into account any of the potential risk associated with Plaintiff's claims, the maximum possible damages for the asserted class claims is approximately \$2,889,064.88 which includes civil penalties under the PAGA. The maximum exposure for PAGA penalties is approximately \$547,315.20 based on the counts alleged to the LWDA and the class data. Based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's practices and/or policies were improper. As such, a "subsequent

violation” may not be found for penalty calculation purposes and the exposure analysis here is based on an “initial violation” valuation being adopted by any fact finder if this matter went to trial.

11. If Plaintiff were to win on all claims exactly as alleged and the only reduction experienced in the value of the claims was a discretionary reduction to PAGA penalties by the Court, the maximum likely recovery after an estimated 82% reduction of the PAGA penalties would be approximately \$2,099,515.46. Taking this into account, Plaintiff’s \$220,000 gross recovery under the Agreement represents approximately 10% of the maximum likely value in this matter. After deducting from the Gross Settlement Amount the proposed allocations for attorneys’ fees (\$77,000) and costs (\$6,104.53), any Enhancement Payment to the Class Representative (\$15,000), employer taxes (\$6,957.13), Claims Administrator Costs (\$6,750), and the PAGA Payment (\$10,000), the net recovery under the Agreement, \$98,188.34, represents approximately 4.7% of the maximum likely value in this matter. Based on the final numbers from the administrator, the average net recovery is \$1,055.79 and the maximum net recovery is \$5,909.74. I believe the Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this Agreement.

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

1 requirements or the company becomes financially insolvent. Additionally, there are occasions, where
2 the fee recovered actually results in a negative multiplier of our lodestar.

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

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

- *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin Sup. Ct.);
- *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D. Cal.);
- *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);

- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Neufield v. Professional Transportation, Inc.*, Case No. 34-2021-00309849 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

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

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

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

1 Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento
2 County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association
3 Labor and Employment Law Section’s executive committee in 2019 and was the Chair of the executive
4 committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law
5 Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses
6 on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor
7 Standards Act (“FLSA”) claims. He is actively involved in most of the complex litigation handled by
8 our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited
9 to, the following:

- 10 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 11 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 12 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 13 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 14 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080
15 (San Joaquin Sup. Ct.);
- 16 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 17 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 18 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
19 Sup. Ct.);
- 20 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
21 Ct.);
- 22 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 23 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
24 00271174 (Sac. Sup. Ct.);
- 25 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
26 Ct.);
- 27 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
28 Ct.);

- 1 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 2 Sup. Ct.);
- 3 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 4 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 5 Ct.);
- 6 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 7 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 8 00209613 (Sac. Sup. Ct.);
- 9 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 10 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 11 00222101 (Sac. Sup. Ct.);
- 12 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 13 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 14 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 15 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 16 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 17 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 18 Ct.);
- 19 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 20 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 21 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 22 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 23 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 24 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 25 • *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 26 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 27 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 28 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);

- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 34-2019-00263185 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovation Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

18. Mr. Shimoda graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in

2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, he has authored a number of employment law articles for journals and regularly publishes articles on our firm's website.

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

20. He has practiced law in California since being admitted to the State Bar in 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases. He began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.

1 He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour
2 law. He has litigated several class action cases in California State and Federal Courts, including up to
3 certification, settlement, preliminary and final approval, and disbursement of monies, and has been
4 found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA
5 cases he is litigating and/or has litigated as lead or co-counsel over the past nineteen (19) years include,
6 but are not limited to, the following:

- 7 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 8 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 9 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 10 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 11 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 12 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 13 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 14 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 15 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
16 Sup. Ct.);
- 17 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 18 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
19 Ct.);
- 20 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
21 Ct.);
- 22 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
23 Sup. Ct.);
- 24 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 25 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
26 Ct.);
- 27 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 28 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-

- 00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
 - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
 - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
 - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
 - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
 - *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
 - *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
 - *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
 - *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
 - *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
 - *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
 - *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
 - *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
 - *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
 - *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
 - *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
 - *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);

- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

22. My office is requesting attorneys' fees pursuant to the common fund doctrine pursuant to *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980). Plaintiff and Plaintiff's Counsel have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. There was substantial risk in agreeing to take this case on a contingency basis and as a class action with the

possibility that Plaintiff's Counsel would not receive any compensation their time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. In my experience, the attorney's fee request of thirty-five percent (35%) of the common fund is within ranges typically approved in wage and hour class action litigation. This includes awards in Sacramento County Superior Court. For example, On May 5, 2016, the Honorable Alan G. Perkins, who presided over the Court's Complex Department at the time, awarded 35% of the \$4,000,000.00 common fund settlement for attorney's fees, which included a 1.23x multiplier of counsel's lodestar in that case. A true and correct copy of the May 5, 2016, Minute Order is filed with this Motion as Exhibit G.

23. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this case. The total lodestar is approximately \$123,417.50 based on approximately 230.3 hours, which include approximately 10 hours of time for myself preparing for and attending the final approval hearing, ensuring compliance and the disbursement of funds consistent with a final approval order. I have reviewed our firm's billing records with Mr. Shimoda and Mr. Rodriguez and have created a summary chart showing the task categories and hours worked by each billing attorney in each category. A true and correct copy of this summary chart is being filed with this Motion as Exhibit F. In reviewing the entries with Mr. Shimoda and Mr. Rodriguez, I believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	21.2	\$725	\$15,370.00
Justin P. Rodriguez	95.9	\$625	\$59,937.50
Brittany V. Berzin	113.2	\$425	\$48,110.00
Total:	230.3		\$123,417.50

1 24. I believe the requested rates of \$425 per hour for myself, \$625 per hour for Mr.
2 Rodriguez, and \$725 per hour for Mr. Shimoda are within the prevailing market rates for Sacramento
3 County and elsewhere. We have approximately 4 years, 11 years, and 19 years of experience,
4 respectively, litigating complex wage and hour class and PAGA actions. As far back as May 2016, the
5 Sacramento County Superior Court also approved hourly rates in the amount of \$695 for a partner with
6 approximately 18 years of experience, \$575 for partners with approximately 12 years of experience,
7 and rates for associates with approximately 4 years of experience in the range of \$375-\$425 in a wage
8 and hour class action settlement. See Exhibit G. According to the U.S. Bureau of Labor Statistics, the
9 value of goods and services that cost \$575 in May 2016 have an equivalent value of \$710.42 in today's
10 dollars as of September 2022. See https://www.bls.gov/data/inflation_calculator.htm. In addition, in
11 November 2022, the Sacramento County Superior Court approved Mr. Shimoda, Mr. Rodriguez, and
12 myself at these rates in connection with a motion for final approval of a wage and hour class action
13 settlement in *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup.
14 Ct.). A true and correct copy of the final approval order in the *Strawn* matter is being filed with this
15 Motion as Exhibit H. Awarding fees at the hourly rate in effect at the time of the fee request is an
16 appropriate and judicially approved method. See *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283
17 (1989). For the foregoing reasons, I believe the request of \$77,000 (approximately 35%) for attorneys'
18 fees is justified given the results obtained on behalf of the class.

19 25. Although the Agreement set out a maximum of \$10,000.00 for potential attorney's costs,
20 the total costs incurred or that will be incurred through a compliance hearing by Class Counsel is
21 \$6,104.53. A true and correct copy of my firm's itemized costs incurred prior to the filing of this
22 Motion and the expected costs incurred through the final approval and compliance hearings is attached
23 to this declaration as Exhibit D. The difference in the actual costs and the maximum amount allocated
24 under the Agreement will be added to the Net Settlement Amount and disbursed to Class Members.

25 26. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
26 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
27 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
28

provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit E.

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

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

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

30. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-on-one legal consultations for low-wage workers. The CFWR discusses employment issues with

workers and advises them as to the available legal remedies. In addition to individual counseling on employment issues, the CFWR educates workers, unions, and community members about workplace laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

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

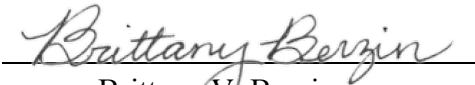
32. I believe the services provided by CPB and the CFWR promote the law consistent with the objective of wage and hour class actions in general and in this case specifically.

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

34. I have never done any work, volunteer or otherwise with Capital Pro Bono, Inc. During law school, I was a student volunteer for the CFWR for two summers. Since graduating law school, I have volunteered for the CFWR approximately one to two times per year, assisting in the advice clinic. I am currently the Chair of the Board of Directors for CFWR. I have never received payment or compensation of any kind in connection with any work I’ve done with the CFWR. Justin Rodriguez has volunteered for both CPB and the CFWR numerous times over the past several years, either directly in the advice clinics or by presenting seminars on wage and hour laws for law students seeking to also volunteer at advice clinics. He has also volunteered by sitting on CPB’s advisory committee. I believe these entities provide quality service and attention to individuals in need of employment law advice and representation at the California Labor Commissioner. I believe the services they provide directly

1 support and promoted the purposes underlying this lawsuit. I do not receive any compensation, whether
2 direct or indirect, for designating these entities as *cy pres* beneficiaries.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed this 16th day of December 2022 in Elk Grove, California.

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

Attorneys for Plaintiff TRAVIS BLAIR

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

TRAVIS BLAIR, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

CLARK WAGAMAN DESIGNS, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00313156

CLASS ACTION

**DECLARATION OF PLAINTIFF TRAVIS
BLAIR IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: January 13, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: December 22, 2021

FAC Filed: March 10, 2022

Trial Date: None Set

1 I, Travis Blair, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant Clark Wagaman Designs ("Defendant") from approximately
6 July 7, 2020 to December 3, 2020 and then again from May 17, 2021 to November 9, 2021 as a non-
7 exempt employee. I was subject to all of Defendant's policies and practices that have been alleged as
8 unlawful in the Complaint and the notice sent to the Labor and Workforce Development Agency,
9 including the following: failure to pay overtime, failure to provide meal periods or pay premiums in
10 lieu thereof, failure to provide rest periods or pay premiums in lieu thereof, failure to provide accurate
11 wage statements, failure to pay final wages, failure to pay reimbursements for expenses, failure to
12 maintain accurate records, and failure to provide paid sick leave.

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

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

27 5. During the course of this litigation, I have given detailed accounts of all the facts related
28 to my employment. I provided my attorneys with extensive documentation that I believe supported the

1 claims brought against Defendant. I met with and assisted my attorneys in understanding these
2 documents and providing context for Defendant's payroll process as it applied to me and how I
3 believed it applied to Defendant's other employees. I worked for Defendant during two separate
4 periods of time during the class period and in two different job positions, so I was able to discuss the
5 similarities of the wage and hour policies and practices among all Class Members.

6 6. The work I performed for this case included an extensive review of documents and
7 payroll practices to show and explain to my attorneys what was happening and why I thought it was
8 unlawful. For example, I produced excerpts from Defendant's handbook regarding incentive payments,
9 overtime, work assignments, and expense reimbursement, reviewed my text messages and provided a
10 text exchange I had with the owner regarding pay, and time and pay records, including job breakdown
11 sheets. I went over the job breakdown sheets in detail with my attorneys to explain how Defendant's
12 piece rate compensation system worked and how Class Members' pay was calculated by Defendant.
13 This was very important as it helped not only the minimum wage, overtime claims, but also claims
14 related to rest periods, paid sick time, wage statements, and final pay. The review became even more
15 detailed when my attorneys asked me questions about the payroll data sample that was produced as part
16 of informal discovery to engage in mediation. I also spent time identifying and speaking to potential
17 witnesses who could speak to my attorneys to give their own insights and provide declarations.
18 Ultimately, I was able to find 10 witnesses who agreed to be contacted by my attorneys. Since the
19 settlement, I have also fielded questions by Class Members about this case and the process for
20 receiving payment. Overall, I have spent numerous hours of my time assisting in the prosecution of
21 this case. I estimate that I spent about 35 to 40 hours assisting with this case.

22 7. I participated in the negotiations and settlement discussions in this case, including
23 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
24 additional information needed to assist the negotiations, and discussing the potential terms of the
25 Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions
26 when I needed clarification about various aspects of this case to make sure there were continually steps
27 taken to advance the interests of Class Members.

28 //

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15 of December 2022 in Sacramento, California.

DocuSigned by:

 Travis Blair
 86B59BCB207B48B...

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

Attorneys for Plaintiff TRAVIS BLAIR

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

TRAVIS BLAIR, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

CLARK WAGAMAN DESIGNS, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2021-00313156

CLASS ACTION

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

Date: January 13, 2023
Time: 9:00 a.m.
Dept.: 28
Judge: Hon. Lauri A. Damrell

Filed: December 22, 2021
FAC Filed: March 10, 2022
Trial Date: None Set

1 I, Krystal Quiroz declare as follows:

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

9 2. ILYM Group has extensive experience in administering Class Action Settlements,
10 including direct mail services, database management, claims processing and settlement fund
11 distribution services for Class Actions ranging in size from 26 to 4.5 million Settlement Class
12 Members.

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

27 4. On September 7, 2022, ILYM Group received the Court approved text for the
28 Notice Packet from Counsel for Plaintiff. ILYM Group prepared a draft of the formatted Notice

1 Packet, which was approved by the Parties' Counsel prior to mailing.

2 5. On September 21, 2022, ILYM Group received the class data file from Counsel for
3 Defendant, which contained the name, social security number, last known mailing address, and
4 employment dates worked for each Settlement Class Member. The data file was uploaded to our
5 database and checked for duplicates and other possible discrepancies. The Class List contained 93
6 individuals.

7 6. As part of the preparation for mailing, all 93 names and addresses contained in the
8 Class List were then processed against the National Change of Address ("NCOA") database,
9 maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming
10 the mailing addresses of the Settlement Class Members before mailing of the Notice Packet. The
11 NCOA contains requested change of addresses filed with the USPS. To the extent that an updated
12 address was found in the NCOA database, the updated address was used for the mailing of the
13 Notice Packet. To the extent that no updated address was found in the NCOA database, the original
14 address provided by Counsel for Defendant was used for the mailing of the Notice Packet.

15 7. On October 5, 2022, the Notice Packet was mailed, via U.S First Class Mail, to all
16 93 individuals contained in the Class List. Attached hereto, as **Exhibit A**, is a true and correct
17 copy of the mailed Notice Packet.

18 8. As of the date of this declaration, 14 Notice Packets have been returned to our office
19 as undeliverable. Of the 14 returned Notice Packets, none were returned with a forwarding address.
20 ILYM Group performed a computerized skip trace on the 14 returned Notice Packets that did not
21 have a forwarding address, in an effort to obtain an updated address for purpose of re-mailing the
22 Notice Packet. As a result of this skip trace, 12 updated addresses were obtained and the Notice
23 Packet was promptly re-mailed to those Settlement Class Members, via U.S First Class Mail.

24 9. As of the date of this declaration, a total of 12 Notice Packets have been re-mailed
25 as a result of ILYM Group's skip tracing efforts and a total of 2 Notice Packets have been deemed
26 undeliverable as no updated address was found notwithstanding the skip trace.

27 10. As of the date of this declaration, ILYM Group has received 0 requests for
28 exclusion. The deadline to request exclusion from the Settlement was November 19, 2022.

11. As of the date of this declaration, ILYM Group has not received any objections to the Settlement. The deadline to file an objection to the Settlement was November 19, 2022.

12. As of the date of this declaration, ILYM Group reports a total of 93 Participating Class Members, representing 100% of the 93 Settlement Class Members.

13. Participating Class Members will receive a proportional share of the Net Settlement Fund through individual settlement payments, based on the number of workweeks worked by Class Members during the Class Period. The Net Settlement Fund is the amount remaining after deduction of the Court-approved payments from the Gross Settlement Fund for Class Counsel's Fees and Litigation Costs, employer taxes, the Class Representative Enhancement Award, Claims Administration Fees to ILYM Group, the PAGA Payment (allocated between the LWDA and Aggrieved Employees).

Gross Settlement Fund	\$220,000.00
Attorney's Fees	\$77,000.00
Attorney's Costs	\$6,104.53
Estimated Employer Taxes	\$6,957.13
Enhancement Award – Travis Blair	\$15,000.00
ILYM Group Fees	\$6,750.00
PAGA Payment to LWDA	\$7,500.00
PAGA Payment to Aggrieved Employees	\$2,500.00
Net Settlement Fund	\$98,188.34

Under the Settlement, each Participating Class Member's share will be determined by dividing his or her total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks by all Participating Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Participating Class Member's individual share of the Net Settlement Amount. Based on these calculations, the Participating Class Member's will receive an estimated average net payment of \$1,055.79 and an estimated highest net payment of \$5,909.74. The PAGA Members will receive an estimated average net payment of \$50.00 and an estimated highest net payment of \$137.22.

14. ILYM Group's total fees and costs for services in connection with the administration of this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement administration, are \$6,750.00. ILYM Group's work in connection with this matter will continue with the calculation of the settlement award payments, issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that the Parties mutually agree to and/or the Court orders ILYM Group to perform.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed this 5th day of December 2022, at Tustin, California.

Krystal Quiroz
KRYSTAL QUIROZ

EXHIBIT “A”

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

TRAVIS BLAIR, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

CLARK WAGAMAN DESIGNS, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. **34-2021-00313156**

CLASS ACTION

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

ATTENTION: All non-exempt, hourly employees who have, or continue to, work for Defendants in California from December 22, 2017 up to August 27, 2022 (the “Class Members”).

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

Pursuant to an order from the Sacramento County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on September 1, 2022, you are receiving notice of a proposed class action and Private Attorneys General Act (“PAGA”) settlement between Plaintiff Travis Blair (“Plaintiff” or “Class Representative”) and Defendants Clark Wagaman Designs and Clark Wagaman, individually (“Defendants”) on behalf of Class Members as defined above. You are receiving this notice because Defendants’ records indicate you fall within the definition of “Class Member.” Defendants’ records also indicate that you worked «Class_Weeks» weeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be \$«Estimated_Class_Amount». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

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

I. BACKGROUND OF THE CASE

On December 22, 2021, Plaintiff filed a Complaint against Defendants in the Sacramento County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Sacramento County Superior Court, Case No. 34-2021-00313156. The Class Period is December 22, 2017 up to August 27, 2022 (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendants 1) failed to pay overtime wages; 2) failed to provide meal periods or pay premiums in lieu thereof; 3) failed to provide rest periods or pay premiums in lieu thereof; 4) failed to provide accurate wage statements; 5) failed to timely pay final wages; 6) failed to reimburse expenses; 7) engaged in unfair competition; 8) failed to maintain accurate records; 9) failed to provide all paid sick leave; and 10) violated Labor Code section 558 and 558.1. Defendants have denied all of Plaintiff’s allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Defendants deny all alleged violations and deny that they owe Class Members and Aggrieved Employees any remedies. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation. The Court has not made a ruling on the merits of the case.

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

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants have agreed to pay a total sum of Two Hundred Twenty Thousand Dollars (\$220,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed 35% of the Gross Settlement Amount which equals \$77,000, attorneys’ costs not to exceed \$10,000, Claims Administrator Costs not to exceed \$10,000, Class Representative’s Enhancement Payment of \$15,000, employer taxes attributable to payments allocated as wages, and \$10,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all non-exempt, hourly employees who have, or continue to, work for Defendants in California during the PAGA Claim Period, *i.e.*, from December 22, 2020 up to August 27, 2022.

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

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

Defendants will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to taxation as specified in this notice. Defendants do not make any representations regarding the taxability of payments made pursuant to this settlement. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as two-thirds (2/3) for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and one-third (1/3) for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

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

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

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

November 19, 2022. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

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

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

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the operative Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendants, as well as Defendants' past and present owners, parents, affiliated or related companies, officers, shareholders, directors, agents, employees, attorneys, insurers, successors and assigns, and any individual that could have been jointly or severally liable with Defendants.

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

E. Attorneys' Fees and Costs

Defendants have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$77,000, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

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

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e.*, *Blair v. Clark Wagaman Designs*, 34-2021-00313156); (d) be signed; and (e) be post-marked no later than November 19, 2022. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

ILYM Group, Inc.
PO Box 2031
Tustin, CA 95781

The request to opt out must be postmarked no later than November 19, 2022. If you submit a request to opt out which is not postmarked by November 19, 2022, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the

Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e.*, *Blair v. Clark Wagaman Designs*, 34-2021-00313156) (e) be signed; and (f) be post-marked no later than November 19, 2022. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendants at the addresses identified in section VI of this notice.

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

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

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

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 28, 720 9th Street Sacramento, California, 95814 on January 13, 2023, at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendants' Counsel as follows:

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

Laura C. McHugh
Ryan LaRocca
Duggan McHugh Law Corporation
641 Fulton Avenue Suite 100
Sacramento, CA 95825
Telephone: (916) 550-5309
Facsimile: (916) 404-5900
On behalf of Defendants

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

BY ORDER OF THE COURT

Blair v. Clark Wagaman Designs

c/o ILYM Group, Inc.

P.O. Box 2031

Tustin, CA 92781

«ILYMID

QR

Code»

ILYM ID: «ILYMID»

«Employee»

«Address_1»

«City», «State» «Zip_Code»

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

5 Attorneys for Plaintiff TRAVIS BLAIR
6
7

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

11 TRAVIS BLAIR, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 CLARK WAGAMAN DESIGNS, a California
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.
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20
21
22

Case No. 34-2021-00313156

CLASS ACTION

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

Date: January 13, 2023

Time: 9:00 a.m.

Dept.: 28

Judge: Hon. Lauri A. Damrell

Filed: December 22, 2021

FAC Filed: March 10, 2022

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on January 13, 2023 at 9:00 a.m., in Department 28 before the
4 Honorable Lauri A. Damrell, presiding. Named Plaintiff Travis Blair (“Plaintiff”) filed this putative
5 class action on December 22, 2021. The operative Complaint alleges that Clark Wagaman Designs
6 (“Defendant”) failed to pay overtime wages, failed to provide meal periods or pay premiums in lieu
7 thereof, failed to provide rest periods or pay premiums in lieu thereof, failed to provide accurate wage
8 statements, failed to pay all final wages, failed to reimburse expenses, and engaged in unfair
9 competition. Plaintiff has also alleged Defendant is liable for civil penalties under the Private
10 Attorneys General Act (“PAGA”) based on these violations. Plaintiff sought attorneys’ fees and costs
11 as part of this Action. Defendant denied all of Plaintiff’s claims and denied that this case was
12 appropriate for class treatment. No class has been certified. The class settlement was preliminarily
13 approved by this Court on September 1, 2022.

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

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

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

26 All non-exempt, hourly employees who have worked, or continue to work,
27 for Clark Wagaman Designs and Clark Wagaman in California from
28 December 22, 2017, up to August 27, 2022.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
2 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

3 For settlement purposes only, the Court finds that Class Members meet the ascertainability and
4 numerosity requirements since the parties can identify with a matter of certainty, based on payroll
5 records, individuals who fall within the definition and the number of Class Members would make
6 joinder impractical. The commonality and predominance requirements are met for settlement purposes
7 since there are questions of law and fact common to Class Members. The common questions of law or
8 fact in this case all stem from Plaintiff's contentions that Defendant caused the violations outlined above
9 by 1) failing to pay the correct regular rates of pay by failing to account for the value of non-
10 discretionary bonuses being paid in the same workweek as overtime premiums and paid sick time; 2)
11 failing to pay overtime wages to employees paid under a piece rate compensation system prior to
12 January 2020; 3) failing to authorize and permit all meal periods and keep track of whether employees
13 took meal periods; 4) failing to compensate for rest and recovery periods; and 5) failing to reimburse
14 employees for the use of personal items for work, such as personal cellphones and tools. The PAGA,
15 waiting time, wage statement, and unfair competition claims also derive from these violations.
16 Additionally, Class Members seek the same remedies under state law. The typicality requirement for
17 settlement purposes is also satisfied since the claims of the Class Representative is based on the same
18 facts and legal theories as those applicable to the class members.

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

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

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

27 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
28 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls

1 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
2 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length
3 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
4 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
5 were able to object to the Agreement and its terms through the administration process and at a fairness
6 hearing or opt-out of being bound by the preliminarily approved Agreement. No objections were made
7 by Class Members and no Class Members opted out of the settlement. Because the Court finds the
8 Parties' settlement to have been agreed upon only after an extensive investigation and arms-length
9 negotiations, and in an attempt to avoid further delays and costs, the Court gives final approval to the
10 Agreement and all terms therein as if stated here in full, including the \$220,000 Gross Settlement
11 Amount.

12 The Court approves of the \$10,000 PAGA Payment, which shall be paid from the Gross
13 Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA
14 claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce
15 Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved Employees
16 on a pro rata basis as described in the Agreement. The Court also finds that based on the facts of this
17 case and the disputed issues, the Agreement provides a recovery that creates an effective substantial
18 deterrent to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

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

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

26 Class Counsel sought an award of attorneys' fees of \$77,000.00, attorney's costs of \$6,104.53,
27 an Enhancement Payment to the Class Representative in the amount of \$15,000, and for Claims
28 Administrator Costs in the amount of \$6,750.00. Defendant does not oppose these requests. The

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

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

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

IV. IMPLEMENTATION SCHEDULE

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

Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day to fund settlement	As described in Section 5.1 of the Agreement
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after the settlement is fully funded
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

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

5 **IT IS SO ORDERED.**

6
7 Date: _____

By: _____

Judge of the Superior Court

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

5 Attorneys for Plaintiff TRAVIS BLAIR
6
7

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

11 TRAVIS BLAIR, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 CLARK WAGAMAN DESIGNS, a California
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.
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Case No. 34-2021-00313156

CLASS ACTION

PROOF OF SERVICE

1 *Blair v. Clark Wagaman Designs*
2 *Sacramento County Superior Court of California 34-2021-00313156*

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

5 I, Shaniya Baird, declare that:

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

8 On December 16, 2022, I served the following documents on the party below:

- 9 • **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL**
- 10 **APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- 11 • **EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF'S**
- 12 **MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA**
- 13 **SETTLEMENT**
- 14 • **DECLARATION OF TRAVIS BLAIR IN SUPPORT OF PLAINTIFF'S**
- 15 **MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA**
- 16 **SETTLEMENT**
- 17 • **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL**
- 18 **APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- 19 • **DECLARATION OF BRITTANY V. BERZIN IN SUPPORT OF**
- 20 **PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION**
- 21 **AND PAGA SETTLEMENT**
- 22 • **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF**
- 23 **PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION**
- 24 **AND PAGA SETTLEMENT**
- 25 • **DECLARATION OF KRYSTAL QUIROZ IN SUPPORT OF PLAINTIFF'S**
- 26 **MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA**
- 27 **SETTLEMENT**

21 Laura C. McHugh (SBN: 180930) 22 Ryan D. Larocca (SBN: 343635) 23 Duggan McHugh Law Corporation 24 641 Fulton Avenue Suite 100 25 Sacramento, CA 95825 26 Phone: (916) 550-5309 Facsimile: (916) 404-5900 Email: ryan@dugganmchugh.com laura@dugganmchugh.com gerie@dugganmchugh.com	
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27 [] [By Mail] I am familiar with my employer's practice for the collection and
28 processing of correspondence for mailing with the United States Postal
Service and that each day's mail is deposited with the United States Postal
Service that same day in the ordinary course of business. On the date set forth

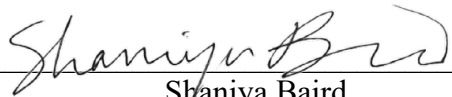
1 above, I served the aforementioned document(s) on the parties in said action
2 by placing a true copy thereof enclosed in a sealed envelope with postage
3 thereon fully prepaid, for collection and mailing on this date, following
ordinary business practices, at Elk Grove, California, addressed as set forth
above.

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

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

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

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct, and that this declaration was executed on December 16, 2022, at Salt Lake City, Utah.

11 
12 _____
Shaniya Baird