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Attorneys for Plaintiff JAMES F. RACHAL, JR.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JAMES F. RACHAL, JR., an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

ELG METALS, INC., a Pennsylvania
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 20STCV45861

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: November 18, 2022

Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Dept.: 1

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am co-counsel of record for
5 Plaintiff JAMES F. RACHAL, JR., (hereafter "Plaintiff") in this wage and hour class action filed
6 against ELG METALS, INC. (hereinafter "Defendant").

7 2. This declaration is being submitted in support of Plaintiff's Motion for Preliminary
8 Approval of Class Action and PAGA Settlement.

9 **I. EXHIBITS**

10 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Joint
11 Stipulation of Settlement and Release of Class and PAGA Action ("Agreement" or "Settlement
12 Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed
13 Class Notice.

14 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the
15 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement
16 and Motion for Preliminary Approval of Class Action and PAGA Settlement evidencing Class
17 Counsel's compliance with California Labor Code Section 2699(1)(2).

18 5. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for settlement
19 administration submitted by ILYM Group, Inc., in the amount of \$5,628.40.

20 6. Attached hereto as **"Exhibit 4"** is a true and correct copy of the JCL Law Firm "Firm
21 Resume" detailing some of the major cases the JCL Law Firm has undertaken.

22 **II. INTRODUCTION**

23 7. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
24 the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
25 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
26 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
27 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will

1 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
2 denied or of Defendant prevailing at trial. Given that there are approximately 40 Class Members, the
3 average gross recovery is approximately **\$2,516.66** (Net Settlement Amount divided by Class
4 Members). At the time of mediation, there were approximately 31 PAGA Members during the PAGA
5 Period.

6 8. As discussed below, the proposed Settlement satisfies all criteria for preliminary
7 settlement approval and falls within the range of reasonableness. The average Individual Settlement
8 Share to the Settlement Class meets or exceeds awards in similar wage and hour class actions.
9 Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly,
10 Plaintiff respectfully requests the Court grant preliminary approval of the Settlement.

11 **III. FACTS AND PROCEDURE**

12 **A. Overview of the Litigation**

13 9. Defendant is in the business of trading, processing, and recycling raw materials for the
14 stainless-steel industry and recycles high performance materials for the aerospace industry throughout
15 California, including Los Angeles County where Plaintiff worked. Plaintiff worked for Defendant as a
16 non-exempt employee in California from September of 2003 until March 24, 2020. At all times during
17 his employment, Plaintiff earned an hourly wage and was entitled to legally complaint meal and/or rest
18 periods, minimum, regular, and overtime wages, and additional compensation in the form of non-
19 discretionary incentive wages. Throughout his employment, Plaintiff was subject to Defendant's
20 written policies and procedures contained in, among other documents, the Employee Handbook and
21 "California State Supplement.

22 10. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant
23 asserts that it fully complied with all applicable employment laws and raised several other significant
24 defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period
25 policies, compliant wage statements, reimbursed for all required business expenses, and payment of all
26 wages upon separation.

1 15. On March 29, 2022, the Parties participated in a full day mediation with Hon. Steven
2 Denton (Ret.), a highly regarded jurist and mediator. After arms-length negotiations and bargaining,
3 the Parties reached an agreement to settle based on Judge Denton's Mediator's proposal and signed a
4 Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
5 negotiated a long-form settlement agreement, which is the subject of the instant motion.

6 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

7 16. Months before filing the Action, Class Counsel began their pre-filing investigation into
8 the Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
9 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,
10 including time and payroll records. At the conclusion of the interviews, Class Counsel determined that
11 each of Plaintiff's complaints appeared to substantiate Plaintiff's claim that Defendant's failed to,
12 among other things, pay for all time worked, reimburse for mandatory business expenses, and provide
13 compliant meal and rest periods.

14 17. To prepare for mediation, Class Counsel requested documents and data points to further
15 evaluate Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to
16 Class Counsel's request, Defendant produced, among other things, the time and payroll records for all
17 of the Class Members, aggregate workweek and pay period data, and copies of applicable handbooks,
18 policies, and agreements. In total, Defendant produced several pages of pertinent policy documents,
19 time records for Class Members, and more than 73,000 unique cells of payroll data for Class Counsel
20 to analyze.

21 18. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
22 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
23 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
24 and experienced experts in their fields and have provided their expertise on thousands of cases.

25 19. BCG analyzed Defendant's time and payroll data to assist in the development of various
26 damage models. Among other things, BCG determined the approximate amount of unpaid wages,
27 amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and
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1 average number of hours worked per week. BCG also estimated the number of missed, late, or truncated
2 meal and rest periods, and the amount of missed meal and rest period premiums paid during the Class
3 Period.

4 20. Additionally, at the time of mediation, Plaintiff's expert estimated that there were
5 approximately 31 PAGA Group Members who worked approximately 1,682 pay periods during the
6 PAGA Period.

7 21. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
8 determining Plaintiff's suitability as a putative class representative through interviews, background
9 investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims;
10 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
11 and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing
12 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
13 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
14 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
15 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
16 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
17 independent assessment of the reasonableness of the terms to which the Parties have agreed.

18 22. Class Counsel only agreed to enter the Settlement following this thorough investigation
19 and evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and
20 marketplace for similar settlements, and considering the risk of significant delay and uncertainty
21 associated with litigation, and the various defenses asserted by Defendant, Class Counsel believe this
22 Agreement to be in the best interest of the Class Members. Because the Settlement's terms are fair,
23 reasonable, and adequate, the Court should preliminarily approve the Settlement.

24 **C. The Parties Settled at Mediation**

25 23. On March 29, 2022, the Parties participated in mediation with Hon. Steven Denton (Ret.),
26 a highly respected jurist and wage and hour class action mediator. Judge Denton managed the Parties'
27 expectations and provided a useful, neutral analysis of the issues and risks to both sides. At all times,

1 the Parties' negotiations were at an arm's length, adversarial, and non-collusive. The mediation
2 concluded with a settlement, after both sides agreed to a Mediator's proposal, which was subsequently
3 memorialized in a Memorandum of Understanding ("MOU"). After reaching an agreement in the
4 principle, the Parties drafted and negotiated a long-form settlement which is the subject of the instant
5 motion. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement
6 terms are fair, adequate and represent a reasonable compromise of the claims at issue.

7 **IV. ARGUMENT**

8 **A. The Court Should Preliminarily Approve the Settlement**

9 24. The Gross Settlement Amount of \$212,500.00 is within the range of reasonableness. To
10 determine whether a settlement is fair and reasonable, the court should "consider enough information
11 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
12 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
13 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the
14 court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
15 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such
16 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
17 is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola*
18 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
19 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
20 have received if they had succeeded at trial.¹ Indeed, "[t]he determination whether a settlement is

21
22 ¹ Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
23 settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
24 necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
25 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
26 Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to
27 only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
28 460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184
("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in
itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers*
for Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather
than the individual component parts, that must be examined for overall fairness").

1 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank*
2 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc.*
3 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).).

4 25. The Gross Settlement Amount of \$212,500.00 is fair and reasonable considering the
5 nature and magnitude of the claims being settled and the various potential impediments to recovery.
6 Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring
7 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The
8 various models were informed by Class Counsel’s investigation, including the analysis of a significant
9 sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims*
10 (excluding PAGA Penalties) ranged between \$1,030,249 million dollars for damages and \$1,539,849
11 million dollars for damages and statutory penalties if successful at trial. Thus, the Gross Settlement
12 Amount of \$212,500.00 represents approximately 20.6% of Defendant’s *class-wide* liability exposure
13 for damages, and approximately 13.8% of Defendant’s *class-wide* liability exposure for damages and
14 statutory penalties, as estimated by Class Counsel at the time of mediation. The following summarizes
15 Defendant’s estimated exposure.

16 26. Plaintiff’s primary claim in this Action alleges that Defendant failed to provide compliant
17 meal and rest periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules,
18 Plaintiff, Class Members, and PAGA Group Members were not able to take timely and duty-free meal
19 and rest periods. Consequently, Plaintiff alleges that he is owed meal period premiums for meal and
20 rest period violations that occurred during the Class Period.

21 27. Conversely, Defendant argued, among other things, that it provided all their employees,
22 i.e., Class Members and PAGA Group Members, with the opportunity to take compliant meal and rest
23 periods. Defendant also argued that it maintained facially complaint meal and rest period policies.
24 Thus, Defendant argued that there was no potential liability for Plaintiff’s alleged meal and rest period
25 violations and any claimed violations required a highly individualized inquiry not suitable to class
26 treatment.

1 28. Plaintiff estimated Defendant's exposure for this claim was approximately \$967,585.00
2 dollars.

3 29. Additionally, Plaintiff alleged that Defendant required Class Members and PAGA Group
4 Members to incur personal expenses for the use of their own personal cellular phones. California
5 employers who require employees to incur personal business expenses for work purposes must
6 reimburse the employee for the cost incurred. (See Cal. Lab. Code § 2802(a), providing that "[a]n
7 employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the
8 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the
9 directions of the employer..."). Specifically, Plaintiff alleged Defendant required Plaintiff, Class
10 Members, and PAGA Group Members to use their own cellular phones in order to perform work related
11 tasks, but Defendant failed to reimburse them for the costs related to the use of their personal cellular
12 phones in violation of California Labor Code section 2802.

13 30. Defendant argued, among other things, that when employees incurred business expenses,
14 if any, these expenses were fully reimbursed. Plaintiff estimated that Defendant's exposure for this
15 claim was approximately \$50,253.33.

16 31. Plaintiff also alleged that Defendant failed to pay for all hours worked. Specifically,
17 Plaintiff asserted that Defendant required Plaintiff and other employees to work while clocked out
18 during what was supposed to be their off-duty meal break.

19 32. Defendant vigorously denied liability for claim. In preparation for mediation, Defendant
20 produced its California specific policies. Defendant asserted that these written policies and procedures
21 directed its employees to ensure all work is conducted while on-the-clock. Defendant asserted that any
22 deviation from these written policies were location specific and, thus, created individualized issues of
23 liability unsuitable for class treatment.

24 33. Plaintiff estimated Defendant's exposure for this claim was approximately \$62,664.00
25 dollars.

26 34. Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor
27 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential
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1 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the
2 “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
3 Defendant could argue that Plaintiff could not show that Class Members suffered an “injury” because of
4 wage statement violations, as required by Labor Code section 226. Plaintiff could not give the penalty
5 claims great weight given that they depended on proving the underlying claims, which had their own risks.
6 Plaintiff estimated Defendant’s exposure for these claims to be approximately \$173,200.00 dollars.

7 35. Class Counsel’s damage models also estimated Defendant’s exposure for PAGA
8 penalties. At the time of mediation, Plaintiff estimated Defendant’s PAGA exposure was approximately
9 \$504,600.00 dollars.

10 36. In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
11 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
12 LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot
13 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
14 Code by the defendant.”). Here, Plaintiff would need to prove that each PAGA Group Member suffered
15 a violation for each pay period the employee worked. Again, Defendant raised several defenses that
16 presented serious threats to the claims of the Plaintiff and the PAGA Group Members. Defendant
17 asserted that its employment practices complied with all applicable Labor Laws. In addition to those
18 arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v.*
19 *Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff’s claims, on liability, value, and
20 manageability as to the rest period claims.

21 37. The proposed Settlement allocates \$5,000 to satisfy the PAGA claims. This amount
22 represents 2.3% of the Gross Settlement Amount. This is well within the range of approved PAGA
23 Payments. See, e.g., *Nordstrom Comm’n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA
24 allocation); *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1%
25 PAGA allocation in \$5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942
26 * 6 (approving \$3,000 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D.
27 Cal. 2010) 2010 WL 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson*

1 v. *Hanesbrands, Inc* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA allocation in
2 \$1.026M settlement.)

3 **B. Litigation Risks**

4 38. Although Plaintiff is confident about the strength of his claims, it would be foolish to
5 ignore the most immediate risk to continued litigation, i.e., class certification. With respect to the most
6 immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and
7 hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668.
8 There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer
9 for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of
10 the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087
11 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National*
12 *Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class
13 action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that
14 employees might not take their breaks were predominantly individualized questions of fact not
15 susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming
16 denial of certification because employees’ declarations attesting to having taken meal and rest breaks
17 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*
18 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of
19 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
20 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
21 period claims based on the predominance of individual issues). Collectively, the examples cited above
22 illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification
23 through a contested motion is a significant risk factor favoring settlement.

24 39. Plaintiff recognizes that Defendant has factual and legal defenses that, if successful,
25 would potentially defeat or substantially impair the value of Plaintiff’s lawsuit. Collectively, the
26 examples cited in Plaintiff’s brief illustrate the uncertain nature of class litigation. Consequently, the
27

1 uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
2 settlement.

3 40. Finally, continuing to litigate this action would require continued and extensive resources
4 coupled with significant Court time to proceed through trial and post-trial motions; which can often
5 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
6 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
7 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
8 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
9 the risk of an appeal and subsequent reversal is real.

10 41. Given the amount of the settlement here, as compared to potential value of the claims,
11 offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

12 **B. Proposed Notice Informs the Class About the Case and Settlement**

13 42. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
14 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
15 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
16 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
17 procedure and time period within which to requests for exclusions or objections to the Settlement, the
18 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
19 and scope of the Released Claims. See generally Agreement at § 8. This method was negotiated by the
20 Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring
21 cost effective administration of the Settlement.

22 43. As detailed in the Agreement, the method of disseminating the proposed Class Notice and
23 contents of the Proposed Class Notice satisfy due process and the California Rule of Court 3.766.

24 **C. The Court Should Preliminarily Approve the Incentive Award**

25 44. The Settlement provides for an Incentive Award of \$10,000² for Plaintiff. The service
26 award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class

27 ² The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both
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Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, responding to Defendant's written discovery, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising out of his employment.

45. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Incentive Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Incentive Award.

D. The Court Should Preliminary Approve Class Counsel's Attorneys' Fees and Expenses

46. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class

federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguiar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed award of Class Counsel's Attorneys' Fees and Expenses is fair and reasonable.

47. Plaintiff will file a formal motion for the negotiated award of Class Counsel's Attorneys' Fees and Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

E. The Court Should Provisionally Certify the Settlement Class

48. For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate.

49. Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records.

50. The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class.

51. Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair.

52. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

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54. I am qualified to represent the Plaintiff, the State of California and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiff, the State of California and the Aggrieved Employees throughout this action.

56. I have significant class counsel and collective action counsel experience. My credentials are reflected in the JCL Law Firm, APC, Firm Resume, which is attached hereto as Exhibit 4.

58. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

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60. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of October 2022, at San Diego, California.

JCL LAW FIRM, APC

By: Jean-Claude Lapuyade
Jean-Claude Lapuyade
Attorneys for Plaintiff

EXHIBIT 1

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Attorneys for Defendant
ELG METALS, INC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JAMES F. RACHAL JR., an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

ELG METALS, INC., a Pennsylvania
Corporation; and Does 1-50, Inclusive,

Defendant.

) Case No. 20STCV45861

) Judge: Stuart M. Rice

) Dept: SS-1

) **JOINT STIPULATION OF SETTLEMENT
) AND RELEASE OF CLASS AND PAGA
) ACTION**

) Action Filed: November 30, 2020

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**JOINT STIPULATION OF SETTLEMENT AND
RELEASE OF PAGA ACTION**

1 This Joint Stipulation of Settlement and Release of Class Action (“Agreement”) is made
2 and entered into between Plaintiff James Rachal Jr. (“Plaintiff”), individually and on behalf of the
3 proposed Settlement Class, as defined below, and Defendant ELG Metals, Inc. (“Defendant”). This
4 Agreement is subject to approval of the Court, pursuant to the California Rules of Court (“CRC”),
5 Rule 3.769(c), (d) and (e), and made for the sole purpose of attempting to consummate settlement
6 of the Action (as defined below) on a class-wide basis subject to the following terms and
7 conditions. As detailed below, in the event the Court does not enter an order granting final
8 approval of the Class Settlement (as defined below) and enter judgment, or the conditions
9 precedent are not met for any reason, this Agreement is void and of no force or effect whatsoever.

10 1. **DEFINITIONS**

11 As used in this Agreement, the following terms shall have the meanings specified below.
12 To the extent terms or phrases used in this Agreement are not specifically defined below, but are
13 defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

14 1.1 **Action**. “Action” shall mean the lawsuit titled *James F. Rachal Jr. v. ELG Metals,*
15 *Inc.*, Case No. 20STCV45861 pending in the Los Angeles County Superior Court. The Complaint
16 is styled as a wage and hour putative class action and representative PAGA against Defendant,
17 alleging the following claims: (1) Unfair Competition In Violation Of Cal. Bus. & Prof. Code §
18 17200, et seq.; (2) Failure To Pay Overtime Wages In Violation Of Cal. Lab. Code. §§ 510 et seq;
19 (3) Failure To Provide Required Meal Periods In Violation Of Cal. Lab. Code §§ 226.7 & 512 And
20 The Applicable IWC Wage Order; (5) Failure To Provide Required Rest Periods In Violation Of
21 Cal. Lab. Code §§ 226.7 & 512 And The Applicable IWC Wage Order; (5) Failure To Provide
22 Accurate Itemized Statements In Violation Of Cal. Lab. Code § 226; (6) Failure To Reimburse
23 Employees For Required Expenses In Violation Of Cal. Lab. Code § 2808; (7) Failure To Provide
24 Wages When Due In Violation Of Cal. Lab. Code §§ 201, 202 And 203; (8) Failure To Pay
25 Minimum Wages In Violation Of Cal. Lab. Code §§ 1194, 1197, And 1197.1; and (9) Violation Of
26 The Private Attorneys General Act (Labor Code §§2698 et seq.) (the “Action”).
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1.2 **Class Claims.** “Claims” shall mean the claims and theories asserted and causes of action alleged in the Action, or that could have been alleged in the Action based on the facts alleged in the Action.

1.3 **PAGA Claims.** “PAGA Claims” shall mean claims for civil penalties under the PAGA predicated on the theories of liability that were set forth in the Action and Plaintiff’s notice to the LWDA.

1.4 **Class Counsel.** “Class Counsel” refers to Shani O. Zakay and Jackland K. Hom of Zakay Law Group, APLC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121; Jean-Claude Lapuyade of JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

1.5 **Class Counsel’s Attorneys’ Fees and Expenses.** “Class Counsel’s Attorneys’ Fees and Expenses” shall mean Class Counsel’s attorneys’ fees and expenses to be requested and subject to approval by the Court at the time of the Approval Hearing in an amount not to exceed one-third of the Gross Settlement Amount (Seventy Thousand Eight Hundred and Thirty Three Dollars and Thirty-Three Cents (\$70,833.33)) and reasonable documented costs not to exceed Twenty Thousand Dollars (\$20,000).

1.6 **Class Member(s)** mean all members of the Class.

1.7 **Class.** The Class is defined as all non-exempt employees of Defendant in California from January 18, 2017 to July 27, 2022.

1.8 **Class Period** means January 18, 2017 through July 27, 2022, with the sole exception that if the workweek total exceeds 6,400 by more than 10%, the Class Period shall end on the day before the workweek total exceeds 6,400.

1.9 **Court.** “Court” shall mean the Superior Court of California, County of Los Angeles.

1.10 **Defendant.** “Defendant” shall mean ELG Metals, Inc.

1.11 **Defense Counsel.** “Defense Counsel” shall mean Garrett V. Jensen and Carolina Schwalbach of CDF Labor Law LLP, 18300 Von Karman Avenue, Suite 800, Irvine, California 92612.

1.12 **Effective Date.** “Effective Date” shall be the later of the time when: (i) the date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order and Judgment in a form substantially identical to the form of the Final Approval Order entered by the Court, and the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; or (iv) if no appeal is filed, the sixty-first (61st) day after the Court enters final approval of the settlement and the Judgment approving this Agreement.

1.13 **Employee’s Taxes and Required Withholding.** “Employee’s Taxes and Required Withholding” shall mean the employee’s share of any and all applicable federal, state or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act (“FICA”), FUTA and/or SUTA on the portion of any Settlement Class Member’s Individual Settlement Amount that constitutes wages as set forth in Section 6, Paragraph 6.4. The Employee’s Taxes and Required Withholdings will be withheld from and paid out of the Net Settlement Amount.

1.14 **Employer’s Taxes.** “Employer’s Taxes” shall mean and refer to Defendant’s share of corporate, federal, state and/or local payroll taxes that is owed on the portion of any Settlement Class Member’s Individual Settlement Amount that constitutes wages, up to a maximum wage allocation of twenty percent (20%) as set forth in Section 6, Paragraph 6.4. The Employer’s Taxes shall be separately paid by Defendant and shall not be paid from the Gross Settlement Amount or Net Settlement Amount.

1.15 **Final Approval Date.** “Final Approval Date” shall mean the date upon which the Court enters an order of final approval of the Class Action Settlement.

1.16 **Final Approval and Fairness Hearing.** “Final Approval and Fairness Hearing” shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

1.17 **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed upon settlement amount totaling Two Hundred and Twelve Thousand Five Hundred Dollars (\$212,500.00), to be paid by Defendant in full settlement of the Released Claims asserted in this case, which includes the Administration Expenses, PAGA Counsel’s Attorneys’ Fees and Expenses, and an Incentive Award. In no event shall Defendant be required to pay more than the Gross Settlement Amount with the exception of the Employers share of the payroll taxes as specified in Section 1.13 above.

1.18 **Incentive Award.** “Incentive Award” shall mean the monetary payment to the Class Representative of an amount up to \$10,000.00, for his efforts in initiating this Action, the broad release provided by him herein, the risks undertaken on behalf of the Class Members, and for the substantial benefits to be received by Class Members. The Incentive Award payment shall be reported on an IRS 1099 basis, and shall be paid in addition to the Plaintiff’s Individual Settlement Payment he is entitled as a member of the Class under the terms of this Settlement.

1.19 **Individual Settlement Payment.** “Individual Settlement Payment” means the proportionate share of the Net Settlement Amount to be distributed to each Settlement Class Member based on the number of his or her Weeks Worked during the Class Period in relation to the aggregate number of Weeks Worked by all Settlement Class Members, less any Employee’s Taxes and Required Withholdings.

1.20 **Net Settlement Amount.** “Net Settlement Amount” or “NSA” shall mean the Gross Settlement Amount, minus the Court-approved amounts awarded for the Attorneys’ Fees and Costs, Class Representative Incentive Award, Settlement Administration Fees, and the PAGA Payment. The Parties intend that the NSA shall be sufficient to pay all valid claims of Settlement Group Members. Accordingly, if for any reason the total value of Individual Settlement Payments to Settlement Group Members exceeds his amount, then payment to each Settlement Group Member will be adjusted on a pro-rate basis so that the total payout to Settlement Group Members

1 does not exceed the NSA.

2 1.21 **Notice Packet.** “Notice Packet” shall mean the Class Notice distributed to each
3 Class Member through the notice process.

4 1.22 **Opt-Out.** “Opt-Out(s)” shall mean any and all persons who timely and validly
5 request exclusion from the Class in accordance with the terms of the Class Notice.

6 1.23 **PAGA.** “PAGA” refers to the Labor Code Private Attorneys General Act of 2004,
7 Labor Code sections 2699, *et seq.*

8 1.24 **PAGA Group Members.** PAGA Group Members refers to as all non-exempt
9 employees of Defendant in California from September 18, 2019 through July 27, 2022.

10 1.25 **PAGA Payment.** “PAGA Payment” shall mean an allocation of Five Thousand
11 Dollars (\$5,000.00) to the PAGA claim, of which 75% shall be remitted to the LWDA for its
12 statutorily-set portion of the PAGA penalties and the remaining 25% shall be distributed to the
13 PAGA Group Members as part of the Net Settlement Amount.

14 1.26 **PAGA Period.** “PAGA Period” is defined as September 18, 2019 through July 27,
15 2022 .

16 1.27 **PAGA Release.** See Released Claims.

17 1.28 **Parties.** “Parties” shall mean Plaintiff (as defined below) and Defendant.

18 1.29 **Plaintiff.** “Plaintiff” and “Class Representative” shall mean Plaintiff James Rachal.

19 1.30 **Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date
20 upon which the Court enters an order preliminarily approving this Stipulation.

21 1.31 **Released Class Claims.** “Released Class Claims” shall mean all claims and theories
22 that were set forth, or that could have been set forth based on the facts alleged in the Action during
23 the Class Period, including under California Labor Code sections 201, 201.3, 202, 203, 204, 210,
24 218.5, 218.6, 223, 225.5, 226, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,
25 1197.1, 1197.14, 1198, 1198, 1199, 2808, and related IWC Wage Orders, based on the various
26 theories of liability, including, but not limited to, Defendant’s alleged failure to: provide meal
27 periods, provide rest periods, pay for all hours worked, pay overtime wages at the correct rate, pay
28 minimum wage, provide reimbursement for business expenses, provide accurate wage statements,

and timely pay all final wages at separation of employment.

1.32 **Released PAGA Claims.** “Released PAGA Claims” shall mean all claims for civil penalties under the PAGA, including pursuant to California Labor Code sections 2698 and 2699, predicated on the theories of liability that were set forth in the Action and Plaintiff’s notice to the LWDA.

1.33 **Released Parties.** “Released Parties” shall mean Defendant and its officers, directors, managers, owners, executives, partners, exempt employees, shareholders, agents, attorneys, any of its former and present parents, subsidiaries, and affiliates, and its officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

1.34 **Settlement.** “Settlement” shall mean the settlement between Parties, which is memorialized in this Agreement, including any attached exhibits, and subject to Court approval.

1.35 **Settlement Administrator.** “Settlement Administrator” or “Administrator” shall mean ILYM Group, INC. , the third-party settlement administrator selected by the Parties and to be approved by the Court, which the Parties have agreed will be responsible for administration of the Settlement and related matters. The Administrator’s fee and expenses are estimated to not exceed \$6,000.00 (“Administrative Expenses”).

1.36 **Settlement Class Member.** “Settlement Class Member” shall mean any and all Class Members who do not timely and validly opt-out of the Class Settlement.

1.37 **Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and Release of Class Action, including any attached exhibits.

2. **FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

2.1 On November 30, 2020, Plaintiff filed the Action.

2.2 The Parties agreed to explore the possibility of mediation with Hon. Steven R. Denton, Ret. and Plaintiff requested, and received, informal discovery to evaluate the claims and theories alleged. On March 29, 2022, the Parties mediated. While the Parties did not settle at the mediation, with the continued assistance of Hon. Steven R. Denton, they were able to resolve the matter based on Judge Denton’s mediator proposal, the terms of which were memorialized in a

Memorandum of Settlement executed by the Parties.

2.3 The Parties and their respective counsel believe this Agreement reflects a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement as a result of arms'-length negotiations, facilitated by an experienced and neutral mediator, taking into account all relevant factors, present and potential.

3. **ALLEGATIONS OF THE CLASS ACTION AND BENEFITS OF THE SETTLEMENT**

3.1 The extensive exchange of information conducted in this matter, as well as discussions between counsel, have been adequate to give class representatives and class counsel a sound understanding of the merits of their positions and to evaluate the worth of the claims of the Settlement Class. The information exchanged by parties through informal exchange and settlement discussions are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

3.2 The Parties recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendant through class certification, dispositive motions, trial and through appeals. Class Counsel has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as this, as well as difficulties and delays inherent in such litigation, the potential difficulty of obtaining certification of the Action, as well as trying the claims of the Class. Class Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits upon Plaintiff and the Settlement Class Members and that an independent review of this Stipulation by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel has determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiff and the Settlement Class Members.

4. **NO ADMISSION OF ANY LIABILITY**

4.1 The Parties agree that this Agreement reflects their good faith compromise of the claims raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. This Agreement does not constitute, is

1 not intended to constitute, and will not be deemed to constitute, an admission of liability by
2 Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against
3 Defendant in the Action or the appropriateness of class or conditional certification. Defendant
4 denies each and all of Plaintiff's allegations in their entirety, and allege that Plaintiff and all other
5 Class Members were paid all wages owed, including minimum wages and overtime wages, were
6 properly paid all hours worked, provided all meal and rest periods, paid all wages on a timely basis,
7 received accurate itemized wage statements, paid all wages owed upon termination throughout their
8 employment, Defendant kept accurate records, were reimbursed for any business expenses, and
9 Defendant did not engage in unfair competition and/or unfair business practices.

10 4.2 Nothing in this Stipulation, nor any action taken or made in implementation thereof,
11 nor any statements, discussions, or communications, nor any materials prepared, exchanged,
12 issued, or used during the course of the negotiations leading to the Agreement and/or Stipulation, is
13 intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used, or be
14 admissible in any way in this case or any other judicial, arbitral, administrative, investigative or
15 other forum or proceeding as evidence of any violation of any federal, state, or local law, statute,
16 ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.
17 Notwithstanding the foregoing, the Agreement/Stipulation may be used in any proceeding in the
18 Court that has as its purpose the interpretation, implementation, or enforcement of the Agreement
19 or any orders or judgments of the Court entered into in connection therewith.

20 4.3 The Parties agree that Plaintiff's motion for preliminary approval of the Settlement
21 seeking certification of a class action and Defendant's agreement thereto is for purposes of the
22 Settlement only. If, for any reason, the Settlement is not approved, the stipulation for certification
23 will have no force or effect. The Parties agree that certification for purposes of the Settlement is in
24 no way an admission that class certification or conditional certification of a representative action is
25 proper under the standard applied to contested certification motions and that this
26 Agreement/Stipulation will not be admissible in this or any other proceeding as evidence that (i) a
27 class or representative action should be certified as Plaintiff proposed, or (ii) Defendant is liable to
28 Plaintiff or the Class Members as Plaintiff alleged. Further, neither this Agreement/Stipulation nor

the Court's actions with regard to this Agreement/Stipulation will be admissible in any court or other tribunal regarding the propriety of class certification for purposes other than the settlement of this Action. In the event that this Agreement/Stipulation is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Defendant will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Action, including, but not limited to, its ability to move to compel arbitration, raise defenses in opposition to certification, contest the merits of the claim, etc.

5. **CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL**

5.1 **The Settlement Class.** For the purposes of this Stipulation and the Class Settlement of this Action only, the Parties stipulate to conditional class certification of the Settlement Class. Defendant's counsel believes this conditional certification is appropriate because the Released Claims are being compromised without need to establish the elements of those claims on which liability turns.

5.2 **Appointment of Class Counsel.** For purposes of this Stipulation and subject to the Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the Class and the effectuation of the Class Settlement pursuant to this Stipulation.

6. **CLASS SETTLEMENT CONSIDERATION**

6.1 **Gross Settlement and Net Settlement Amounts and Distribution.** The claims of all Settlement Class Members and PAGA Members are settled for a Gross Settlement Amount of \$212,500.00. The Gross Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration for the Class Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) Class Attorney Fees and Expenses, (c) Administrative Expenses, (d) the Incentive Awards, (e) any other obligation of Defendant under this Stipulation (other than the Employer's Taxes and Required Withholding on the portion of the Net Settlement Amount allocated to the payment of wages). As more fully detailed in this Agreement, after the Court issues an order preliminarily approving this Class Settlement, the Settlement Administrator will distribute the Class Notice to the Settlement Class Members, which shall describe the terms of

1 the Class Settlement and procedures to opt out, object or do nothing, which shall identify the
2 Settlement Class Member, the number of workweeks worked by each Settlement Class Members.
3 The Net Settlement Amount will be allocated as follows: (1) 20% to wages and reported on an IRS
4 W-2 basis; (2) 30% to interest, to be reported on an IRS form 1099; and (3) 50% to penalties, to be
5 reported on an IRS form 1099. Defendant agrees to pay the employer's portion of the payroll taxes
6 on the portion of settlement awards allocated to W2 wages, which will be computed and paid by
7 the Settlement Administrator, but funded separately and in addition to the Gross Settlement
8 Amount.

9 6.2 **Incentive Award for Class Representative.** The Class Representative will petition
10 the Court to approve an Incentive Award in an amount up to \$10,000 for Plaintiff's efforts on
11 behalf of the Settlement Class in this Action, including assisting in the investigation and consulting
12 with Class Counsel and providing crucial documents to Class Counsel. Defendant shall not oppose
13 any request by Plaintiff for an Incentive Award up to such an amount. Any Incentive Award
14 approved by the Court shall be paid to Plaintiff from the Gross Settlement Amount and shall be in
15 addition to any distribution to which they may otherwise be entitled as a Settlement Class Member.
16 The Incentive Award shall not be considered wages, and the Settlement Administrator shall issue
17 Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the payment
18 of any and all taxes with respect to their Incentive Awards and shall hold Defendant harmless from
19 any and all liability with regard thereto. Any reduction in the Incentive Payments shall be added to
20 the Net Settlement Amount.

21 6.3 **Payments to Settlement Class Members.** Each Class Member shall be eligible to
22 receive payment of an Individual Settlement Amount, which is a share of the Net Settlement
23 Amount based on the number of workweeks worked while employed by Defendant during the
24 Class Period. The Individual Settlement Amount for each Settlement Class Member shall be
25 calculated in accordance with section 9, Paragraph 9.2. Each Settlement Class Member, including
26 Plaintiff, assume full responsibility and liability for any employee taxes owed on their Individual
27 Settlement Amount.
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1 6.4 **Tax Treatment and Payment.** For the purposes of calculating Employee's
2 withholding for the Individual Settlement Amounts for Settlement Class Members (including
3 payments to the Class Representative but exclusive of his Incentive Awards), the Parties agreement
4 that twenty percent (20%) of each Individual Settlement Amount shall be constituted as wages (and
5 each Settlement Class Member will be issued an IRS Form W-2 for such payment to him or her);
6 thirty percent (30%) shall be allocated to interest (and each Settlement Class Member will be
7 issued an IRS Form 1099 for such payment to him or her); and fifty percent (50%) shall be
8 allocated to penalties (and each Settlement Class Member will be issued an IRS Form 1099 for
9 such payment to him or her). Prior to final distribution, the Settlement Administrator shall calculate
10 the total Employee's Taxes and Required Withholdings due as a result of the wage portion of
11 Settlement Class Members' anticipated Individual Settlement Amounts and such actual amount
12 will be deducted from the Net Settlement Amount. Additionally, prior to the funding of the Gross
13 Settlement Sum and final distribution, the Settlement Administrator shall calculate the total
14 Employer's Taxes due on the wage portion of the Settlement Class Members' Individual
15 Settlement Amounts and issue instructions to Defendant to separately fund these tax
16 obligations/withholdings. The Parties understand that Plaintiff and the Settlement Class Members
17 who receive any payment pursuant to this Stipulation shall be solely responsible for any and all
18 other individual tax obligations associated with this Class Settlement.

19 6.5 **No Effect on Employee Benefits.** Neither the Class Settlement nor any amounts
20 paid under the Class Settlement will modify any previously credited hours, days, or weeks or
21 service under any employee benefit plan, policy or bonus program sponsored by Defendant, if any.
22 Such amounts will not form the basis for additional contributions to, benefit under, or any other
23 monetary entitlement under Defendant's sponsored benefit plans, policies or bonus programs, if
24 any. The payments made under the terms of this Stipulation shall not be applied retroactively,
25 currently, or on a going forward basis, as salary, earnings, wages, or any other form of
26 compensation for the purposes of any of Defendant's benefit plans, policies or bonus programs, if
27 any. Defendant retains the right to modify the language of its benefits plans, policies and bonus
28 programs to effect this intent and to make clear that any amounts paid pursuant to this Stipulation

are not for “weeks worked,” “weeks paid,” “weeks of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Stipulation. Defendant do not consider the Class Settlement payments “compensation” for purposes of determining eligibility for, or benefit accrual within, any benefits plan, policy, or bonus program, or any other plan or program sponsored by Defendant, if any.

6.6 **Class Attorney Fees and Expenses.** As part of the motion for final approval of the Class Settlement, Class Counsel may submit an application for an award of Class Attorney Fees and Expenses not to exceed Seventy Thousand Eight Hundred and Thirty Three Dollars and Thirty-Three Cents (\$70,833.33), (which is 1/3 of the Gross Settlement Amount) and the award of actual documented costs and expenses not to exceed Twenty Thousand Dollars (\$20,000), both of which shall be paid from the Gross Settlement Amount. Defendant agrees not to object to any such fee, cost or expense application up to those amounts. As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the manner reflected by this Section. Any Class Attorney Fee and Expenses awarded by the Court shall be paid from the Gross Settlement Amount in arriving at the Net Settlement Amount and shall not constitute payment to any Settlement Class Member. If the Class Counsel voluntarily reduces the request for Class Attorney Fees and Expenses or the Court’s award of Class Attorney Fees and Expenses is less than set forth above, the Net Settlement Amount shall be increased to reflect the actual Class Attorney Fees and Expenses awarded.

6.7 **Payment of Class Attorney Fees and Expenses.** Class Attorney Fees and Expenses as awarded by the Court shall be paid by the Settlement Administrator out of the Gross Settlement Amount within thirty (30) calendar days of the Effective Date.

7. **CLAIMS ADMINISTRATION COSTS AND EXPENSES**

7.1 All costs and expenses due to the Settlement Administrator in connection with its administration of the Settlement described in the Agreement, including, but not limited to, formatting and mailing the Notice Packet by first class, U.S. Mail, performing a National Change of Address database search to update Class Member addresses prior to the initial mailing of the

1 Notice Packets, performing skip-traces to locate and update Settlement Class Members' address on
2 the return of undelivered Notice Packets, establishing a toll-free number and post office box for the
3 receipt of Class Member communications; processing Opt-Out requests (and sending those to
4 counsel for Defendant) and objections, calculating, and distributing Individual Settlement
5 Payments, and payments to PAGA Members, tax reporting, weekly status reports, and declarations
6 as needed and requested by the Parties or by the Court, among other tasks as reflected within this
7 Agreement shall be paid by the Settlement Administrator to the Settlement Administrator from the
8 Gross Settlement Amount

9 7.2 **Payment by Defendant.** The Settlement Administrator will calculate the
10 Employer's Taxes and inform Defendant of the total amount of such Employer's Taxes within five
11 days after the Effective Date. Within 15 calendar days after the Effective Date, Defendant shall
12 deposit the Gross Settlement Amount of \$212,500.00 with the Settlement Administrator to pay:
13 (1) the Class Attorney Fees and Expenses, as approved by the Court; (2) the Incentive Awards, as
14 approved by the Court; (3) the Administrative Expenses; (4) PAGA Payment of \$5,000.00 of which
15 \$3,750.00 shall be remitted to the LWDA and \$1,250 shall be distributed to the PAGA Members;
16 and (5) the balance shall be distributed to class members as part of the Net Settlement Amount.
17 Defendant shall separately pay its share of Employer Taxes to the Settlement Administrator prior to
18 the distribution of the Individual Settlement Amounts to Settlement Class Members. In no event
19 shall Defendant be obligated to pay or deposit with the Settlement Administrator more than
20 collectively \$212,500.00, plus the Employer Taxes.

21 8. **NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION**
22 **PROCESS**

23 8.1 **The Settlement Administrator.** The Settlement Administrator will be responsible
24 for mailing the Class Notice (**Exhibit 1**) to the Settlement Class Members, handling inquiries from
25 Settlement Class Members concerning the Class Notice, determination of Individual Settlement
26 Amounts, maintaining the settlement funds in an appropriate interest bearing account, preparing,
27 administering and distributing Individual Settlement Amounts to Settlement Class Members,
28 issuing a final report and performing such other duties as the Parties may direct.

1 On a weekly basis, the Settlement Administrator will provide summary information to Class
2 Counsel and Defense Counsel updating them as to the number of validated and timely objections
3 and Opt-Out Requests. The Settlement Administrator will send, via e-mail, date-stamped copies of
4 the original no later than seven days after their receipt: (1) to Defense Counsel, opt-out requests
5 and, (2) to Class Counsel and Defense Counsel, objections. The Settlement Administrator will
6 provide Class Counsel with proof of mailing of the Class Notice, without listing individual Class
7 Member names which the Settlement Administrator will file with the Court at the time Class
8 Counsel files its motion in support of the Court's Final Approval and Fairness Hearing. No later
9 than twenty (20) court days prior to the final approval hearing, the Settlement Administrator will
10 compile and deliver to Class Counsel and Defense Counsel a report with summary information
11 regarding (a) the total amount of final Individual Settlement Amounts of each Settlement Class
12 Member, (b) the number of Settlement Class Members to receive such payments, and (c) the final
13 number of Opt-Outs and objections.

14 The Administrator's fees shall be paid out of the Gross Settlement Amount. Prior to the
15 calculation and distribution of the Individual Settlement Amounts, the Settlement Administrator
16 shall calculate the total Administrative Expenses through the consideration of their services and
17 such actual amount will be deducted from the Gross Settlement Amount prior to the final
18 calculation of the Individual Settlement Amounts.

19 **8.2 Notice to the Settlement Class Members.** Notice shall be provided to Settlement
20 Class Members in the following manner: Within twenty-one (21) calendar days of Preliminary
21 Approval of the Settlement, Defendant shall provide the Settlement Administrator with the names,
22 most recent known mailing address, Social Security Numbers, the pay periods worked during the
23 PAGA Period, and the workweeks worked during the Settlement Class Period (collectively "Class
24 List and Data"). This information will not be shared with and/or provided to Class Counsel in any
25 way.

26 Within twenty eight (28) days following the Preliminary Approval Date, the Settlement
27 Administrator shall determine the number of workweeks for each Settlement Class Member, the
28 number of pay periods for each PAGA Member, populate the Settlement Class for each

1 accordingly, and send each Settlement Class Member the Class Notice via first-class, United States
2 mail. The Class Notice shall also contain an easily understood statement alerting the Class
3 Members that, unless they elect to Opt-Out of the Class Settlement, the Settlement Class Member
4 is releasing and waiving all Released Claims against the Released Parties.

5 The Notice will include, non-exclusively, information regarding the nature of the Action; a
6 summary of the substance of the Settlement; the Class and PAGA definitions; the date for the final
7 approval hearing; the formula used for the Individual Settlement Payments; the settlement
8 procedure and time period for objecting to the Settlement, disputing the number of workweeks
9 worked, or opting out from the Settlement. The Notice shall include the Class Member's estimated
10 workweeks upon which the Individual Settlement Payment is based and the estimated pay periods
11 upon which the individual PAGA Payment is based if applicable.

12 8.3 **Disputing Information In Notice Packet.** If a Class Member disputes the
13 Individual Settlement Payment or any other information on the Notice that s/he receives, the Class
14 Member may produce evidence to the Settlement Administrator for the Class Period. In order for
15 the dispute to be considered, s/he must follow the directions on the Notice of Class Action
16 Settlement.

17 Written notice of the dispute must be received by the Settlement Administrator within 45
18 calendar days of the mailing of the Notice Packet in order to be considered (the "Response
19 Deadline"). The date of mailing the Notice Packet by the Settlement Administrator to the Class
20 Member, and the date the Settlement Administrator received the Notice Packet, shall be
21 conclusively determined according to the records of the Settlement Administrator. Upon the timely
22 receipt of any disputed workweeks worked, the Settlement Administrator will notify Defense
23 Counsel in writing (e-mail constitutes a writing for this purpose) of the dispute. Defendant's
24 records will be presumed determinative, absent evidence to rebut Defendant's records, but the
25 Settlement Administrator will evaluate the evidence submitted by the Class Member and make the
26 decision as to the validity of such evidence. The Court shall make the final decision regarding any
27 Individual Settlement Payment disputes.

28

1 8.4 **Returned Notice Packet.** The Parties agree that the Administrator shall update
2 address information before transmitting notice, will skip trace returned mail that does not have a
3 forwarding address, and will re-mail Notice packets accordingly. Settlement Class Members who
4 receive re-mailed notice will have a 15-day extension of time to deliver an Opt Out, an objection,
5 or a dispute regarding the Individual Settlement Payment to the Settlement Administrator, but in no
6 event shall that time period be longer than 15 days after the end of the Notice Period.

7 The date of the postmark on the return mailing envelope shall be the exclusive means used
8 to determine whether an Opt Out, objection or dispute has been timely submitted. However,
9 regardless of the date of the postmark, any Opt Outs, objections, or disputes that are received more
10 than 45 calendar days after the date the Notice Packets were initially mailed will not be considered
11 valid. Within five (5) days prior to the final approval hearing, the Settlement Administrator shall
12 certify the number of individual Class Members who have not objected, opted out and/or timely
13 submitted a dispute.

14 8.5 **Opt Out.** In order for a Class Member to validly Opt Out from the Class and this
15 Settlement, the Class Member must sign and submit a written request to the Settlement
16 Administrator requesting that he or she be excluded from the settlement. The Opt Out must be sent
17 to the Claims Administrator by mail, fax, or email so that the Claims Administrator receives it by
18 no later than the Response Deadline. However, if an Opt Out is mailed, it will be valid if it is
19 postmarked by the date of the Response Deadline. By signing this Agreement/Stipulation, Plaintiff
20 agree that they will not Opt Out from the Class. The Parties and their respective counsel agree that
21 none of them will take any steps to encourage any Class Member to opt out of the Class or object to
22 the settlement. The date of mailing the Notice Packet, and the date the signed Opt Out was
23 received by the Settlement Administrator, shall be conclusively determined according to the
24 records of the Settlement Administrator. Any Class Member who timely and validly opts out of the
25 Class and this Settlement will not be entitled to any recovery from this Settlement, will not be
26 bound by the terms and conditions of this Agreement, and will not have any right to object, appeal
27 or comment thereon, except with respect to PAGA claims as provided hereinbelow. Upon
28 returning an Opt Out, the submitting Class Member waives the right to object to the Settlement. If

1 a Class Member submits both an Opt Out and an Objection, the Opt Out will be deemed void. If a
2 Class Member, who is also a PAGA Member, opts out of the class portion of the settlement, he/she
3 will still receive a payment from the PAGA portion of the settlement and will release the PAGA
4 Released Claims._

5 8.6 **Objections to Settlement.** In order to object to this Agreement, or any term of it,
6 the person making the objection must be a Class Member, must not opt-out, and must, by no later
7 than forty-five (45) calendar days after the Notice Packet is first mailed, file the written objection
8 with the Settlement Administrator a written statement of the grounds of objection, signed by the
9 objecting Class Member or his or her attorney, along with all supporting papers, in accordance with
10 the instructions in the Notice of Class Action Settlement. The Settlement Administrator shall serve
11 Class Counsel and Defense Counsel the written objection within three days of its receipt. The
12 written objection shall include the basis for the individual's objection, whether they are represented
13 by counsel, and shall indicate whether they intend to appear at the final fairness hearing. The date
14 of mailing of the Notice Packet to the objecting Class Member shall be conclusively determined
15 according to the records of the Settlement Administrator. Any objection that does not meet the
16 requirements of this subparagraph may still be considered by the Court, at the Court's discretion.
17 Class Members who fail to timely and validly file and serve objections in the manner specified
18 herein may still appear at the Final Fairness Hearing to make their objection orally at the Court's
19 discretion. By signing this Agreement, Plaintiff agrees that he will not object to any of the terms of
20 the Settlement.

21 In the event a Class Member returns both a timely Opt Out and an Objection, the Opt Out
22 will be deemed void.

23 9. **CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

24 9.1 **Allocation of the Gross Settlement Amount.** The claims of all Settlement Class
25 Members are settled for the maximum Gross Settlement Amount of \$212,500, which will be
26 allocated as follows:

- 27 a. The Administrative Expenses not to exceed \$6,000.00 subject to Court approval;
28

b. The Class Counsel Attorney Fees not to exceed \$70,833.33 and reasonable costs not to exceed \$20,000.00, subject to Court approval. Attorney Fees will be allocated 50% to the JCL Law Firm, APC and 50% to Zakay Law Group, APLC;

c. The Incentive Award, not to exceed \$10,000 to Plaintiff, subject to Court approval; and

d. PAGA Payment of \$5,000.00 of which \$3,750.00 shall be paid to the LWDA, and \$1,250 paid to the PAGA Members, allocated to each PAGA Member based on the number of pay periods he/she worked during the PAGA Period in relation to the total number of pay periods worked by all PAGA Members during the PAGA Period.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in Section 1(a-d) prior to sending the Notice to the Settlement Class Members. Prior to final distribution, the Settlement Administrator shall calculate the final Net Settlement Amount based on the actual values in Section 1(a-d).

9.2 Calculation of the Individual Settlement Amounts. Individual Settlement Payments to Settlement Class Members shall be allocated as 20% to wages, 30% to interest, and 50% to penalties. The estimated amount of the Settlement Class Member's Individual Settlement Payment will be calculated by the Administrator based on the number of Weeks Worked during the Class Period divided by the total number of Weeks Worked by all Settlement Class Members. If a Settlement Class Member is also a PAGA Member, they will also receive a proportionate share of \$5,000 (25% of the amount allocated to PAGA) in addition to the Individual Settlement Payment as calculated above. The payment under PAGA for each PAGA Member will be calculated by the Administrator based on the number of pay periods employed during the PAGA period divided by the total number of pay periods for all PAGA Members. The maximum amount that each Settlement Class Member is entitled to receive from the Net Settlement Amount is determined by dividing the Net Settlement Amount by the total number of pay periods worked during the class period by the entire Settlement Class to set a per pay period amount, and then multiplying the individual Settlement Class Member's pay periods worked during the same period by the per pay

1 period amount. If any Class Members opt out of the settlement, their portion will be allocated
2 towards the Net Settlement Amount.

3 All applicable legal deductions will be withheld from the wage portion of Individual
4 Settlement Payments and the appropriate W-2s and 1099s filed with the relevant taxing authorities
5 by the Settlement Administrator. The Plaintiff's Incentive awards will be in addition to their
6 allocated portion of the NSA and shall be reported on an IRS 1099 basis.

7 Defendant will provide the Settlement Administrator with any information reasonably
8 necessary to perform the calculation of number of pay periods for each Settlement Class Member,
9 and any other reasonably required information the Settlement Administrator requests to perform the
10 calculations required under this Settlement Agreement. Defendant shall have no responsibility for
11 deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to
12 this Stipulation, shall have no involvement in or responsibility for the determination or payment of
13 Employee's Taxes and Required Withholdings. Although the Settlement Administrator will
14 calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the
15 Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Settlement Class
16 Members
17 represent and understand that they shall be solely responsible for any and all tax obligation
18 associated with their respective Individual Settlement Amounts and Incentive Awards.

19 9.3 **Time for Payment of Attorneys' Fees and Expenses to Class Counsel.** The
20 Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses approved
21 by the Court to Class Counsel no later than thirty (30) calendar days after the Effective Date.

22 9.4 **Time for Payment of Incentive Awards to Class Representatives.** The
23 Settlement Administrator shall distribute to Plaintiff the Incentive Awards approved by the Court
24 no later than thirty (30) calendar days after the Effective Date.

25 9.5 **Time for Payment of Taxes and Required Withholding and Individual**
26 **Settlement Amounts.** The Settlement Administrator shall make every effort to pay the
27 Employee's Taxes and the Required Withholding associated with each Settlement Class Member's
28 Individual Settlement Amount and mail the Individual Settlement Amount to each Settlement Class

1 Member, by first-class U.S. mail, to the last-known address no later than thirty (30) calendar days
2 after the Effective Date. If the Settlement Administrator is not able to do so within the time period
3 set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate
4 date by which Employee's Taxes and Required Withholding shall be paid and the Individual
5 Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator
6 distribute checks to Settlement Class Member until all Individual Settlement Amounts have been
7 considered, calculated, and accounted for, and all of the remaining monetary obligations have been
8 calculated and accounted for. Within 240 days of the Effective Date, the Settlement Administrator
9 shall file with the Court and provide to Class Counsel a declaration of payment. In the event that
10 any Settlement Class Member is deceased, payment shall be made payable to the estate of that
11 Settlement Class Member and delivered to the executor or administrator of that estate, unless the
12 Settlement Administrator has received an affidavit or declaration pursuant to Cal. Probate Code
13 § 13101, in which case payment shall be made to affiant(s) or declarant(s).

14 9.6 **Non-Cashed Settlement Checks.** Settlement Class Member shall have one hundred
15 eighty days (180) to cash their checks. If a Notice Packet is returned as undeliverable, the
16 Individual Settlement Payment check for that Settlement Class Member will be held by the
17 Settlement Administrator subject to (2) below, unless a new address for the Settlement Class
18 Member is obtained, in which case the Notice Packet (subject to Paragraph 8.4 above) and
19 Individual Settlement Payment check will be remailed to the new address. To the extent that: (1)
20 Individual Settlement Payment checks are undeliverable, or (2) the Individual Settlement Payment
21 checks are uncashed 180 calendar days after the date listed on the check, the amount of those
22 checks shall be directed to the California State Controller for deposit in the Unclaimed Property
23 Fund in the name of the employee.

24 9.7 **Time for Payment of PAGA Payment to the LWDA.** The Settlement
25 Administrator shall distribute to the PAGA Payment to the LWDA and the PAGA Group Members
26 as approved by the Court no later than thirty (30) calendar days after the Effective Date.
27
28

1 10. **NULLIFICATION OF THIS STIPULATION**

2 10.1 **Non-Approval of the Stipulation.** If (a) the Court for any reason fails to approve
3 this Stipulation in the form agreed to by the Parties, or (b) the Court for any reason fails to enter a
4 judgment with prejudice of this Action, or (c) the approval of the Class Settlement and judgment is
5 reversed, modified or declared or rendered void, then the Class Settlement and conditional class
6 certification shall be considered null and void, and neither the Class Settlement, conditional class
7 certification, nor any of the related negotiations or proceedings shall be of any force or effect, and
8 all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class
9 Settlement has been neither entered into nor filed with the Court. Notwithstanding the foregoing,
10 the Parties may attempt in good faith to cure any perceived defects in the Stipulation to facilitate
11 approval. In the event the Court reduces any of the amounts apportioned for Administrative Fees,
12 Class Attorney Fees and Expenses, Incentive Awards, or the portion of the PAGA Payment due to
13 the LWDA, the difference shall become part of the Net Settlement Amount.

14 10.2 **Parties' Right to Void Class Settlement.** If 10% or more of the Class Members
15 Opt Out of the Settlement, Defendant may, at its election, rescind the Settlement and all actions
16 taken in its furtherance of it will be thereby null and void. If Defendant elects to revoke the
17 agreement, Defendant shall be solely responsible for the settlement administration costs incurred
18 until the date of revocation. Defendant must exercise this right of rescission, in writing, to Class
19 Counsel, within 21 calendar days after the Claims Administrator notifies the Parties of the total
20 number of opt-outs. If the option to rescind is exercised, then Defendant shall be solely responsible
21 for all costs of the claims administration accrued to that point. Defendant also have the right to
22 withdraw from the Settlement if: (1) the Court does not execute the Preliminary and/or Final
23 Approval Orders, does not certify the Settlement Class, and/or does not certify a class releasing the
24 claims set forth herein, or otherwise makes an order inconsistent with any of the terms of this
25 Agreement, and/or (2) Plaintiff and/or Class Counsel materially breaches the Agreement. In the
26 event that (1) or (2) occur, Class Counsel and Defendant shall be equally responsible for all costs of
27 the Claims Administrator accrued to that point. Further, this Agreement may not be used or
28 introduced in further litigation between the Parties.

1 10.3 **Invalidation.** Invalidation of any material portion of the Class Settlement shall
2 invalidate the Class Settlement in its entirety, unless the Parties shall subsequently agree in writing
3 that the remaining provisions of the Class Settlement are to remain in full force and effect.

4 10.4 **Stay Upon Appeal.** In the event of a timely appeal from the approval of the Class
5 Settlement and judgment, including an appeal relating to Class Counsel's attorneys' fees, the
6 judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement
7 Amount or take any other actions required by this Stipulation until all appeal rights have been
8 exhausted by operation of law.

9 11. **MOTION FOR COURT APPROVAL**

10 11.1 **Preliminary Approval.** Class Counsel will submit this Stipulation to the Court
11 along with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate
12 to present the Class Settlement to the Court for preliminary approval in a timely fashion. The
13 Preliminary Order shall be provided to Defendant 5 calendar days prior to filing and shall at a
14 minimum: **(1)** Conditionally certify the Settlement Class and Class Claims; **(2)** Conditionally
15 appoint Plaintiff and Class Counsel as representatives of the proposed California Settlement Class;
16 **(3)** Appoint ILYM Group, Inc. as the settlement administrator, and order the Settlement
17 Administrator to provide notice of the settlement as outlined in Section 8. Above; **(4)** Confirm that
18 the procedure for distributing the Class Notice (in Section 8) (i) constituted the best practicable
19 notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise
20 the Settlement Class of the pendency of the Action, and their right to exclude themselves from or
21 object to the proposed Class Settlement and to appear at the Final Approval and Fairness Hearing;
22 (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to
23 receive notice; and (iv) met all applicable requirements of due process, and any other applicable
24 rules or law; **(5)** Impose a stay on all litigation of the Action pending the Final Approval and
25 Fairness Hearing, or prohibit Plaintiff and/or the Settlement Class from prosecuting any claims
26 against Defendant or the Released Parties pending the Final Approval and Fairness Hearing; **(6)**
27 Order preliminary approval of the Settlement and that the Court's certification of the Settlement
28 Class and Class Claims, and all actions associated with them, are undertaken on the condition that

1 they shall be vacated if the Settlement is terminated or disapproved in whole or in part by the
2 Court, or any appellate court and/or other court of review in which event the Settlement and the
3 fact that it was entered into shall not be offered, received, or construed as an admission or as
4 evidence for any purpose, including but not limited to an admission by any Party of liability or non-
5 liability or of the certifiability of a litigation class or the appropriateness of maintaining a
6 representative action.

7 11.2 **Final Approval.** The Final Approval and Fairness Hearing shall be held before the
8 Court. At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of
9 the final order certifying the Class for settlement purposes only and approving the Class Settlement
10 as being fair, reasonable and adequate to the Settlement Class Members within the meaning of
11 California Rules of Court, Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the
12 Action consistent with the terms of the Class Settlement and California Rule of Court 3.769(h) and
13 California Labor Code § 2699 (l)(2). The Final Approval Order shall be provided to Defendant
14 prior to filing and shall at a minimum explicitly adjudge that: **(1)** The Settlement Administrator has
15 fulfilled its initial notice and reporting duties under the Settlement and that the Class Notice
16 (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated,
17 under the circumstances, to apprise Settlement Class Members of the pendency of the Action, and
18 their right to exclude themselves from or object to the proposed settlement and to appear at the
19 Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to
20 all persons entitled to receive notice; and (iv) met all applicable requirements of due process, and
21 any other applicable rules or law; **(2)** The Settlement as fair, reasonable, and adequate; **(3)** Plaintiff
22 and Class Counsel may adequately represent Settlement Class Members and Settlement Class
23 Member for the purpose of entering into and implementing the Settlement; **(4)** The Settlement
24 Administrator is to execute the distribution of proceeds pursuant to the terms of this Settlement;
25 **(5)** The Final Approval order and judgment shall be final and entered forthwith; **(6)** Without
26 affecting the finality of the Final Approval order and judgment, the Court retains continuing
27 jurisdiction over Plaintiff, Defendant, and the Settlement Class Members, as to all matters
28 concerning the administration, consummation, and enforcement of this Settlement; **(7)** As of the

1 Final Approval Date, the Plaintiff, Settlement Class Members, and their Legally Authorized
2 Representatives, heirs, estates, trustees, executors, administrators, principals, beneficiaries,
3 representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or
4 purporting to act for them or on their behalf, regardless of whether they have received actual notice
5 of the proposed Settlement, have conclusively compromised, settled, discharged, and provided: the
6 complete and general release (in the case of Plaintiff); the release of Class Claims (in the case of
7 the Settlement Class Member); the release of PAGA Claims (in the case of PAGA Members)
8 against Defendant and the Released Parties, and are bound by the provisions of this Settlement
9 Agreement; **(8)** All PAGA Claims are settled and the Settlement Class is prohibited from pursuing
10 a further action under PAGA for any claims pursuant to PAGA covered by the PAGA Released
11 Claims; **(9)** Notwithstanding the submission of a timely request for exclusion, all Settlement Class
12 Members are still bound by the settlement and release of the PAGA Claims or remedies under the
13 Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests for exclusion do
14 not apply to PAGA claims, and further affirms that the State's claims for civil penalties pursuant to
15 PAGA are also extinguished; **(10)** This Settlement and the Final Approval order and Judgment to
16 be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or
17 other proceedings that encompass Plaintiff's, the Settlement Class and Settlement Class Members,
18 claims released herein, and that are maintained by or on behalf of Plaintiff, the Settlement Class,
19 and Settlement Class Members and/or their heirs, estates, trustees, executors, administrators,
20 principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming
21 through them or acting or purporting to act for them or on their behalf; **(11)** Plaintiff and Settlement
22 Class Members are permanently barred from filing, commencing, prosecuting, intervening in, or
23 participating (as class members or otherwise) in any other lawsuit or administrative, regulatory,
24 arbitration, or other proceeding in any jurisdiction based on the claims released herein; and
25 **(12)** The Settlement provided for herein, and any proceedings undertaken pursuant thereto, are not,
26 and should not in any event be offered, received, or construed as evidence of, a presumption,
27 concession, or an admission by any Party of liability or non-liability or of the certifiability or non-
28 certifiability of a litigation class or collective, or that PAGA claims may validly be pursued;

provided, however, that reference may be made to this Settlement in such proceedings as may be necessary to effectuate the provisions of this Settlement. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

12. **RELEASES AND WAIVERS**

12.1 **Release of Claims by Settlement Class.** Upon the Effective Date and Defendant's funding of the Gross Settlement Amount, each Settlement Class Member who has not submitted a timely Opt-Out, and Plaintiff, each releases the Released Parties, and each of them, of and from any and all Released Class Claims during the Class Period.

It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever settle, compromise, and discharge the Released Class Claims during the Class Period.

Each Settlement Class Member, except those who timely Opt-Out, will be bound to the release of Released Class Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.

Settlement Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Amount. That section provides in pertinent part as follows:

"An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made."

12.2 **Release by the LWDA, Plaintiff, and PAGA Members.** Upon the Effective Date and Defendant's funding of the Gross Settlement Amount, the LWDA, Plaintiff, and the Aggrieved Employees shall be deemed to have released the Released Parties of any and all of the PAGA Released Claims.

1 12.3 **Release of Claims by Plaintiff.** Upon the Effective Date and Defendant's funding
2 of the Gross Settlement Amount, Plaintiff, on behalf of himself and his heirs, executors,
3 administrators, and representatives, shall and does forever release, discharge and agree to hold
4 harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
5 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands,
6 costs, losses, debt and expenses (including attorney fees and costs), known or unknown, at law or
7 in equity, which they may now have or may have after the signing of this Stipulation, arising out of
8 or in any way connected with their employment with or assignment at Defendant including, the
9 Released Claims, claims that were asserted or could have been asserted in the Complaint(s),
10 Action, and any and all transactions, occurrences, or matters between the Parties occurring during
11 the respective Class Period. Without limiting the generality of the foregoing, this release shall
12 include, but not be limited to, any and all claims under the (a) Americans with Disabilities Act, as
13 amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of
14 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as
15 amended; (f) the Fair Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee
16 Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation
17 Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights
18 Act of 1966; (m) the California Fair Employment and Housing Act; (n) the California Constitution;
19 (o) the California Labor Code; (p) the California Government Code; (q) the California Civil Code;
20 and (r) any and all other federal, state and local statutes, ordinances, regulations, rules and other
21 laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds
22 as well as any other claims based on the theories of wrongful or constructive discharge, breach of
23 contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or
24 negligent infliction of emotional distress, or damages under any other federal, state or local
25 statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how
26 denominated, including, but not limited to, overtime, wages, back pay, front pay, vacation pay,
27 bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages,
28 damages for pain and suffering, and attorneys' fees and costs, and Plaintiff hereby forever release,

1 discharge and agree to hold harmless Defendant and the Released Parties from any and all claims
2 for attorney fees and costs arising out of the matters released in this Stipulation.

3 Plaintiff specifically acknowledges that he is aware and familiar with the provisions of
4 Section 1542 of the California Civil Code, or any other similar provision under federal or state law,
5 which provides:

6 **A general release does not extend to claims which the creditor or releasing**
7 **party does not know or suspect to exist in his or her favor at the time of**
8 **executing the release and that, if known by him or her, would have materially**
9 **affected his or her settlement with the debtor or released party.**

10 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights
11 and benefits he may have under Section 1542 as well as any other statutes or common law
12 principles of a similar effect. Plaintiff may hereafter discover facts in addition to or different from
13 those which they now know or believe to be true with respect to the subject matter of all the claims
14 referenced herein, but stipulate and agree that, upon the Effective Date, Plaintiff shall and hereby
15 do fully, and forever settle and release any and all claims against the Released Parties, known or
16 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
17 been asserted upon any theory of law or equity without regard to the subsequent discovery
18 existence of such different or additional facts.

18 13. **DUTIES OF THE PARTIES**

19 13.1 **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
20 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
21 limited to, execution of such other documents and the taking of such other actions as may
22 reasonably be necessary to fulfill the terms of this Class Settlement. The Parties shall use their best
23 efforts, including all effects contemplated by this Stipulation and any other efforts that may become
24 necessary by court order or otherwise, to effectuate this Stipulation and the terms set forth herein.
25 As soon as practicable after execution of this Stipulation, Class Counsel, with the cooperation of
26 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval
27 of this Stipulation.

1 13.2 **Duty to Support and Defend the Class Settlement.** The Parties agree to abide by
2 all of the terms of the Class Settlement in good faith and to support the Class Settlement fully and
3 to use their best efforts to defend this Class Settlement from any legal challenge, whether by appeal
4 or collateral attack.

5 13.3 **Duties Prior to Court Approval.** Class Counsel shall promptly submit this
6 Stipulation to the Court for preliminary approval and determination by the Court as to its fairness,
7 adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall
8 apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of
9 whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to
10 the Settlement Class Members, approving as to form and content the proposed Class Notice
11 attached hereto as **Exhibit 1**, and directing the mailing of the Class Notice to Settlement Class
12 Members.

13 14. **MISCELLANEOUS PROVISIONS**

14 14.1 **Different Facts.** The Parties hereto, and each of them, acknowledge that, except for
15 matters expressly represented herein, the facts in relation to the dispute and all claims released by
16 the terms of this Stipulation may turn out to be other than or different from the facts now known by
17 each party and/or its counsel, or believed by such Party or counsel to be true, and each Party
18 therefore expressly assumes the risk of the existence of different or presently unknown facts, and
19 agrees that this Stipulation shall be in all respects effective and binding despite such difference.

20 14.2 **No Prior Assignments.** The Parties represent, covenant, and warrant that they have
21 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
22 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
23 action, or right herein released and discharged except as set forth herein.

24 14.3 **Non-Admission.** Nothing in this Stipulation shall be construed as or deemed to be
25 an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other
26 Party, or any other person, and the Parties specifically disclaim any culpability, negligence, or
27 wrongdoing toward each other or any other person. Each of the Parties has entered into this
28 Stipulation with the intention to avoid further disputes and litigation with the attendant

1 inconvenience, expenses, and contingencies. Nothing herein shall constitute any admissions by
2 Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action.
3 Nothing herein shall constitute any admission by Defendant regarding the merits of the Claims in
4 this Action, including but not limited to claims for unpaid wages, failure to provide rest/meal
5 periods, failure to pay minimum, overtime or timely wages, failure to provide accurate wage
6 statements, failure to keep accurate records, failure to provide business reimbursements or unfair
7 competition/unfair business practices under California and/or other applicable. Nothing herein
8 shall constitute an admission by Defendant that the Action was properly brought as a class or
9 representative action other than for settlement purposes. To the contrary, Defendant has denied and
10 continues to deny each and every material factual allegation and all Claims. To this end, the Class
11 Settlement of the Action, the negotiation and execution of this Stipulation, and all acts performed
12 or documents executed pursuant to or in furtherance of this Stipulation or the Class Settlement are
13 not, shall not be deemed to be, and may not be used as, an admission or evidence of any
14 wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in
15 the Complaint in the Action; and are not, shall not be deemed to be, and may not be used as, an
16 admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or
17 administrative proceeding in any court, administrative agency or other tribunal.

18 14.4 **Media or Press.** Plaintiff and Defendant, and their respective counsel, agree to
19 limit public comment on this Settlement, the Action, and the claims to stating that the matter has
20 been resolved to the satisfaction of both parties. Neither side will initiate public comment.

21 14.5 **Non-Retaliation.** Defendant understands and acknowledges that it has a legal
22 obligation not to retaliate against any Settlement Class Member who elects to participate in the
23 Class Settlement or elects to Opt-Out of the Class Settlement. Defendant will refer any inquiries
24 regarding this Class Settlement to the Settlement Administrator or Class Counsel and will not
25 discourage, directly or indirectly, Settlement Class Members from making claims, opting out or
26 objecting to the Class Settlement.

27 14.6 **Construction.** The Parties hereto agree that the terms and conditions of this
28 Stipulation are the result of lengthy, intensive, arms-length non-collusive negotiations between the

Parties and that this Stipulation is not to 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 Stipulation. If any of the dates in the Stipulation fall on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

14.7 **Governing Law.** This Stipulation is intended to and shall be governed by the laws of the State of California, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

14.8 **Notices.** Except for Settlement Class Member notices required to be made by the Settlement Administrator, any and all notices or other communications required or permitted under this Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S. certified mail, postage pre-paid, e-mail, facsimile, or overnight delivery addressed to the address of the party appearing in this Stipulation.

14.9 **Captions and Interpretations.** Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Stipulation or any provision thereof.

14.10 **Modification.** This Stipulation may not be changes, altered, or modified, except in writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

14.11 **Integration Clause.** This Stipulation contains the entire agreement between the Parties relating to the Class Settlement of the Action and the transactions contemplated thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby superseded. No rights under this Stipulation may be waived except in writing as provided above.

14.12 **Successors and Assigns.** This Stipulation shall be binding upon and inure to the benefit of the Parties and Settlement Class Members (excluding only persons who timely opt-out) and each of their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent

1 companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and
2 assigns.

3 14.13 **Corporate Signatories.** Any person executing this Stipulation or any such related
4 document on behalf of a corporate signatory, limited liability company or a partnership hereby
5 warrants and promises, for the benefit of all Parties hereto, that such persons has been duly
6 authorized by such corporation, limited liability company or partnership to execute this Stipulation
7 or any such related document.

8 14.14 **Execution in Counterparts.** This Stipulation shall become effective upon its
9 execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and
10 execution of counterparts shall have the same force and effect as if all Settling Parties had signed
11 the same instrument.

12 14.15 **Attorney Fees, Costs and Expenses.** Except as otherwise specifically provided for
13 herein, each Party shall bear their or its own attorney fees, costs and expenses, taxable or otherwise,
14 incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any
15 other party to this Stipulation.

16 IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on
17 the date below their signatures of their representatives. The date of the Stipulation shall be the date
18 of the latest signature.

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October __, 2022

CDF LABOR LAW LLP

By: _____
Garrett V. Jensen, Counsel for ELG Metals,
Inc.

October __, 2022

By: _____

_____ On behalf of
Defendant ELG Metals, Inc.

October 25, 2022

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay, Counsel for Plaintiff James
F. Rachal Jr.

JCL Law Firm, APC

October 25, 2022

By: 
Jean-Claude Lapuyade, Counsel for Plaintiff
James F. Rachal Jr.

Oct 25, 2022
October __, 2022

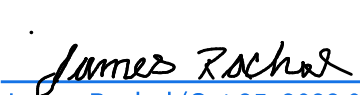
By:  11
James Rachal (Oct 25, 2022 09:34 PDT)
James F. Rachal Jr., Plaintiff

EXHIBIT A

James Rachal Jr. v. ELG Metals, Inc.
(Los Angeles Superior Court Case No. 20STCV45861)
NOTICE OF PROPOSED CLASS ACTION SETTLEMENT (“Notice”)

I. WHY IT IS IMPORTANT TO READ THIS NOTICE

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY THE
LEGAL PROCEEDINGS IN THIS ACTION. YOU MAY BE ENTITLED TO
MONETARY COMPENSATION FROM THIS SETTLEMENT.**

YOU ARE NOT BEING SUED

You are being sent this Notice because records indicate that you were a non-exempt employee of Defendant ELG Metals, Inc. (“Defendant”) in California at any time from January 18, 2017 through July 27, 2022. This Notice relates to a proposed settlement (“Settlement”) of a Private Attorney General Act of 2004 (“PAGA”) and class action litigation brought against Defendant. If you are a Settlement Class Member, this Notice contains important information about your right to a payment from the Settlement or to be excluded from the class portion of the Settlement according to the procedures described below. If you are a PAGA Group Member, this Notice contains important information about your right to a payment from the PAGA portion of the Settlement.

Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, the Superior Court for the State of California, County of Los Angeles, the Honorable **Stuart M. Rice**, presiding, entered on **[preliminary approval date order]**, you are hereby notified as follows:

A proposed Settlement has been reached between the parties in the lawsuit titled *James Rachal Jr. v. ELG Metals, Inc.*, Los Angeles Superior Court Case No. 20STCV45861. The Settlement is on behalf of all persons employed in the State of California by Defendant in California as an hourly, non-exempt employee at any time between January 18, 2017 through July 27, 2022, inclusive (the “Class Period”), (“Class Members”). Settlement Class Members are Class Members who do not timely and validly opt out of the Settlement. Moreover, the Settlement is also on behalf of any non-exempt employee of Defendant in California at any time between September 18, 2019 through July 27, 2022 (“PAGA Group Members” and “PAGA Period”).

Settlement Class Members’ individual recoveries may exclude recovery based on any release agreement with Defendant with respect to any wage-and-hour claim during the Class Period and based on the date the release agreement was entered. You have received this notice because Defendant’s records indicate that you are a Settlement Class Member and/or PAGA Group Member, and, therefore, entitled to a payment from the Settlement.

In addition to conditionally approving the Settlement, the Court also conditionally approved Plaintiff James Rachal (“Plaintiff” or “Named Plaintiff”) to serve as class representative, and Shani O. Zakay and Jackland K. Hom of Zakay Law Group, APLC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121; Jean-Claude Lapuyade of JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 to serve as Class Counsel.

The Court will decide whether to provide final approval of the Settlement at a court hearing schedule for , 2023 at , before the Honorable Stuart M. Rice in Department 1 of the Superior Court of California, County Los Angeles, which is located at 312 North Spring Street, Los Angeles, CA 90012 (the “Final Approval Hearing”). At the Final Approval Hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. At the Final Approval Hearing, the Court will also determine Class Counsel’s request for attorneys’ fees, litigation

1 expenses, administrative costs, penalties under Labor Code §§ 2698 et seq. and the class representative
2 incentive award. The Final Approval Hearing may be continued by the Court without further notice to the
3 Class. It is not necessary for you to appear at this Final Approval Hearing, but you are welcome to do so.

4 **II. WHAT THIS LITIGATION IS ABOUT**

5 On or about November 30, 2020, Plaintiff filed a Complaint in the Los Angeles Superior Court,
6 Case No. 20STCV45861, against Defendant, alleging the following claims: (1) Unfair Competition In
7 Violation Of Cal. Bus. & Prof. Code § 17200, *et seq.*; (2) Failure To Pay Overtime Wages In Violation Of
8 Cal. Lab. Code. §§ 510 *et seq.*; (3) Failure To Provide Required Meal Periods In Violation Of Cal. Lab. Code
9 §§ 226.7 & 512 And The Applicable IWC Wage Order; (4) Failure To Provide Required Rest Periods In
10 Violation Of Cal. Lab. Code §§ 226.7 & 512 And The Applicable IWC Wage Order; (5) Failure To Provide
11 Accurate Itemized Statements In Violation Of Cal. Lab. Code § 226; (6) Failure To Reimburse Employees
12 For Required Expenses In Violation Of Cal. Lab. Code § 2808; (7) Failure To Provide Wages When Due In
13 Violation Of Cal. Lab. Code §§ 201, 202 And 203; (8) Failure To Pay Minimum Wages In Violation Of Cal.
14 Lab. Code §§ 1194, 1197, And 1197.1; and (9) Violation Of The Private Attorneys General Act (Labor Code
15 §§2698 *et seq.*) (the “Action”).

16 Defendant has denied, and continues to deny, the allegations in the Action. Defendant contends that it has
17 always acted in compliance with the law. There has been no finding of any wrongdoing or liability by
18 Defendant. Defendant does not admit to any wrongdoing or liability. Defendant also does not admit that the
19 Action can or should proceed as a PAGA and/or class action. There has been no trial in this case. Instead, both
20 sides recognize the risks, expenses, and disruption associated with continued litigation and they have,
21 therefore, chosen to resolve their differences by entering the Settlement. By doing so, the Parties can avoid
22 the cost of a trial, yet PAGA Group Members and Settlement Class Members, if the court grants final approval
23 of the Settlement, are still entitled to receive payments. The Parties entered this Settlement after arm’s-length
24 negotiations while using the services of an experienced and neutral mediator. The Plaintiff and Class Counsel
25 believe that the Settlement is fair and reasonable and is in the best interest of the PAGA Group Members and
26 Settlement Class Members.

27 Plaintiff and Defendant (where appropriate, Plaintiff and Defendant will be collectively referred to as the
28 (“Parties”)) have now reached the Settlement on behalf of the Class. Accordingly, the Parties have entered a
Joint Stipulation of Settlement and Release of Class and PAGA Action (the “Settlement Agreement”), which
the Court preliminarily approved on [Insert date of preliminary approval order].

The Parties and their respective counsel recognize the inherent risk and expense of continued proceedings
necessary to continue this Action. The Parties and their counsel have also taken into account the extensive
settlement negotiations that have been conducted. Based on the foregoing, the Parties believe the Settlement
confers substantial benefits to all Settlement Class Members, is a fair, adequate, and reasonable settlement,
and is in the best interests of all Settlement Class Members. The Court also finds that there is sufficient
evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final
determination of those issues will be made at the final hearing.

24 **III. SUMMARY OF THE SETTLEMENT TERMS**

25 The Parties have agreed to settle the Action in exchange for the Class Settlement amount of no more than
26 Two Thousand Twelve and Five Hundred Dollars (\$212,500.00) (“Gross Settlement Amount”). The Gross
27 Settlement Amount includes: (a) the Individual Settlement Payments to the Settlement Class Members; (b)
28 the attorneys' fees award to Class Counsel in an amount not to exceed Seventy Thousand Eight Hundred and
Thirty Three Dollars and Thirty-Three Cents (\$70,833.33), (c) reimbursement of costs incurred by Class
Counsel, not to exceed Twenty Thousand Dollars (\$20,000.00); (c) the Incentive Award to the Named
Plaintiff, in an amount not to exceed Ten Thousand Dollars (\$10,000.00); (d) Administrative Expenses to

the Settlement Administrator, in an amount no greater than Six Thousand Dollars and Zero Cents (\$6,000.00). ; and (e) a PAGA Payment the amount of Five Thousand Dollars (\$5,000.00), of which 75% shall be remitted to the California Labor and Workforce Development Agency ("LWDA") for its statutorily-set portion of the PAGA penalties and the remaining 25% shall be distributed to the PAGA Group Members as part of the Net Settlement Amount.

The balance that remains after the foregoing deductions for the Incentive Award to the Named Plaintiff, Class Counsel's Attorneys' Fees and Expenses, the PAGA Payment, and the Administration Expenses (the "Net Settlement Amount") will be proportionally paid to Settlement Class Members as Individual Settlement Payments according to the formula set forth below.

Individual Settlement Payments will be calculated and distributed to Settlement Class Members based on the number of his or her weeks worked during the Class Period in relation to the aggregate number of weeks worked by all Settlement Class Members, less any Employee's Taxes and Required Withholdings. Each Settlement Class Member's Individual Settlement Payment will be calculated as follows:

$$\text{Individual Settlement Payment} = \text{Net Settlement Amount} \times (\text{Individual's Number of Weeks Worked} \div \text{Aggregate Weeks Worked by all Settlement Class Members During the Class Period})$$

Based on the Settlement Administrator's review of Defendant's records, the Settlement Administrator intends to credit YOU the following number of Weeks Worked: [ADMIN TO INSERT NUMBER OF WORKWEEKS]

All PAGA Group Members will receive their share of the PAGA Payment of the Settlement regardless of whether they choose to opt out of the Class portion of the Settlement. Each PAGA Group Member's share of the PAGA Payment allocated to PAGA Group Members (\$1,250.00) will be determined by comparing the number of Pay Periods the PAGA Group Member was employed during the PAGA Period to the total number of Pay Periods all PAGA Group Members were employed during the PAGA Period. The PAGA Group Members' share of the PAGA Payment will be calculated as follows:

$$\text{Individual PAGA payment} = \$5,000 \times (\text{Individual's Number of Pay Periods Worked} \div \text{Aggregate Pay Periods Worked by all PAGA Group Members During the PAGA Period})$$

Based on the Settlement Administrator's review of Defendant's records, the Settlement Administrator intends to credit YOU the following number of Pay Periods: [ADMIN TO INSERT NUMBER OF PAY PERIODS]

IRS Forms W-2 and/or 1099 will be distributed to PAGA Group Members and Settlement Class Members and the appropriate taxing authorities reflecting the payments that PAGA Group Members and Settlement Class Members receive under the Settlement. For purposes of this Settlement, Individual Settlement Payment shall be allocated as follows: (a) twenty percent (20%) to wages and reported on an IRS W-2 basis; (b) thirty percent (30%) to interest to be reported on an IRS form 1099; and (c) fifty percent (50%) to penalties to be reported on an IRS form 1099. PAGA Group Members' portion of the PAGA Payment will be allocated one hundred percent (100%) penalties to be reported on an IRS form 1099. The wage portion of each Settlement Class Member's Individual Settlement Payment will be subject to applicable payroll taxes and withholdings.

PAGA Group Members and Settlement Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Checks made payable to Settlement Class Members shall remain negotiable for one hundred eighty (180) days. To the extent that: (1) the Notice Packet and/or the Individual Settlement Payment checks are undeliverable, or (2) the Individual Settlement Payment checks are uncashed 180 calendar days after the date listed on the check, the amount of those checks shall be directed to the California State Controller for

1 deposit in the Unclaimed Property Fund in the name of the employee. As for any undeliverable Notice, the
2 Administrator shall update address information before transmitting notice, will skip trace returned mail that
does not have a forwarding address, and will re-mail Notice packets accordingly.

3 Any Settlement Class Member who disagrees with the data used to calculate his or her claim as reflected in
4 this Notice shall be allowed to indicate and explain such disagreement by submitting a written statement
5 explaining your dispute to the Settlement Administrator. All Weeks Worked disputes must be postmarked,
6 emailed, or faxed to the Settlement Administrator no later than forty-five (45) days after the date the Notice
7 is first mailed (the "Response Deadline"). The Settlement Administrator shall resolve the disagreement with
8 the Settlement Class Member using the employee records provided by Defendant and the Settlement Class
9 Member, in consultation with Defense Counsel. Any disputes not otherwise resolved by the Settlement
Administrator and Defense Counsel concerning administration of the Settlement shall be resolved by the
Court, under the laws of the State of California. The date of the postmark on the envelope or the date of emails
or fax confirmations sent to the Settlement Administrator shall be the exclusive means used to determine
whether a Settlement Class Member has "timely" disputed the calculation or application of the formula for
determining Individual Settlement Payments.

10 IV. YOUR OPTIONS UNDER THE SETTLEMENT

11 **Option 1 — *Do Nothing: if you WANT to receive an Individual Settlement Payment***

12 Participation in this Settlement **does not** require the submission of a claim form. Accordingly, if the Court
13 grants final approval of the Settlement at the Final Approval Hearing, and you have not affirmatively opted-
14 out of the Settlement by preparing and returning an opt-out request described in Option 2 below, you will be
mailed a check for your Individual Settlement Payment, minus applicable withholdings, by the Settlement
Administrator. You will be bound by the Released Claims and all other terms of the Settlement unless you
follow Option 2 below. Defendant will not fire, punish, retaliate, or otherwise discriminate against any
15 employee because he or she chooses to participate in this Settlement.

16 **Option 2 — *Opt Out of the Class Portion Settlement: if you opt-out of the class portion Settlement, you*** 17 ***will NOT receive an Individual Settlement Payment.***

18 If you do not wish to participate in the class portion Settlement, you may exclude yourself from
19 participating by submitting a written request to the Settlement Administrator expressly and clearly
indicating that you have received this Notice, have decided not to participate in the Settlement, and desire to
be excluded or that you "opt-out" from the Settlement. If you do not submit a timely written request to opt-
out, then you will be bound by the release of claims as set forth in Section V below ("Released Claims")
and all other terms of the Settlement. Your written request (the "Opt-Out Statement") **must state (or**
20 **contain words substantially similar to) the following:**

21 "I have received the Notice of Class Action Settlement of the Action titled *James Rachal*
22 *Jr. v. ELG Metals, Inc., et al.*, Los Angeles Superior Court Case No. 20STCV45861. I
23 wish to opt out of the Settlement. I understand that by requesting to be excluded from the
Settlement Class, I will not receive any payment from the Settlement approved by the
Court in the Action."

24 The written Opt-Out Statement also must set forth your full name (including the name you used while
25 employed with Defendant(s), if different), address, last four digits of your Social Security Number, and
26 telephone number. You must sign, date, and either email, mail or fax the Opt-Out Statement to the
Settlement Administrator by First Class U.S. Mail to the address, fax number or email address below:

1 *James Rachal Jr. v. ELG Metals, Inc., et al. Class Action Settlement*

2 Settlement Administrator

3 [street address/P.O. Box

4 [City, State, Zip Code]

5 [phone number]

6 [fax number]

7 [email address]

8 **If you wish to exclude yourself from this proposed Settlement, you must submit a written Opt-Out Statement to the Settlement Administrator no later than [Response Deadline].**

9 If you submit an Opt-Out Statement that is not postmarked, emailed or faxed by [Admin to Enter Response Deadline], subject to the Court's final determination, it may be rejected and you will be included in the Settlement Class and bound by the Released Claims and all other terms of the Settlement, and you will receive the appropriate Individual Settlement Payment. Similarly, should you receive and cash a check for your Individual Settlement Payment and elect to opt-out of the Settlement, your attempt to opt-out may be deemed void and you will be included in the Settlement Class and bound by the Released Claims and all other terms of the Settlement. Similarly, if you submit both an Opt-Out Statement and an objection, your Opt-Out Statement will be deemed void. If a Class Member opts out of the class portion of the settlement, he/she will still receive a payment from the PAGA portion of the settlement and will release the PAGA claim. Stated differently, if you a PAGA Group Member, you cannot opt-out of the PAGA Settlement

13 ***Option 3 — Make an Objection With the Court and Remain a Member of the Settlement Class***

14 Any Class Member, who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. To object to the Settlement, you must remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement.

17 If you wish to object to the Settlement, then you may do so by submitting a written objection to the Settlement Administrator. If you wish to submit a written objection to the Settlement, then you must submit your written statement to the Settlement Administrator by either mail, fax or email. A written objection must include your name, address, telephone number, last four digits of your Social Security number, name of the case and case number as follows: *James Rachal Jr. v. ELG Metals, Inc., et al.*, Case No. 20STCV45861 and must state with particularity the factual and legal basis on which any objections are asserted.

21 All written objections must be submitted to the Settlement Administrator by either mail, email, or fax not later than [Response Deadline]. The date of the postmark on the mailing envelope, or the date of the fax or email transmission to the Settlement Administrator shall be the exclusive means used to determine whether a written objection was timely submitted.

23 The Court will hear from any Settlement Class Member who attends the final approving hearing and asks to speak.

25 **V. THE BINDING EFFECT OF THE SETTLEMENT**

26 Upon the Court's final approval of the settlement, and funding of the Gross Settlement Amount, and except as to such rights or claims as may be created by the settlement, Plaintiff and Settlement Class Members release all claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during the Class Period, including under California Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197,

1 1197.1, 1197.14, 1198, 1198, 1199, 2808, and related IWC Wage Orders, based on the various theories of
2 liability, including, but not limited to, Defendant's alleged failure to: provide meal periods, provide rest
3 periods, pay for all hours worked, pay overtime wages at the correct rate, pay minimum wage, provide
reimbursement for business expenses, provide accurate wage statements, and timely pay all final wages at
separation of employment. (collectively, "Released Claims").

4 In addition, upon the funding of the Gross Settlement Amount, the LWDA, Plaintiff, and the PAGA Group
5 Members shall be deemed to have released the Released Parties, and each of them, of and from all claims for
6 civil penalties under the PAGA, including pursuant to California Labor Code sections 2698 and 2699,
7 predicated on the theories of liability that were set forth in the Action and Plaintiff's notice to the LWDA.
The PAGA Released Claims will bind the PAGA Group Members even if they timely and validly opt out of
the Settlement Class. The scope of the PAGA Released Claims is limited to claims arising during the PAGA
Period ("PAGA Released Claims").

8 The Released Parties shall mean Defendant and its officers, directors, managers, owners, executives, partners,
9 exempt employees, shareholders, agents, attorneys, and any of Defendant's former and present parents,
10 subsidiaries, and affiliates, and its officers, directors, managers, owners, executives, partners, employees,
shareholders, agents, attorneys, and any other successors, assigns, or legal representatives ("Released
Parties").

11 The time period covered by this release is January 18, 2017 through July 27, 2022. Settlement Class
12 Members agree not to sue or otherwise make a claim against any of the Released Parties that is in any way
13 related to the Released Class Claims. Settlement Class Members may later discover facts in addition to or
different from those they now know or believe to be true with respect to the subject matter of the Released
Class Claims, but the Settlement Class Members shall be deemed to have, and by operation of the Final
14 Order shall have, fully, finally, and forever settled and released any all of the claims released pursuant to this
Settlement.

15 If the Settlement is not finally approved by the Court, or if any of its conditions are not satisfied, the
16 Settlement will be voided, no money will be paid, and the Action will revert to litigation. However, if that
17 happens, there is no assurance that: (a) any decision at trial would be in favor of any Settlement Class
Members; (b) a favorable trial decision, if any, would be as favorable to any Settlement Class Members as
18 the Settlement; or (c) any favorable trial decision would be upheld if an appeal was filed. The Court has
expressed no opinion regarding the merits of the claims asserted in the Action.

20 VI. ADDITIONAL INFORMATION

21 This Notice is only a summary of the Action and the Settlement. For a more detailed statement of the matters
22 involved in the Action and the Settlement, you may refer to the pleadings, the Settlement Agreement, and
other papers filed in the Action, which may be inspected at the Records public window of the Superior Court
of California, County of Los Angeles, 312 N. Spring Street, Los Angeles, California 90012, during regular
23 business hours of each court day. To the extent there are any conflicts between this Notice and the terms of
Settlement Agreement, the terms of the Settlement Agreement will govern.

24 The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval
25 hearing], 2022 at [time a.m./p.m.], before Judge Stuart M. Rice located at 312 N. Spring Street, Los Angeles,
26 California 90012, Department ____.

27 This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend**
the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If you wish to
28 appear, please see the Los Angeles County Superior Court for directions <https://my.lacourt.org/laccwelcome>.

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**DO NOT CALL OR CONTACT THE CLERK OF THE COURT OR THE JUDGE FOR
INFORMATION ABOUT THE SETTLEMENT.**

If you have any questions about the Settlement, you may contact the Settlement Administrator at the following
addressee or numbers:

[Settlement Administrator]
[street address/P.O. Box
[City, State, Zip Code]
[phone number]
[fax number]
[email address]

EXHIBIT 2

EXHIBIT 3

Case Name: Rachal v. ELG Metals

Friday, June 17, 2022

Requesting Attorney:
Requesting Attorney's E-mail:
ILYM Contact
E-Mail
Contact Number

Eddie Garcia
EGarcia@jcl-lawfirm.com
Sean Hartranft
Sean@ilymgroupclassaction.com
949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out

ASSUMPTIONS	
Total Estimated Number of Class Members	40
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
Certified Spanish Translation	No
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

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

Subtotal \$325.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	4	\$480.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	0	\$0.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Per Piece	\$15.00	1	\$15.00
Toll-Free Phone Support	Flat Fee	\$20.00	1	\$20.00
ILYM Group Static Website, Including Hosting	Flat Fee	\$750.00	1	\$750.00
Status Reports	Flat Fee	\$750.00	1	Waived

Subtotal \$1,475.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING

Initial Mailing, Fulfillment of Notices	Per Piece	\$2.50	40	\$100.00
USPS First Class Postage	Per Piece	\$0.76	40	\$30.40
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$3.00	8	\$24.00
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$454.40

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)

Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Stub & Release - Print & Mail (including W2 and/or 1099)**	Per Check	\$2.50	40	\$100.00
Check Mailing Postage	Per Piece	\$0.55	40	\$22.00
Reminder Mailing, Includes Postage	Per Piece	\$3.00	4	\$12.00
Preparation of Taxes	Hourly	\$120.00	6	\$720.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal \$2,904.00

CASE CONCLUSION

Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal \$470.00

Total Case Estimate: \$5,628.40

Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 4

JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291

FIRM RESUME

Areas of Practice: Employee Class Actions, Wage and Hour Class Actions, Civil Litigation, and Unlawful Housing Practices.

ATTORNEY BIOGRAPHIES

Jean-Claude Lapuyade, Esq.
California Bar Number 248676
Founding Partner

Biography:

Mr. Lapuyade is a San Diego based labor and employment attorney representing aggrieved California employees and the victims of unlawful housing practices throughout the State of California. Mr. Lapuyade's litigation practice focuses on representing California employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, and misclassification, wrongful termination cases and tenants in unlawful housing class actions. Mr. Lapuyade prides himself on providing his clients with aggressive, attentive and result driven representation through the litigation process, trial and arbitration. Since 2007, Mr. Lapuyade successfully recovered in excess of \$100 million in monetary awards for his clients.

Mr. Lapuyade served as co-editor of the Insurance Column for Consumer Attorneys of San Diego from 2011 to 2014. As editor, Mr. Lapuyade was responsible for publishing monthly articles in the Trial Bar News periodical analyzing complex insurance coverage issues. Mr. Lapuyade is a four-time recipient of the Super Lawyers Rising Star by Thomson Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to 5 percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California
- U.S. District Court Central District of California
- U.S. District Court Eastern District of California
- U.S. District Court Northern District of California

Professional Associations:

- California Employment Lawyers Association, 2007 to Present
- Consumer Attorneys of San Diego, 2007 to 2020
- American Bar Association, Section of Litigation, Member, 2007 to 2020
- American Bar Association, Labor & Employment Section, Member, 2007 to 2020
- American Bar Association, Tort, Trial & Insurance Section, Member, 2007 to 2020
- California Bar Association, Labor & Employment Section, Member, 2007 to Present
- California Bar Association, Litigation Section, Member, 2007 to Present

Education:

- **California Western School of Law**
 - J.D. - 2006
 - Honors: Deans Merit Scholarship, California Western School of Law 2005 - 2006
- **University of Arizona**
 - B.A. - 2001
 - Major: History

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2015 - 2018
- Distinguished Advocate Award for Outstanding Oral Advocacy, 2005 - 2006

Sydney Castillo-Johnson, Esq.
California Bar Number 343881
Associate Attorney

Biography:

Ms. Castillo-Johnson is a San Diego based labor and employment attorney representing California employees throughout the state of California. Ms. Castillo-Johnson's litigation practice focuses on representing current and former employees in wage and hour class actions for unpaid wages, missed meal and rest breaks, misclassification, and wrongful termination.

Ms. Castillo-Johnson volunteered her time at California Western School of Law first as a student intern and later as a student manager with the Community Law Project which offers legal services to the low-income community of San Diego. She now sits on the Advisory Council with the Community Law Project.

Education:

- **California Western School of Law**
 - J.D.- 2022
 - Honors:
 - Dean's Honor List: Spring 2021, Fall 2021
 - Public Service Honor Society Fall 2021
 - 3L Academic Merit Scholarship
 - Dean's Diversity, Service, and Leadership Scholarship
 - Activities: Community Law Project Student Manager
- **Azusa Pacific University**
 - B.A. – 2018
 - Major: Criminal Justice

Monnett De La Torre, Esq.
California Bar Number 272884
Senior Associate

Biography:

Ms. De La Torre is a San Diego and Ventura County based labor and employment attorney representing aggrieved California employees throughout the State of California. Ms. De La Torre's litigation practice focuses on representing California employees in wage and hour class and representative actions for unpaid wages, missed meal and rest breaks, misclassification, penalties, and wrongful termination cases. Ms. De La Torre has extensive experience handling internal workplace investigations. Ms. De La Torre has handled matters before the Department of Fair Employment and Housing, Equal Employment Opportunity Commission and Department of Labor.

Ms. De La Torre is a two-time recipient of the Super Lawyers Rising Star by Thomas Reuters. To be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. While up to five percent of the lawyers in a state are named to Super Lawyers, no more than 2.5 percent are named to Rising Stars.

Bar Admissions:

- California
- U.S. District Court Southern District of California

Professional Associations:

- California Employment Lawyers Association, 2022 to Present
- Consumer Attorneys of San Diego, 2010-2015
- American Bar Association, Labor & Employment Section, Member, 2015 to Present
- California Bar Association, Labor & Employment Section, Member, 2015 to Present
- San Diego La Raza Lawyers Association, 2010-2015
- Ventura County Bar Association, 2015-Present
- Women Lawyers of Ventura County, 2015-Present

Education:

- **New England School of Law**
 - J.D.- 2010

- Honors:
 - Dean's List Consecutive years
- **University of California, San Diego**
 - B.A.- 2006
 - Major: Economics
 - Minor: Latin American Studies

Honors:

- Super Lawyers Rising Star, Thomson Reuters, 2021 and 2022
- Pacific Cost Business Times, "Top 40 under 40" Award
- Daily Transcripts "Top Young Attorney: nominee, consecutive years"

REPORTED CASES

- *Blanchette et al., v. Superior Court (GHA Homes)*, 8 Cal.App.5th 521, 2017
- *Chmurny v. State*, 392 Md. 159, 2006

CLASS ACTION & REPRESENTATIVE CASES

- *Martinello v. Century Wilshire, Inc.*, Los Angeles Superior Court Case No. 20STCV32613 (March 1, 2022) Hon. Carolyn Kuhl approved a \$550 billing rate and appointed Jean Claude Lapuyade, Esq. of the JCL Law Firm, APC, as Class Counsel.
- *Wilson v. Spreen Inc. (dba Spreen Honda)*, San Bernardino Superior Court Case No. CIVSB2119857 (April 6, 2022) Hon. David Cohn approved a \$300,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC, represented the plaintiff, the State of California, and the Aggrieved Employees.
- *Ledesma v. TVJ Sons I, Inc.; Porter and Howard, Inc.* Santa Barbara Superior Court Case No. 20CV03573 (November 10, 2021) Hon. Jed Beebe approved a \$350,000 PAGA action settlement for meal and rest period violations. The JCL Law Firm, APC represented the State of California and the Aggrieved Employees.
- *Jacobs v. Rush Media Company, LLC; XLT Management Services, Inc.*, Los Angeles Superior Court Case No. 20STCV32350 (May 2, 2022) Hon. Daniel J. Buckley appointed the JCL Law Firm, APC as Class Counsel and approved a \$330,000 class action settlement for, *inter alia*, independent contractor misclassification.
- *Chavez v. HTL Conrad Domestic, LLC; HTL Conrad Domestic Employer, LLC*, San Diego Superior Court Case No. 37-2020-00016193-CU-OE-CTL (June 9, 2022) Hon. John S. Meyer approved a \$850,000 PAGA action settlement for, *inter alia*, failure to compensate overtime at the regular rate of pay. The JCL Law Firm, APC acted as representative PAGA counsel for the State of California and the Aggrieved Employees.
- *Renteria v. Love's Country Stores of California*, San Bernardino Superior Court Case No. CIVDS20164481 (June 14, 2022) Hon. David Cohn approved a \$2.2 million dollar class action and PAGA action settlement for, *inter alia*, unpaid overtime and sick pay. The JCL Law Firm, APC acted as Class Counsel and as representative PAGA counsel for the State of California.
- *Lopez v. Adidas America, Inc.*, Ventura Superior Court Case No. 56-2021-005498444-CU-OE-VTA (April 4, 2022) Hon. Mark Borrell approved a \$1.5 million dollar class action and PAGA action settlement for, *inter alia*, inaccurate overtime calculations, and appointed the JCL Law Firm, APC as Class Counsel.
- *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.
- *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq. as Class Counsel.)
- *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq. as Class Counsel in a wage and hour class action settlement.)
- *Latin v. OneMain General Service Corporation*, Stanislaus County Superior Court Case No. CV-20-002498 (October 22, 2021) Hon. Stacy Speiller approved a PAGA action settlement for \$700,000 wage statement violations. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.

- *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson approved \$550 billing rate in a representative California Labor Code Private Attorney General Act settlement).
- *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)
- *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)
- *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)
- *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)
- *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)
- *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)
- *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)
- *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)
- *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)
- *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL Law Firm, APC, acted as lead counsel.)
- *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)
- *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)
- *Hill v. Stetak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)
- *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon. Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)
- *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

- *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)
- *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);