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

11 JOE HART, individually and on behalf of all
12 other similarly situated employees,

13 Plaintiff,

14 vs.

15 ALUMINUM COATING TECHNOLOGIES,
16 INC., a California Corporation;
17 BRUCE CENICEROS, an individual;
18 ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

19 Defendants.
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Case No. 34-2022-00320564

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Reservation No. A-320564-001

Date: March 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: May 23, 2022

FAC Filed: July 29, 2022

SAC Filed: June 13, 2023

Trial Date: none set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on March 8, 2024, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 22 of the above-entitled Court, Plaintiffs Clint Davidson and Patrick Wirth,
4 individually and on behalf of all other similarly situated individuals, hereby move for entry of an Order
5 for the following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiffs Clint Davidson and Patrick Wirth as class representatives
8 for purposes of settlement;
- 9 3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of
10 settlement;
- 11 4. Preliminarily approving the proposed class action and Private Attorneys General Act
12 settlement, in the amount of 225,000, which is incorporated herein by reference;
- 13 5. Preliminarily approving the appointment of Apex Class Action as the Settlement
14 Administrator and for payment to Apex Class Action for administering said class action
15 settlement in an amount not to exceed \$10,000;
- 16 6. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
17 the total amount of \$10,000, 75% of which will be paid to the Labor and Workforce
18 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 19 7. Approving as to form and content the Notice of Settlement, which provide Class Members
20 information regarding the settlement, their ability to opt out of, or object to, the class action
21 settlement and which provides instruction on how to dispute an individual's settlement
22 allocation under the proposed settlement agreement;
- 23 8. Approving the proposed procedures to notify the class and determining that the proposed
24 notification procedures and process complies with Class Members' due process rights and
25 directing the Notice of Settlement to be sent by first class mail to Class Members;
- 26 9. Directing Defendants to report employment information, including social security numbers,
27 to the Settlement Administrator to administer the settlement proceeds;
- 28

1 10. Scheduling a fairness hearing on the question of whether the proposed settlement should be
2 finally approved as fair, reasonable, and adequate;

3 11. Directing that any amount from settlement checks that were not cashed by the check cashing
4 deadline be paid to the California State Controller's Unclaimed Property Fund;

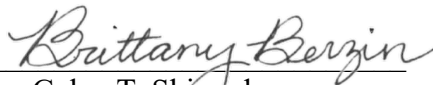
5 12. Preliminarily and conditionally approving and adopting the Proposed Order and its
6 implementation schedule, which is filed herewith and incorporated by reference.

7 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
8 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action
9 and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members
10 and should be approved by the Court. This motion will be based on the notice of motion, memorandum
11 of points and authorities, the Declaration of Brittany V. Berzin, the Declaration of Joe Hart, exhibits, the
12 record and files of this case, and any further oral or documentary evidence introduced at the hearing of
13 this motion.

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

22 Dated: February 9, 2024

Shimoda & Rodriguez Law, PC

23 By: 
24 Galen T. Shimoda
25 Justin P. Rodriguez
26 Brittany V. Berzin
27 Attorneys for Plaintiffs
28

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SUPERIOR COURT OF CALIFORNIA
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JOE HART, individually and on behalf of all
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vs.

ALUMINUM COATING TECHNOLOGIES,
INC., a California Corporation;
BRUCE CENICEROS, an individual;
ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00320564

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-320564-001

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiffs Clint Davidson and Patrick Wirth (“Plaintiffs”) seek preliminary approval of a wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of 225,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]). Plaintiffs brought this class action individually and on behalf of similarly situated employees who worked for Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros, and Andrea Cenicerros, (“Defendants”) (Plaintiffs and Defendants sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiffs's Operative Complaint). There are approximately 159 Class Members.

Plaintiffs have alleged that Defendants 1) failed to pay overtime wages; 2) failed to pay split shift premiums; 3) failed to provide meal periods or pay premiums in lieu thereof; 4) failed to provide rest periods or pay premiums in lieu thereof; 5) failed to provide accurate wage statements; 6) failed to timely pay final wages; 7) failed to reimburse expenses; and 8) engaged in unfair competition. *See generally* Exhibit B; *see also* Declaration of Brittany V. Berzin (“Decl. Berzin”), ¶¶ 3, 9-10. Plaintiff has also alleged Defendants are liable for a civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiffs’ Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendants have denied all of Plaintiffs' allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Berzin, ¶ 5. Defendants have also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiffs and Plaintiffs' counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Berzin, ¶¶ 6-10.

It is well within the discretion of this Court to grant preliminary approval of the Agreement as it satisfied all applicable criteria under California law. Accordingly, Plaintiffs request that the Court: (1) certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the

1 Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in
2 the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

3 **II. PROCEDURAL AND LITIGATION HISTORY**

4 A class action complaint was filed on approximately May 23, 2022, in Sacramento County
5 Superior Court against Defendants. Plaintiffs exhausted administrative remedies under the PAGA by
6 providing notice of the claims and violations to the LWDA prior to alleging a PAGA claim. *See*
7 Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Berzin, ¶ 3; Exhibit B.

8 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

9 Plaintiffs thoroughly investigated issues affecting certification, the merits of the class claims,
10 and potential damages for such claims. *See id.* at ¶¶ 3, 6-10; Declaration of Clint Davidson (“Decl.
11 Davidson”) ¶ x; Declaration of Patrick Wirth (“Decl. Wirth”). Plaintiffs worked during the time all of
12 Defendants' policies and practices at issue in the Complaint were in effect and provided information
13 regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl.
14 Davidson, ¶ x; Decl. Wirth, ¶ x. The Parties engaged in informal discovery and exchange of
15 documents, including a representative sampling of employee data, such as timecards, paystubs, payroll
16 data, and relevant policies for the entirety of the statute of limitations applicable to the asserted claims.
17 The discovery covered all aspects of the asserted claims, including certification issues, merits issues,
18 damages, the scope and configuration of Class Members, the content and implementation of the wage
19 and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas.
20 *See* Decl. Berzin, ¶ 7. The information allowed Plaintiffs to determine the extent and frequency of any
21 violations in accordance with Plaintiffs' contentions and create an accurate damages model to assess the
22 reasonableness of any settlement. *See id.*

23 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

24 **a. Plaintiffs and Defendants Engaged in Extensive Arm’s Length Negotiations**

25 The final settlement occurred only after extended, arm’s length negotiations. Over the course of
26 approximately 1.5 years, Plaintiff has been investigating the claims and discussing with Defendants'
27 counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-8. The Parties
28

1 exchanged substantial amounts of information and legal analysis in connection with these discussions.
2 *See id.* It was only after these extended discussions, which included a full day mediation with Howard
3 Broadman, that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 8.

4 **b. The Terms of the Agreement**

5 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
6 which include all individuals who have, or continue to, work for Defendants as non-exempt employees
7 in California up to the Preliminary Approval Date; and (b) Aggrieved Employees, which include all
8 individuals who have, or continue to, for Defendants in California up to the Preliminary Approval Date.
9 *See* Exhibit A, ¶¶ 1.2, 1.5.

10 2. Defendants will pay the Gross Settlement Amount of 225,000, which is exclusive of the
11 employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will
12 revert to Defendants. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA
13 Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

14 3. Up to \$10,000 will be paid to Plaintiffs as an Enhancement Payment. This amount will
15 be in addition to any amount Plaintiffs may be entitled to under the terms of the Agreement. *See id.* at
16 ¶ 5.4.

17 4. Subject to Court approval, the Parties have selected Apex Class Action to act as the
18 Settlement Administrator, who has provided a maximum cost estimate of \$7,900. *See* Exhibit D
19 (Apex Class Action Quote); Exhibit A, ¶ 1.33; Decl. Berzin, ¶ 21.

20 5. The Parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
21 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
22 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
23 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
24 by Defendants to maintain compliant policies and take corrective action, the presence of what may
25 likely be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiffs
26 believe the \$10,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring
27 non-compliance given the facts of this case. *See* Decl. Berzin, ¶¶ 6-10; *see also Nordstrom Com.*
28 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims

1 based on their being disputed and being part of a class settlement which was evaluated based on the
2 terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2
3 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
4 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA
5 claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016
6 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA
7 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
8 *Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
9 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
10 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
11 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.
12 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
13 *& Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
14 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
15 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S.
16 Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
17 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
18 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
19 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
20 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement
21 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving
22 PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

23 6. The Parties agree that up to Thirty Five Percent (35%) of the Gross Settlement Amount
24 (\$78,750) will be paid for Plaintiffs' attorneys' fees incurred in the litigation of this case. Defendants
25 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
26 Additionally, the Parties agree that Plaintiffs will also be entitled to the actual litigation costs as
27 approved by the Court in an amount not to exceed \$15,000. *See id.* The proposed notice to be sent to
28 Class Members will state this information. *See* Exhibit F.

1 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class
2 Representative Enhancement Payment, and attorney’s fees and costs that are not ultimately awarded by
3 the Court will remain part of the Net Settlement Amount and be paid out to Participating Class
4 Members on a pro rata basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These
5 amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement
6 Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

7 8. Class Members who fail to timely opt-out of this settlement will waive all Released
8 Class Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.14, 1.26, 1.30, 1.32, 6.1. Aggrieved
9 Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether
10 they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

11 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
12 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
13 respective settlement checks within 180 calendar days of issuance, the remaining amount shall be paid
14 to the State of California Unclaimed Property Fund to be held in the name of each expired check payee,
15 pursuant to applicable unclaimed property laws. *See* Exhibit A, at ¶ 5.6. Because the Agreement
16 provides a plan for distribution of all funds, there is no “residue” that will need to be addressed in
17 connection with entering judgment pursuant to California Rules of Court, Rule 3.769(h). *See also In re*
18 *Microsoft I-V Cases*, 135 Cal. App. 4th 706, 718, 720, 722-724 (2006); Cal. Civ. Proc. Code § 384(b).

19 **c. Allocation of Settlement Funds**

20 Payment to Participating Class Members and Aggrieved Employees will not require the
21 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
22 Gross Settlement Amount any attorneys’ fees and costs, Enhancement Payment to the Class
23 Representatives, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by
24 the Court. Each Class Member’s share will be determined by dividing their total weeks worked within
25 the Class Period by the total weeks worked by all Class Members within the Class Period. That
26 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s
27 individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion
28 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA

1 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
2 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
3 Aggrieved Employee's individual share. *See* Exhibit A, at ¶¶ 1.17, 5.5, 5.8.

4 **V. THE PROPOSED PROCEDURES TO NOTIFY CLASS MEMBERS SATISFY DUE**
5 **PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE**
6 **CIRCUMSTANCES**

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

23 Under the proposed notice procedures, Class Members will have sixty (60) days from the date
24 of mailing to review and respond to the Notice of Settlement, which will also be available online. *See*
25 Exhibit A, ¶¶ 1.21, 7.2. The Notice of Settlement contains all information necessary for a Class
26 Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out.
27 *See id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National change of address database searches, skip-traces, and
28 surveying of current employees will be utilized as set out in the Agreement to provide the best practical
means of ensuring Class Members receive the notice mailing. *See* Exhibit A, ¶¶ 7.3-7.4. Any

individual whose initial mailing was deemed undeliverable will have additional time to respond. *See id.* at ¶ 7.4. Additional time to respond will also be provided to cure any deficiencies in opt-outs, objections, or disputes. *See id.* ¶ 7.5.4. This notice method is regularly utilized in wage and hour class actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Class Members satisfy due process and should be approved in this case.

VI. THE AGREEMENT WARRANTS PRELIMINARY APPROVAL AS IT IS FAIR, REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE FACTS OF THIS CASE

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2). However, "[d]ue regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

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

The purpose of the Court's preliminary evaluation of a proposed class action settlement is to determine only whether it is within the range of possible approval such that notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is warranted. *See Wershba*, 91 Cal.

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

App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant preliminary approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining whether the settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802.

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

Settlement of this case was reached only after substantial litigation and extensive arm’s length negotiations lasting nearly 1.5 years, which included a full day mediation. *See Decl. Berzin*, ¶ 8. At all times, the negotiations were adversarial, although still professional in nature. *See id.*

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

The Parties were in possession of all necessary information during the negotiations. The Parties engaged in substantial informal discovery, which included all necessary components for evaluating the class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiffs were in possession of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiffs were able to make a reasonable estimation of Defendants' potential liability. *See id.* For these reasons, the settlement now before the Court was reached at a stage where “the parties certainly have a clear view of

the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

iii. Plaintiffs' Counsel are Experienced in Similar Litigation

Plaintiffs' counsel have considerable experience in complex litigation such as class and PAGA actions. *See Decl. Berzin*, ¶¶ 11-20. Thus, Plaintiffs' counsel are qualified to evaluate the class claims, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. Plaintiffs' counsel believe that the Agreement is fair, reasonable, and adequate in light of the risks associated with the claims, the uncertainties of complex litigation, and the secured benefit to Class Members. *See id.*

iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of Plaintiffs' Case and the Risks and Costs of Further Litigation

Plaintiffs' claims and the ability to obtain and maintain certification all the way through trial were heavily disputed by Defendants. *See Decl. Berzin*, ¶¶ 5, 6-10. Based on the records and facts of this case, Plaintiff has secured a gross recovery of approximately 5.7% of the maximum likely value of the claims in this matter and 29.4% of the more realistic range of recovery. *See Decl. Berzin*, ¶¶ 9-10. The net recovery represents approximately 2.6% of the maximum likely value of the claims in this matter and 13.2% of the more realistic range of recovery. The average net award is approximately \$636.79. *See id.*

This settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total available damages that have been approved in other class settlements. *See Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorney's fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS

1 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
2 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
3 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
4 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
5 *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class
6 Members will receive an average of approximately \$198.70, with the highest payment to a Class
7 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
8 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees
9 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the
10 results achieved in this case were very favorable. Class members are provided with immediate
11 monetary relief, with an average award of around several hundred dollars and a minimum award of
12 \$50").

13 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

14 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
15 information be presented in class action settlements "to ensure that the recovery represents a reasonable
16 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
17 risks and expenses of attempting to establish and collect on those claims by pursuing the
18 litigation" *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
19 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
20 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
21 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff
22 prevailed on all the claims, provided there is a record that allows "an understanding of the amount that
23 is in controversy and the realistic range of outcomes of the litigation." *Id.* at 409.

24 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the
25 data points relied upon in reaching these ranges. *See* Decl. Berzin ¶¶ 9-10. The record demonstrates
26 that the compromises made by Plaintiffs were reasonable and have resulted in a settlement with
27 recovery percentage well within the range of what has been found to be sufficient in several other
28 cases. *See, supra*, Section VI.a.iv; *see also Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th

1 Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery
2 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
3 disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no
4 reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a
5 thousandth part of a single percent of the potential recovery”).

6 **b. Provisional Certification of the Class is Appropriate**

7 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
8 defined community of interest in the questions of law and fact involved affecting the parties to be
9 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
10 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
11 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
12 Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

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

14 The proposed settlement class is ascertainable because all putative Class Members can be
15 readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7
16 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex*,
17 *Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 159
18 individuals who fall within the definition of Class Member, which makes joinder of all members
19 impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980),
20 *aff’d* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no
21 set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is
22 acceptable). Thus, these requirements are satisfied.

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

24 The commonality requirement is met when there are questions of law or fact regarding the class
25 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
26 factual questions exist; Plaintiffs need not show that all issues in the litigation are identical. *See*
27 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
28 447, 460 (1974). Common questions of law or fact must also predominate over individual questions

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

6 The common questions of law and fact in this case stem from Plaintiffs' contention that
7 Defendants violated the law by 1) failing to pay overtime wages and sick time at the correct rates due to
8 Defendants' failure to incorporate the value of nondiscretionary bonuses into Class Members' regular
9 rates of pay; 2) failing to provide all meal periods and providing late meal periods; 3) failing to provide
10 all rest periods; 4) failing to pay Class Members for all overtime hours worked; 5) failing to reimburse
11 Class Members for the use of their personal cellphones; and 6) failing to pay split shift premiums *See*
12 Exhibit B. The waiting time penalties, unfair competition, and PAGA claims are derivative of these
13 violations. *See id.* Plaintiffs and the Class Members seek the same remedies under state law. Under
14 these specific circumstances, the commonality and predominance requirements are satisfied. Regarding
15 the typicality requirement, Plaintiffs contends they suffered from the same unlawful policies, treatment,
16 and circumstances as Class Members did, will request the same remedies, and will rely on the same
17 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
18 satisfied for settlement purposes.

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

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

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

1 of workweeks stated in the Notice of Settlement (Exhibit F).

2 There is no conflict of interest between Plaintiffs and Class Members. Plaintiffs and Plaintiffs'
3 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
4 Plaintiffs' counsel, with Plaintiffs' assistance, thoroughly investigated the claims made in this case by
5 speaking with Plaintiffs and reviewing substantial amounts of documents. Plaintiffs' counsel thereafter
6 engaged Defendants' counsel in settlement discussions over the course of approximately 1.5 years.
7 Moreover, Plaintiffs' counsel has experience defending and bringing wage and hour claims. Because
8 Plaintiffs' counsel has vigorously pursued Plaintiffs' and the Class Members' claims, the adequacy
9 requirement is met. *See generally* Decl. Berzin.

10 **VII. ATTORNEYS FEES AND COSTS, ENHANCEMENT PAYMENTS TO THE CLASS**
11 **REPRESENTATIVES, AND SETTLEMENT ADMINISTRATOR COSTS TO BE**
12 **REQUESTED IN CONNECTION WITH FINAL APPROVAL**

13 Plaintiffs are not requesting any determination with respect to attorney's fees and costs,
14 Enhancement Payments, or Settlement Administrator Costs at this time. Rather, should the Court grant
15 preliminary approval, Plaintiffs will make the request for these amounts as set out in the Agreement as
16 part of their final approval briefing. Specifically, Plaintiffs will request the Court award attorney's fees
17 in the amount of \$78,750.00 (35% of the Gross Settlement Amount), costs in an amount not to exceed
18 \$15,000, Settlement Administrator Costs in an amount not to exceed \$10,000, and an Enhancement
19 Payment for the Class Representatives in the amount of \$10,000 each.

20 Plaintiffs believe an award of attorney's fees under the common fund doctrine is appropriate in
21 this case as there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the
22 benefits received can be accurately traced to the settlement Plaintiffs and Class Counsel were able to
23 negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as
24 the fee request is a specific, lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat.,*
25 *Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir.
26 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common
27 fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee from
28 the fund as a whole."); *see also Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23
(S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No.

06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement); *West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000 representative enhancement where 10,000 class members were to receive a gross award of approximately \$500 each from the \$5,000,000 settlement); *Dent v. ITC Serv. Croup*, 2013 U.S. Dist. LEXIS 139359, at *9-*10, *15-*16 (D. Nev. Aug. 6, 2013) (awarding a \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530 class members); *Patel v. Nike Retail Services, Inc.*, 2019 WL 2029061 at *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees was not excessive where PAGA group consisted of 40 employees).

Plaintiffs' final approval briefing will include information and analysis regarding the appropriateness of the fee percentage sought, a lodestar cross check of the requested fee, a detailed declaration from Plaintiffs regarding their time spent on the case as well as any risks and burdens incurred as the Class Representatives, an itemized costs spreadsheet, and a declaration from the Settlement Administrator detailing the work performed and Settlement Administrator Costs incurred. The Notice of Settlement will state the amounts to be requested to provide Class Members the ability to comment thereon, providing evidence of whether the requested amounts are reasonable. *See* Exhibit F at pg. 2, § II.A; *see also In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members to class counsel's fee request further supports finding the fee request reasonable"). Any allocated amounts not ultimately awarded by the Court will be distributed to Class Members pro rata. *See* Exhibit A, ¶¶ 5.2-5.4, 5.8.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court preliminarily and conditionally certify the class for settlement purposes; grant preliminary and conditional approval of the proposed settlement; approve the proposed notification procedures, including the Notice of Settlement and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of Plaintiffs' proposed order is being filed concurrently herewith.

Shimoda & Rodriguez Law, PC

Dated: February 9, 2024

By: *Brittany Berzin*
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Justin P. Rodriguez
Brittany V. Berzin
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6 and PATRICK WIRTH

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

10 JOE HART, individually and on behalf of all
11 other similarly situated employees,

12 Plaintiff,

13 vs.

14 ALUMINUM COATING TECHNOLOGIES,
15 INC., a California Corporation;
16 BRUCE CENICEROS, an individual;
17 ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

18 Defendants.

Case No. 34-2022-00320564

CLASS ACTION

**DECLARATION OF BRITTANY V. BERZIN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Reservation No.: A-320564-001

Date: March 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: May 23, 2022

FAC Filed: July 29, 2022

SAC Filed: June 13, 2023

Trial Date: none set

1 I, Brittany V. Berzin, declare:

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

8 2. This case was brought as a wage and hour class action based on contentions that
9 Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros, and Andrea Cenicerros,
10 (“Defendants”) failed to pay overtime wages, failed to pay split shift premiums, failed to provide meal
11 and rest periods or pay premiums in lieu thereof, failed to provide accurate wage statements, failed to
12 timely pay final wages, failed to reimburse expenses, and engaged in unfair competition. Plaintiffs also
13 alleged liability for civil penalties under the Private Attorneys General Act (“PAGA”). These claims
14 were based allegations that Defendants violated California law by 1) failing to pay overtime wages and
15 sick time at the correct rates due to Defendants’ failure to incorporate the value of nondiscretionary
16 bonuses into Class Members’ regular rates of pay; 2) failing to provide all meal periods and providing
17 late meal periods; 3) failing to provide all rest periods; 4) failing to pay Class Members for all overtime
18 hours worked; 5) failing to reimburse Class Members for the use of their personal cellphones; and 6)
19 failing to pay split shift premiums. The PAGA, waiting time penalty, wage statement violation, and
20 unfair competition claims also derive from these violations.

21 3. From our initial investigations, we believed these claims had merit and could be
22 maintained as a class action. Joe Hart, the prior class representative, filed the action on or about May
23 23, 2022. Joe Hart exhausted administrative remedies by filing a notice on May 17, 2022, through the
24 Labor and Workforce Development Agency (“LWDA”) prior to amending the Complaint to add a
25 PAGA claim. In around October 2022, I learned that Joe Hart had settled his individual claims and no
26 longer wished to fulfill the fiduciary role of a class representative. In response, my office filed a
27 motion with the Court to ascertain a substitute class representative and dismiss Joe Hart as the named
28 plaintiff, which was granted. A Second Amended Complaint adding Plaintiffs as the class

1 representatives was filed on June 12, 2023. Plaintiffs exhausted administrative remedies by filing a
2 notice with the LWDA on June 9, 2023. A Third Amended Complaint was filed on August 25, 2023,
3 after Plaintiffs exhausted administrative remedies. A true and correct copy of the operative notice
4 Plaintiffs filed with the LWDA is being filed with this Motion as Exhibit C. Copies of the notices were
5 sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the LWDA. There was
6 no response by the LWDA regarding its intent to investigate the claims alleged in the notices for more
7 than 65 days. As such, Plaintiffs are authorized to commence a civil action under the PAGA. A true
8 and correct copy of Plaintiffs' operative Third Amended Complaint is filed with this Motion as Exhibit
9 B. A copy of the Third Amended Complaint was uploaded to the LWDA, after we received an
10 endorsed copy back from Court.

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

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

24 6. Based on the expected testimony from Plaintiffs and Class Members, a review of
25 Defendants' policies and procedures and other documents relating to the alleged claims, information on
26 the number of Class Members, Class Members' dates of employment, and a representative sample of
27 Class Members' payroll data, the scope of the potential damages to Plaintiffs and Class Members in
28 light of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations

1 that have taken place, I believe that the proposed settlement is in the best interest of the class. The
2 length and risks of trial and other normal perils of litigation that impact the value of the claims were also
3 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of
4 potential class certification issues as well as the uncertainty of class certification, the difficulties of
5 complex litigation, and the lengthy process of establishing specific damages and various possible delays
6 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
7 PAGA could be substantially cut at the discretion of the Court even if Plaintiffs were successful on
8 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
9 at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I
10 believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with
11 litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

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

1 directly related to our ability to maintain this case as a class action and our ability to obtain a favorable
2 settlement for the class.

3 8. Throughout this litigation our office had numerous communications with Defendants'
4 Counsel discussing our respective positions. The parties engaged in mediation on December 13, 2023
5 using an experienced mediator, Howard Broadman. It was only after approximately 1.5 years of
6 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
7 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
8 professional in nature.

9 9. The following represents the potential maximum recovery for each of Plaintiffs' claims
10 based on my office's analysis of Defendants' relevant policies and the data produced by Defendants,
11 including a sample of time and payroll records for Class Members. At the time of mediation, there
12 were 10,605 workweeks in the Class Period, 3,686 PAGA pay periods.

13 a) Overtime Wages (Unpaid Hours): This claim is based on allegations that Class Members
14 were not paid for all overtime hours worked. It was estimated based on interviews with
15 Class Members that they were owed approximately one (1) hour of unpaid overtime
16 each week they worked. At the time of mediation, the maximum possible damages for
17 this claim based on Defendants' records and interviews with Class Members was
18 \$286,335.00. This amount does not take into account any potential risks with respect to
19 Plaintiff proving the merits or damages. Defendants contend that they maintained
20 legally compliant policies that encouraged Class Members to record all of their hours
21 worked and to pay Class Members all overtime. Defendants contend that to the extent
22 Class Members were not paid for all hours worked they had no knowledge of this. In
23 order to be liable for off-the-clock work, an employer must know or have reason to to
24 know it was occurring. *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051
25 (2012). Taking these factors into account, a more realistic range of recovery for this
26 claim is \$71,583.75 to \$141,167.50 (75% to 50% reduction based on risk).

27 b) Overtime Wages (Regular Rate of Pay): This claim is based on allegations that Class
28 Members were not paid all overtime premiums owed because Defendants failed to

1 incorporate the value of bonuses paid to Class Members in their regular rates of pay. At
2 the time of mediation, the maximum possible damages for this claim based on
3 Defendants' records was \$4,427.38. This amount does not take into account any
4 potential risks with respect to Plaintiff proving the merits or damages. Defendants
5 contend that the bonuses paid to Class Members were discretionary, constituted profit
6 sharing, or were calculated based on a percentage of Class Members' income and
7 therefore did not need to be included in the regular rate of pay. If Defendants'
8 arguments prevailed, the value of this claim could be reduced to \$0.

9 c) Meal Periods: This claim was based on allegations that Defendants failed to provide
10 Class Members with legally compliant meal periods (*e.g.*, Class Members did not
11 receive a full 30 minute meal period, did not receive second meal periods when working
12 over 10 hours, or did not begin their meal periods by their fifth hour of work). Based on
13 Defendants' time and pay records, the maximum possible damages for this claim was
14 \$128,850.75. This amount was calculated using a 13.5% violation rate based on
15 Defendants' time records. This amount does not take into account any potential risks
16 with respect to Plaintiff proving the merits or damages. Plaintiffs contend that because
17 Defendants' time records reflected meal period violations there is a rebuttable
18 presumption that the meal period violations occurred. Defendants contend they had a
19 legally compliant meal period policy in place during the class period and that to the
20 extent Class Members did not receive all meal periods it was their choice not to take
21 them or to begin them after the fifth hour. Defendants contend that they provided Class
22 Members with the opportunity to take meal periods and encouraged Class Members to
23 take their meal periods and were not required to police Class Members to ensure the
24 meal periods were taken. Defendants also contend that an inquiry into why each Class
25 Member did not receive meal periods would require an individualized inquiry that would
26 defeat class certification. Taking these factors into account, a more realistic recovery for
27 this claim is \$64,425.38 (50% reduction based on risk).
28

- 1 d) Rest Periods: This claim was based on allegations that Defendants failed to provide
2 Class Members with legally compliant rest periods. Based on Defendants' time and pay
3 records, the maximum possible damages for this claim was \$128,850.75. This amount
4 was calculated using a 13.5% violation rate based on Defendants' time records for
5 instances where Class Members did not receive a legally compliant meal period. It is
6 reasonable to assume that on occasions Class Members were unable to take legally
7 complaint meal periods they were also unable to take rest periods. This amount does not
8 take into account any potential risks with respect to Plaintiff proving the merits or
9 damages. Defendants contend they had a legally compliant rest period policy in place
10 during the class period and that to the extent Class Members did not receive rest periods
11 it was their choice. Defendants contend that they provided Class Members with the
12 opportunity to take rest periods, encouraged Class Members to take their rest periods
13 and were not required to police Class Members to ensure the rest periods were taken.
14 Defendants also contend that an inquiry into why each Class Member did not receive
15 rest periods would require an individualized inquiry that would defeat class certification.
16 Taking these factors into account, a more realistic recovery for this claim is \$64,425.38
17 (50% reduction based on risk).
- 18 e) Sick Time: This claim is based on allegations that Class Members were not paid all sick
19 time owed because Defendants failed to incorporate the value of bonuses paid to Class
20 Members in their regular rates of pay. At the time of mediation, the maximum possible
21 damages for this claim based on Defendants' records was \$3,531.89. This amount does
22 not take into account any potential risks with respect to Plaintiff proving the merits or
23 damages. Defendants contend that the bonuses paid to Class Members were
24 discretionary, constituted profit sharing, or were calculated based on a percentage of
25 Class Members' income and therefore did not need to be included in the regular rate of
26 pay. If Defendants' arguments prevailed, the value of this claim could be reduced to \$0.
- 27 f) Split Shift: This claim is based on allegations that Defendants required Class Members
28 to work split shifts without paying split shift premiums. This claim was based on facts

1 learned from Joe Hart, the initial class representative. However, after reviewing
2 Defendants' time records it was discovered that Class Members did not work split shifts
3 and that this was an individual issue that applied to Joe Hart. Accordingly, no amount is
4 being allocated for this claim.

5 g) Wage Statement: This claim is based on allegations that as a result of the violations
6 identified above, the wage statements Class Members received were inaccurate.
7 Because this claim is derivative, it carries the same risks already identified above. The
8 maximum potential damages for this claim was \$184,300.00. This amount does not take
9 into account any potential risks with respect to Plaintiff proving the merits or damages.
10 In addition to the risks identified above, this claim would require Plaintiffs to prove that
11 Defendants had knowledge the wage statements they issued were inaccurate and that
12 violation was intentional. Defendants contend that to the extent Class Members were
13 not paid all overtime wages, sick time, and meal and rest period premiums that they did
14 not have knowledge of this and acted in good faith based on the policies they had in
15 place to ensure compliance with the law. If Defendants' arguments prevailed, the value
16 of this claim could be reduced to \$0.

17 h) Waiting Time Penalties: This claim is derivative of the failure to pay sick time, failure to
18 pay overtime, and failure to provide meal and rest periods. Thus, the same risks
19 identified above apply to this claim. At the time of mediation, the maximum possible
20 damages for this claim based on the data and information provided by Class Members
21 was \$583,200.00. This amount was calculated based on information from Defendants
22 that there were former employees. It was assumed that each employee had some
23 amount of wages owing to him or her and the penalty was calculated using a full 30
24 days. This amount does not take into account any potential risks with respect to Plaintiff
25 proving the merits or damages. Labor Code section 203 requires that the failure to pay
26 wages be willful in order for a waiting time penalty to be appropriate. Defendants
27 contend that they cannot be liable for waiting time penalties because it did not have
28 knowledge of the alleged violations and have a good faith defense. There is substantial

1 risk that Defendants’ policies and records would provide it with a good faith affirmative
2 defense, which would eliminate the value of this claim entirely. *See Diaz v. Grill*
3 *Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Taking these factors into
4 account, it is possible this claim would be eliminated entirely.

- 5 i) Reimbursement: This claim was based on allegations that Class Members, especially
6 drivers, were required to use their personal cellphones for work in order to communicate
7 with Defendants. The maximum possible damages for this claim was \$74,235.00. This
8 amount was calculated assuming each Class Member was owed approximately \$7 for
9 cellphone reimbursement each week. This amount does not take into account any
10 potential risks with respect to Plaintiff proving the merits or damages. Defendants
11 contend that they did not require Class Members to use their personal cellphones and
12 even if Class Members should have been reimbursed for personal cellphone use that
13 such use would have been infrequent. Taking these facts into account, a more realistic
14 recovery for this claim would be \$31,815.00 (based on \$3/week owed for
15 reimbursement).
- 16 j) PAGA: This claim is derivative of the Labor Code violations identified above and would
17 be subject to all the same risks as the underlying claims it is based on. Additionally,
18 based on our research, we did not find any prior Labor Commissioner or court decisions
19 that stated Defendants’ practices and/or policies were improper. As such, a “subsequent
20 violation” may not be found for penalty calculation purposes, and the exposure analysis
21 here is based on an “initial violation” valuation being adopted by any fact finder if this
22 matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-
23 1209 (2008). Based on Class Members’ payroll data, the maximum total exposure for
24 this claim is \$1,542,818.00. This amount does not take into account any of the risks in
25 proving the merits of the underlying claims that the PAGA damages are based on. In
26 addition to the risks on the merits and disputes regarding the proper valuation of the
27 penalty amounts, I believe the Court may exercise its discretion to reduce PAGA
28 penalties in this case because a majority of the civil penalties sought would be in

1 addition to amounts owed for substantive violations, some of the violations are due to
2 technical non-compliance with the Labor Code, such as derivative wage statement
3 violations, and Defendant produced legally compliant policies among other documents,
4 that a Court may find demonstrates a good faith attempt at compliance. Courts are
5 statutorily authorized to use discretion to reduce penalties and the range of discretion
6 used varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203
7 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S.
8 DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Even if using the
9 maximum values possible and setting aside risks of proving the claims on the merits, the
10 total exposure may be cut to approximately \$277,707.24 (82% reduction) to
11 \$1,079,972.60 (30%) or lower. It is important to note that this discretionary reduction is
12 completely separate and in addition to any risks on the merits. Given the substantial
13 risks associated with the claims, we believe the amount that might ultimately be awarded
14 under this claim would be significantly lower than our maximum exposure calculation.
15 Allocating \$10,000 to the PAGA claims in this case is appropriate, especially in light of
16 amounts that Courts have approved as reasonable valuations in other cases. *See*
17 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to
18 the resolution of PAGA claims based on their being disputed and being part of a class
19 settlement which was evaluated based on the terms of the agreement overall);
20 *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022)
21 (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
22 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving
23 settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery);
24 *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving
25 \$10,00 PAGA settlement allocation where total PAGA penalty exposure was
26 approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns*
27 *California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
28 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l*,

1 *LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA
2 allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford*
3 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000
4 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010
5 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
6 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9
7 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v.*
8 *M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving
9 \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was
10 calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon*
11 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving
12 \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
13 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from
14 \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645,
15 at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA
16 out of \$6.9 million common-fund settlement).

17 10. In summary, Plaintiffs' gross recovery of 225,000 under the Agreement equals
18 approximately 5.7% of the maximum likely value of the claims in this matter and 29.4% of the more
19 realistic range of recovery. After deducting from the Gross Settlement Amount the proposed
20 allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representatives,
21 Settlement Administrator Costs, and the PAGA Payment to the LWDA, the net recovery under the
22 Agreement, \$101,250¹, represents approximately 2.6% of the maximum likely value of the claims in
23 this matter. The net recovery also represents 13.2% of the more realistic range of recovery. The
24 average net award is approximately \$636.79. I believe the Agreement represents a reasonable
25 compromise of claims based on the legal and factual disputes in this case. The ability to secure a
26 guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed
27

28 ¹ This was calculating using the maximum amount for attorney's costs and administrator costs. The actual amounts will likely be less.

1 to further litigation and potentially recover nothing, was a motivating factor in reaching this
2 Agreement.

3 11. In agreeing to represent Plaintiffs and take on the case for all Class Members, our office
4 agreed to take this case on a contingency basis, meaning that we would take a percentage of any
5 settlement or judgment should we recover a monetary amount. We took a risk that we would not
6 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
7 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
8 make sure employees are able to find affordable representation in order to ensure that employers are
9 complying with all their legal obligations towards employees and paying employees all their hard-
10 earned wages.

11 12. I am a Senior Associate at Shimoda & Rodriguez Law, PC. Our law firm is a boutique
12 law practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
13 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. I
14 received my J.D. from the University of the Pacific McGeorge School of Law. I joined Shimoda &
15 Rodriguez Law, PC as a law clerk in February 2015 where I gained civil litigation experience working
16 on individual, class action and PAGA employment cases throughout law school. I also participated in
17 an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal
18 consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour,
19 discrimination/harassment, California leave laws, unemployment, workers' compensation, retaliation,
20 and wrongful termination, etc.) under the supervision of an attorney, preparing wage claims, and
21 providing representation in wage claims before the California Labor Commissioner. From 2016-2017,
22 I completed an externship at the Federal Public Defenders Office as a Certified Law Student where I
23 obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented
24 clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and
25 defended a client against five misdemeanor charges in a jury trial in the United States District Court for
26 The Eastern District of California. I was also a member of the nationally recognized McGeorge Mock
27 Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law
28 school. In May 2017, I graduated from the University of the Pacific, McGeorge School of Law with

Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of my class. I received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and Criminal Procedure. From 2020 to present, I have been recognized as a Super Lawyer (Rising Star). I have been a member of the executive committee of the Sacramento County Bar Association Labor & Employment Section since January 2020, serving as Co-Chair of the committee in 2021. I have over seven years of experience working on civil litigation and employment law matters. Most of that experience has been specific to analyzing and litigating wage and hour claims. As an associate, I have worked on a variety of individual, class action, and PAGA cases involving wage and hour claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition, breach of contract, independent contractor misclassification, and salaried misclassifications. Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel include the following:

- *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin Sup. Ct.);
- *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D. Cal.);
- *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);

- *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);

- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

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

14. The partner, Justin P. Rodriguez, Esq. also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Rodriguez attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the Philosophy program. He was one of only two recipients of this award out of the entire Philosophy Department. After U.C. Davis, Mr. Rodriguez attended the University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris Doctorate. He graduated in the top 20% of his class and was a member of the Traynor Honor Society at McGeorge. Other academic achievements of his include receiving a Witkin Award (top grade) in his legal research and writing course, a Witkin Award in complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar Association Diversity Fellow in 2009. Mr. Rodriguez was also a member of the Employment and Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

15. Mr. Rodriguez was an associate of the Shimoda Law Corp from 2011 to 2016 and became a partner in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, he has received an AV Preeminent rating from Martindale-Hubbell for his legal ability and ethical standards. From 2018 to present, he has been recognized as a Super Lawyer (Rising Star). Mr. Rodriguez has been a panel speaker and presented a number of seminars covering issues wage and hour

litigation in general and complex class and PAGA litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-*Viking River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). Mr. Rodriguez was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. Mr. Rodriguez has also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. His practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. He is actively involved in most of the complex litigation handled by our firm. Class and/or PAGA actions he has litigated or is currently litigating include, but is not limited to, the following:

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

- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);

- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 34-2019-00263185 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

4 17. The partner, Galen T. Shimoda, Esq. also assisted with this case. Mr. Shimoda
5 graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in
6 Asian Studies, with a minor in Japanese language. He then attended and graduated from the University
7 of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from
8 McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor
9 Society. Since graduating from McGeorge, he has authored a number of employment law articles for
10 journals and regularly publishes articles on our firm's website.

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

1 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
2 Venue Roundup (May 17, 2019). He has been AV rated by Martindale Hubbell since 2013, was
3 recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a
4 Super Lawyer from 2014 to present.

5 19. He has practiced law in California since being admitted to the State Bar in 2003,
6 litigating wage and hour class actions and individual wage and hour litigation among other cases. He
7 began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP.
8 He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour
9 law. He has litigated several class action cases in California State and Federal Courts, including up to
10 certification, settlement, preliminary and final approval, and disbursement of monies, and has been
11 found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA
12 cases he is litigating and/or has litigated as lead or co-counsel over the past nineteen (19) years include,
13 but are not limited to, the following:

- 14 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 15 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 16 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 17 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 18 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 19 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 20 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 21 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 22 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
23 Sup. Ct.);
- 24 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 25 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
26 Ct.);
- 27 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
28 Ct.);

- 1 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 2 Sup. Ct.);
- 3 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 4 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 5 Ct.);
- 6 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 7 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 8 00209613 (Sac. Sup. Ct.);
- 9 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 10 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 11 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 12 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 13 (San Joaquin Sup. Ct.);
- 14 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 15 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
- 16 Sup. Ct.);
- 17 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 18 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 19 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
- 20 Sup. Ct.);
- 21 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 22 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 23 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 24 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 25 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 26 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 27 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 28 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);

- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

20. The preceding list also does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case. In connection with any final approval hearing, I will be seeking attorneys' fees and costs, an Enhancement Payment to the Class Representatives, and Settlement Administrator Costs as set forth in

1 the Agreement. I will be requesting attorneys' fees and costs pursuant to the common fund doctrine as
2 I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35
3 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
4 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). The facts and case law supporting the requested amounts
5 will be set forth in the final approval motion, including information for the Court to perform a lodestar
6 cross check of the requested attorney's fees, quantify the amount of time spent by Plaintiffs on this case
7 and any further risks and/or burdens incurred as a result of acting as Class Representatives, an updated
8 declaration in support of actual litigation costs and itemized cost spreadsheet, and declaration from the
9 Settlement Administrator detailing the work performed and Settlement Administrator Costs incurred.
10 My firm's expected costs through final approval are not expected to exceed \$15,000. Attached as
11 Exhibit E is a true and correct copy of the costs incurred prior to the filing of this Motion and the
12 expected costs incurred through the final approval and fairness hearing. Any difference in the awarded
13 fees and costs, Class Representatives' Enhancement Payment, and Settlement Administrator Costs and
14 the amounts allocated for each under the Agreement will be added back to the Net Settlement Amount
15 and distributed pro rata to Class Members.

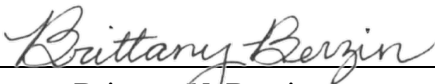
16 21. I have used several class action administrator companies in the wage and hour class
17 actions I have resolved in the past and believe Apex Class Action will provide the best service to
18 administer the proposed class settlement. Apex Class Action has provided a quote for the estimated
19 maximum cost of administering the class settlement of approximately \$7,900. A true and correct copy of
20 a declaration explaining Apex's qualifications, insurance, data security measures, and cost estimate is
21 filed with this Motion as Exhibit D. This is only an estimate, and final pricing may vary depending on
22 the issues, if any, that arise during the administration of the settlement. However, the difference between
23 the actual, lesser costs and \$10,000, if any, will be paid to the Participating Class Members on a pro rata
24 basis.

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

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

3 23. A true and correct copy of the proposed Notice of Settlement is being filed with this
4 Motion as Exhibit F.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct. Executed on February 9, 2024 in Sacramento, California.

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10 Brittany V. Berzin
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Attorneys for Plaintiffs CLINT DAVIDSON and
PATRICK WIRTH

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOE HART, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

ALUMINUM COATING TECHNOLOGIES,
INC., a California Corporation;
BRUCE CENICEROS, an individual;
ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00320564

CLASS ACTION

**DECLARATION OF CLINT DAVIDSON IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-320564-001

Date: March 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: May 23, 2022

FAC Filed: July 29, 2022

SAC Filed: June 13, 2023

Trial Date: none set

1 I, Clint Davidson, declare:

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

5 2. I worked for Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros, and
6 Andrea Cenicerros ("Defendants") from approximately March 2020 to August 2020 as a non-exempt
7 employee. I was subject to Defendants' policies and practices that have been alleged as unlawful in the
8 Complaint and the notice sent to the Labor and Workforce Development Agency, including the
9 following: failure to pay overtime, failure to pay split shift premiums, failure to provide meal and rest
10 periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure to timely
11 pay final wages, failure to reimburse expenses, and engaging in unfair competition

12 3. In March 2023, I received a notice with information about this pending class action case
13 against Defendants. The notice stated that the employee who filed the action was unwilling and unable
14 to continue to serve as the class representative and asked me to fill out a form if I was interested in
15 assisting in the prosecution of the lawsuit by serving as the class representative. The notice also had
16 information about the claims and a class representative's fiduciary duty and responsibilities. I
17 expressed interest in serving as the class representative because I believed that the lawsuit's claims had
18 merit and I was willing to participate, provide information and produce documents, give testimony if
19 there was a deposition and/or trial, and assist Shimoda & Rodriguez Law, PC in prosecuting the action
20 for the benefit of all Class Members.

21 4. Since I became a class representative in May 2023, I have actively participated in the
22 litigation of this case for the benefit of all Class Members. My attorneys explained to me the risks and
23 benefits of bringing a class action and a claim under the Private Attorneys General Act ("PAGA"). I
24 understood that pursuing the case as a class and PAGA action meant that it would take substantially
25 longer than pursuing my claims individually, whether in Court or with the California Labor
26 Commissioner, and that I risked getting nothing in the end, but I believed it was important to make sure
27 that Defendants followed the law for everyone. I understood that I took on the risk, both professionally
28 and financially, in pursuing the case as a class and PAGA action rather than pursuing my claims

1 individually, including the risk of having to pay Defendants' costs if we were unsuccessful in bringing
2 our claims.

3 5. During the course of this litigation, I have given detailed accounts of all the facts related
4 to my employment. I searched for any documentation that I believe supported the claims brought
5 against Defendants to provide to my attorneys. I also assisted my attorneys by providing information
6 about Defendants' employment policies and payroll process as it applied to me and how I believed it
7 applied to Defendants' other employees. I worked for Defendants for several months and was familiar
8 with their policies and practices, so I was able to discuss the similarities of the wage and hour policies
9 and practices among all Class Members.

10 6. I kept in touch with my attorneys and received frequent updates on the status of the case.
11 I also had multiple conversations with my attorneys to go over relevant facts about my employment and
12 answer any questions my attorneys had. I provided substantial information about the way Defendants'
13 tracked employees hours worked, what a typical workday looked like, what policies Defendants'
14 communicated to Class Members, how Defendants communicated policies to Class Members, Class
15 Members' roles and job duties, Defendants' policies and practices regarding lunches and breaks,
16 Defendants' practices regarding work communications with employees on their personal cellphones,
17 Defendants' policies and practices regarding reimbursing expenses, bonuses Defendants paid,
18 Defendants' sick time policies and practices, Defendants' practices regarding paying overtime wages,
19 and Defendants' practices regarding paying final wages. My attorneys kept me informed about the
20 policies, time records, and payroll records produced by Defendants for mediation and their findings
21 after their analysis of the time and pay records. I also answered questions my attorneys had related to
22 the informal information and document exchange to aid in mediation. Overall, I have spent a
23 substantial amount of time assisting in the prosecution of this case.

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

3 8. Although I have already spent a substantial amount of time on this case and assisting my
4 attorneys, I expect the amount of time I spend on this case may increase if preliminary approval is
5 granted because Class Members may reach out to me about the Settlement and the process for receiving
6 payment.

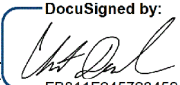
7 9. I have not received any benefits as a result of filing this lawsuit. I have, however,
8 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
9 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendants' costs
10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

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

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

26 I declare under penalty of perjury under the laws of the State of California that the foregoing is
27 true and correct. Executed on 2/9/2024 in Jackson, California.

DocuSigned by:


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1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
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5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiffs CLINT DAVIDSON and
10 PATRICK WIRTH

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

14 JOE HART, individually and on behalf of all
15 other similarly situated employees,

16 Plaintiff,

17 vs.

18 ALUMINUM COATING TECHNOLOGIES,
19 INC., a California Corporation;
20 BRUCE CENICEROS, an individual;
21 ANDREA CENICEROS, an individual; and
22 DOES 1 to 100, inclusive,

23 Defendants.

Case No. 34-2022-00320564

CLASS ACTION

**DECLARATION OF PATRICK WIRTH IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-320564-001

Date: March 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: May 23, 2022

FAC Filed: July 29, 2022

SAC Filed: June 13, 2023

Trial Date: none set

1 I, Patrick Wirth, declare:

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

5 2. I worked for Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros, and
6 Andrea Cenicerros ("Defendants") in March 2019 as a non-exempt employee. I was subject to
7 Defendants' policies and practices that have been alleged as unlawful in the Complaint and the notice
8 sent to the Labor and Workforce Development Agency, including the following: failure to pay
9 overtime, failure to pay split shift premiums, failure to provide meal and rest periods or pay premiums
10 in lieu thereof, failure to provide accurate wage statements, failure to timely pay final wages, failure to
11 reimburse expenses, and engaging in unfair competition.

12 3. In March 2023, I received a notice with information about this pending class action case
13 against Defendants. The notice stated that the employee who filed the action was unwilling and unable
14 to continue to serve as the class representative and asked me to fill out a form if I was interested in
15 assisting in the prosecution of the lawsuit by serving as the class representative. The notice also had
16 information about the claims and a class representative's fiduciary duty and responsibilities. I
17 expressed interest in serving as the class representative because I believed that the lawsuit's claims had
18 merit and I was willing to participate, provide information and produce documents, give testimony if
19 there was a deposition and/or trial, and assist Shimoda & Rodriguez Law, PC in prosecuting the action
20 for the benefit of all Class Members.

21 4. Since I became a class representative in May 2023, I have actively participated in the
22 litigation of this case for the benefit of all Class Members. My attorneys explained to me the risks and
23 benefits of bringing a class action and a claim under the Private Attorneys General Act ("PAGA"). I
24 understood that pursuing the case as a class and PAGA action meant that it would take substantially
25 longer than pursuing my claims individually, whether in Court or with the California Labor
26 Commissioner, and that I risked getting nothing in the end, but I believed it was important to make sure
27 that Defendants followed the law for everyone. I understood that I took on the risk, both professionally
28 and financially, in pursuing the case as a class and PAGA action rather than pursuing my claims

1 individually, including the risk of having to pay Defendants' costs if we were unsuccessful in bringing
2 our claims.

3 5. During the course of this litigation, I have given detailed accounts of all the facts related
4 to my employment. I searched for any documentation that I believe supported the claims brought
5 against Defendants to provide to my attorneys. I also assisted my attorneys by providing information
6 about Defendants' employment policies and payroll process as it applied to me and how I believed it
7 applied to Defendants' other employees. I worked for Defendants as both a driver and warehouse
8 employee and was familiar with Defendants' policies and practices, so I was able to discuss the
9 similarities of the wage and hour policies and practices among all Class Members.

10 6. I kept in touch with my attorneys and received frequent updates on the status of the case.
11 I also had multiple conversations with my attorneys to go over relevant facts about my employment and
12 answer any questions my attorneys had. I provided substantial information about the way Defendants'
13 tracked employees hours worked, what a typical workday looked like, what policies Defendants'
14 communicated to Class Members, how Defendants communicated policies to Class Members, Class
15 Members' roles and job duties, Defendants' policies and practices regarding lunches and breaks,
16 Defendants' practices regarding work communications with employees on their personal cellphones,
17 Defendants' policies and practices regarding reimbursing expenses, bonuses Defendants paid,
18 Defendants' sick time policies and practices, Defendants' practices regarding paying overtime wages,
19 and Defendants' practices regarding paying final wages. My attorneys kept me informed about the
20 policies, time records, and payroll records produced by Defendants for mediation and their findings
21 after their analysis of the time and pay records. I also answered questions my attorneys had related to
22 the informal information and document exchange to aid in mediation. Overall, I have spent a
23 substantial amount of time assisting in the prosecution of this case.

24 7. I participated in the negotiations and settlement discussions in this case, including
25 participating in mediation by phone speaking with my attorney several times throughout the mediation
26 to answer questions, provide any additional information needed to assist the negotiations, and
27 discussing the potential terms of the Agreement to evaluate its adequacy. Throughout the course of this
28

1 litigation, I have asked questions when I needed clarification about various aspects of this case to make
2 sure there were continually steps taken to advance the interests of Class Members.

3 8. Although I have already spent a substantial amount of time on this case and assisting my
4 attorneys, I expect the amount of time I spend on this case may increase if preliminary approval is
5 granted because Class Members may reach out to me about the Settlement and the process for receiving
6 payment.

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

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

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

26 //

27 //

28 //

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed on 2/9/2024 in Ek grove, California.

3
4
5 DocuSigned by:
6 Patrick Wirtle
7 B253A20F71714B3...

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiffs CLINT DAVIDSON
and PATRICK WIRTH

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOE HART, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

ALUMINUM COATING TECHNOLOGIES,
INC., a California Corporation;
BRUCE CENICEROS, an individual;
ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00320564

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-320564-001

Date: March 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: May 23, 2022

FAC Filed: July 29, 2022

SAC Filed: June 13, 2023

Trial Date: none set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiffs' Operative Complaint
C	Plaintiffs' Letter to the LWDA Regarding PAGA Claims
D	Apex Class Action Declaration & Quote
E	Plaintiffs' Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: February 9, 2024

Shimoda & Rodriguez Law, PC

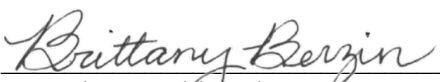
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Brittany V. Berzin
 Attorneys for Plaintiffs

EXHIBIT A

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Attorneys for ALUMINUM COATING TECHNOLOGIES, INC.,
BRUCE CENICEROS, and ANDREA CENICEROS

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

JOE HART, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

ALUMINUM COATING TECHNOLOGIES,
INC., a California Corporation;
BRUCE CENICEROS, an individual;
ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: 34-2022-00320564

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

Filed: May 23, 2022
FAC Filed: July 29, 2022
SAC Filed: June 13, 2023
TAC Filed: August 25, 2023
Trial Date: None set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiffs Clint Davidson and Patrick Wirth (“Plaintiffs”), on behalf of themselves,
3 the Labor and Workforce Development Agency, Class Members, and Aggrieved Employees, and
4 Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros, and Andrea Cenicerros
5 (“Defendants”). This Agreement is subject to the terms and conditions set forth below and the approval of
6 the Court.

7 **1. DEFINITIONS**

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

9 1.1 “Action” means the above stated lawsuit, *Hart v. Aluminum Coating Technologies, Inc.*,
10 Sacramento County Superior Court, Case No. 34-2022-00320564, filed May 23, 2022.

11 1.2 “Aggrieved Employee(s)” means all individuals who have, or continue to, for Defendants
12 in California during the PAGA Claim Period. The estimated number of Aggrieved Employees is 64.

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

15 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of
16 Shimoda & Rodriguez Law, PC.

17 1.5 “Class Member(s)” means all individuals who have, or continue to, work for Defendants as
18 non-exempt employees in California during the Class Period. The estimated number of Class Members is
19 159.

20 1.6 “Class Period” means from May 23, 2018 up to the Preliminary Approval Date.

21 1.7 “Class Representatives” means Plaintiffs Clint Davidson and Patrick Wirth.

22 1.8 “Complaint” means the operative Third Amended Complaint on file in the Action with the
23 Court.

24 1.9 “Court” means the Sacramento County Superior Court.

25 1.10 “Defendants” means Aluminum Coating Technologies, Inc., Bruce Cenicerros, and Andrea
26 Cenicerros.

27 1.11 “Defendants’ Counsel” means Rosasco Law Group, APC.

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1 1.12 “Enhancement Payment” means the amount approved by the Court to be paid to the Class
2 Representatives in recognition of the time and effort expended on behalf of Class Members for the benefit
3 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
4 Representatives as Participating Class Members.

5 1.13 “Effective Date” means the date Plaintiffs serve Defendants with the signed order granting
6 final approval of the settlement, unless there is a timely objection lodged that has not later been withdrawn,
7 in which case the Effective Date will be either (a) the 60th calendar day after a signed order approving this
8 settlement has been filed provided no appellate proceeding having been filed; or (b) seventh (7th) calendar
9 day after any appellate proceeding opposing the settlement has been finally dismissed with no material
10 change to the terms of this settlement and there is no right to pursue further remedies or relief, whichever
11 is later.

12 1.14 “Final Approval Date” means the date a signed order granting final approval of this
13 Agreement is filed with the Court.

14 1.15 “Gross Settlement Amount” is the sum of Two Hundred Twenty-Five Thousand Dollars
15 and No Cents (225,000).

16 1.16 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
17 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
18 Sections 5.5, and 5.8.

19 1.17 “LWDA” means the California Labor and Workforce Development Agency.

20 1.18 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
21 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
22 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement
23 Payment to the Class Representatives.

24 1.19 “Notice of Settlement” means the document substantially in the form attached hereto as
25 Exhibit 1.

26 1.20 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
27 Settlement to Class Members and Aggrieved Employees.

28 1.21 “PAGA” means Private Attorneys General Act.

1 1.22 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
2 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

3 1.23 “PAGA Claim Period” means from May 17, 2021, up to the Preliminary Approval Date.

4 1.24 “Parties” mean Defendants and Plaintiffs.

5 1.25 “Participating Class Member” means any and all Class Members who have not made any
6 timely request to opt-out of the Agreement.

7 1.26 “Preliminary Approval Date” means the date a signed order granting preliminary approval
8 of this Agreement is served on Defendants by the Court or Class Counsel.

9 1.27 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
10 benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments
11 under this Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement
12 shall remain the property of Defendants until the payments required under the Agreement are made.

13 1.28 “Qualifying Workweeks” are the Workweeks worked by Class Members and/or Aggrieved
14 Employees during the Class Period and/or PAGA Claim Period, respectively, in California.

15 1.29 “Released Class Claims” means any and all class claims that are alleged in the Complaint,
16 and any additional wage and hour claims that could have been brought based on the facts alleged in the
17 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.
18 The Released Class Claims exclude claims for workers’ compensation or unemployment insurance
19 benefits. This release will cover all Class Members who do not opt out.

20 1.30 “Released PAGA Claims” means any and all claims that were brought under the Private
21 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage
22 and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during
23 the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

24 1.31 “Released Parties” means Defendants, as well as Defendants’ officers, shareholders,
25 directors, agents, employees, attorneys, and insurers.

26 1.32 “Settlement Administrator” means and refers to Apex Class Action, the third-party entity
27 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
28

1 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
2 Parties each represent that they do not have any financial interest in the Settlement Administrator.

3 1.33 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
4 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
5 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
6 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
7 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
8 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
9 Members and/or Aggrieved Employees, Class Counsel, and Defendants’ Counsel; all costs and fees
10 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
11 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
12 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
13 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
14 other filings required by any governmental taxing authority or agency; all costs and fees associated with
15 preparing any other notices, reports, or filings to be prepared in the course of administering Individual
16 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
17 in connection with the execution of its duties under this Agreement.

18 1.34 “Total Length of Service” means the number of days, inclusive of weekends, between a
19 Class Member’s first day of work for Defendants in California and a) the end of the Class Period and/or
20 PAGA Claim Period or b) the date of the Class Members’ last day of work for Defendants in California,
21 whichever is earlier; less any days between a Class Member’s termination or resignation and his or her
22 subsequent re-hire.

23 1.35 “Workweeks” shall be defined as the Total Length of Service during the Class Period and/or
24 PAGA Claim Period divided by seven. The calculation of a Class Member’s and/or Aggrieved Employee’s
25 workweeks and a determination as to whether a Class Member and/or Aggrieved Employee was actively
26 employed in California in a particular workweek shall be construed from Defendants’ records.

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1 **2. DESCRIPTION OF THE LITIGATION**

2 2.1 On or about May 17, 2022, former class representative, Joe Hart, sent notice to the LWDA
3 to exhaust administrative remedies under the PAGA for failure to pay overtime wages, failure to provide
4 meal periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu thereof,
5 failure to provide accurate wage statements, failure to pay final wages, violation of provisions regulating
6 hours and days of work in the Industrial Welfare Commission Order, failure to maintain accurate records,
7 failure to provide paid sick leave, failure to pay reimbursements for expenses, and failure to pay split shift
8 premiums. On June 9, 2023, an amended notice was submitted to the LWDA adding the current Class
9 Representatives, Clint Davidson and Patrick Wirth, to exhaust administrative remedies. The facts, theories,
10 and claims alleged were unchanged. The LWDA did not respond to the notices within the statutorily
11 required time frame and, as such, Plaintiffs became authorized to act as a Private Attorneys General on all
12 alleged PAGA claims.

13 2.2 On May 23, 2022, Joe Hart filed a class action Complaint in Sacramento County Superior
14 Court on behalf of himself and Class Members alleging claims for failure to pay overtime wages, failure
15 to pay split shift premiums, meal period violations, rest period violations, wage statement violations,
16 waiting time penalties, failure to reimburse expenses, and unfair competition. Joe Hart filed a First
17 Amended Complaint on July 29, 2022 to add a PAGA cause of action based on the violations alleged to
18 the LWDA on behalf of himself and Aggrieved Employees. On February 27, 2023, the Court entered an
19 order dismissing Joe Hart from the action and permitted a notice be sent to Class Members in order to
20 ascertain a new class representative. On June 12, 2023, a Second Amended Complaint was filed adding
21 Clint Davidson and Patrick Wirth as the new class representatives. On August 25, 2023, after the LWDA
22 did not respond to Plaintiffs' PAGA notice, a Third Amended Complaint was filed adding language to
23 specify that Plaintiffs exhausted administrative remedies under the PAGA.

24 2.3 Through informal discovery, Defendants and Defendants' Counsel provided Class
25 Counsel with Plaintiffs' personnel files, the total number of Class Members, Class Members' dates of
26 employment and any interim start/stop dates, a 20% randomly selected sample of Class Members'
27 timecards and paystubs, all employee handbooks (prior and current versions) during the Class Period, all
28 policies and memorandums covering the subject matter of the claims during the Class Period, the total

1 number of Class Members who signed arbitration agreements (these individuals were also identified by
2 employee ID so Plaintiffs' counsel could determine how many weeks they worked in the Class Period),
3 and information regarding any bonuses or profit sharing any Class Members were eligible to receive
4 during the Class Period.

5 2.4 On December 13, 2023, the Parties participated in a full day mediation with private
6 mediator, Judge Howard Broadman (Ret.). At the conclusion of the mediation, the Parties were able to
7 come to a resolution after a mediator's proposal. At all times, the Parties' settlement negotiations have
8 been non-collusive, adversarial, and at arm's length.

9 2.5 Discussions between Plaintiffs and Class Counsel, between counsel for the Parties,
10 document productions, extensive legal analysis, the provision of information by Defendants to Plaintiffs
11 and the detailed analysis of the records, have permitted each side to assess the relative merits of the claims
12 and the defenses to those claims.

13 2.6 In the Action, Plaintiffs contend that Defendants violated California law by 1) failing to pay
14 overtime wages and sick time at the correct rates due to Defendants' failure to incorporate the value of
15 nondiscretionary bonuses into Class Members' regular rates of pay; 2) failing to provide all meal periods
16 and providing late meal periods; 3) failing to provide all rest periods; 4) failing to pay Class Members for
17 all overtime hours worked; 5) failing to reimburse Class Members for the use of their personal cellphones;
18 and 6) failing to pay split shift premiums. The waiting time, wage statement, unfair competition, and
19 PAGA claims are derivative of the above violations. Defendants have denied each of Plaintiffs' claims
20 and Defendants have denied that this Action is appropriate for class certification for anything other than
21 settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties'
22 theories of potential exposure for the underlying claims and the class data supporting these claims. The
23 Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability
24 based on Defendants' factual and legal contentions and defenses.

25 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
26 and the information exchanged to date, are more than sufficient to assess the merits of the respective
27 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiffs, Class Counsel,
28 Defendants, and Defendants' Counsel have concluded that it is desirable that the Action be settled in a

1 manner and upon such terms and conditions set forth herein in order to avoid further expense,
2 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
3 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
4 Plaintiffs, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for
5 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
6 circumstances.

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

8 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
9 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
10 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
11 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
12 conditional basis. If the Final Approval Date does not occur, or if the Court's approval of the settlement is
13 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
14 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
15 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
16 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
17 evidence that may be applicable.

18 3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties,
19 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants
20 have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
21 the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to
22 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,
23 without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert
24 any and all other potential defenses or privileges.

25 **4. SCOPE OF THE CLASS**

26 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
27 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
28 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class

1 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
2 Section 7.5.1.

3 4.2 Only Aggrieved Employees and Participating Class Members and are entitled to recover
4 under this Agreement.

5 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
6 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
7 did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a
8 data request to the Settlement Administrator. The data request must contain all of the following
9 information: (a) the full name and, if applicable, Social Security Number of the individual making the
10 request; (b) the name used by such employee as of the time his or her employment with Defendants ended;
11 (c) the individual's dates of employment with Defendants; and (d) a return address to which a response
12 may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
13 otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the
14 Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event
15 more than two business days) transmit the data requests to Defendants' Counsel and request that
16 Defendants review their records.

17 4.4 If Defendants agree that the person listed in a data request is a Class Member and/or
18 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
19 person who submitted the data request, at the address designated for that purpose in the data request. All
20 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
21 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
22 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
23 Employee for all other purposes.

24 4.5 If Defendants do not agree that the person listed in a data request is a Class Member and/or
25 Aggrieved Employee, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute in
26 good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
27 dispute. Defendants' records shall control unless the individual submitting the data request provides
28 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendants'

Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendants' Counsel and Class Counsel submit the dispute to the Settlement Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject to Court review.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendants shall pay the Gross Settlement Amount of Two Hundred Twenty-Five Thousand Dollars and No Cents (225,000). Funding of the Gross Settlement Amount shall occur within 21 calendar days after the Effective Date to be held in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representatives and the PAGA Payment. Any monies necessary to satisfy Defendants' tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of thirty-five percent (35%) of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed Fifteen Thousand Dollars and No Cents (\$15,000), which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$15,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or

costs, the portion of the requested amounts not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed Ten Thousand Dollars and No Cents (\$10,000). The difference between any actual costs and the allocated \$10,000 shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiffs, shall apply to the Court for an Enhancement Payment to each of the Class Representatives in an amount not to exceed Ten Thousand Dollars and No Cents (\$10,000) to compensate for the risks, time, and expense of their involvement in the Action and securing the benefits of this Agreement for Class Members. The Enhancement Payments are in addition to the Individual Settlement Amount Plaintiffs would otherwise be due under the Agreement as a Participating Class Member. Defendants have agreed to not oppose Class Counsel's request for Enhancement Payments to Plaintiffs so long as it does not exceed the amount stated herein. The Enhancement Payments will be designated as a non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the Class Representatives shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.5 PAGA Payment: Ten Thousand Dollars and No Cents (\$10,000) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.6 Treatment of Residue: For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by cashing their respective settlement checks before the deadline to do so, that remaining amount shall be paid to the California State Controller's Unclaimed Property Fund to be held in accordance with the unclaimed

1 property laws in the name of the affected Participating Class Member and/or Aggrieved Employee. No
2 portion of the Gross Settlement Amount will revert to Defendants for any reason.

3 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
4 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in
5 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
6 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
7 any new or additional compensation or benefits under any company bonus or other compensation or benefit
8 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
9 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
10 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
11 Amounts provided for in this Agreement are the sole payments to be made by Defendants to the
12 Participating Class Members and Aggrieved Employees in connection with this Agreement
13 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
14 might have been in effect during the period covered by this Agreement).

15 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
16 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
17 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
18 approved attorneys' fees and costs, any Enhancement Payments to the Class Representatives, the
19 Settlement Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially
20 determined by dividing their total Qualifying Workweeks within the Class Period by the total Qualifying
21 Workweeks of all Class Members. That fraction will then be multiplied by the Net Settlement Amount to
22 arrive at the Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class
23 Members under this formula who timely opt out of the Settlement will be redistributed to Participating
24 Class Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by
25 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
26 all Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to
27 arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved
28 Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total

Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

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

5.9.1 One Third (1/3) of each Participating Class Members' Individual Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual Settlement Amount.

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

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

5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants' Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Participating Class Members, the

1 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
2 Representatives, the payroll tax liability of Defendants, or the allocation of the Net Settlement Amount or
3 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
4 implications of any provision of this Agreement.

5 5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this
6 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
7 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
8 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
9 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
10 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
11 not meet the standards for settlement approval, then Defendants and Plaintiffs shall be equally responsible
12 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
13 the date of such event.

14 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
15 only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for
16 establishing class certification have been met and are met.

17 5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes
18 of settlement only, Class Counsel and Plaintiffs are adequate representatives for Class Members and
19 Aggrieved Employees.

20 **6. RELEASE**

21 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all
22 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims
23 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their
24 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released
25 Class Claims against any of the Released Parties.

26 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
27 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
28 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in

1 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
2 Claims against any of the Released Parties.

3 **7. SETTLEMENT ADMINISTRATION**

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

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

8 7.2 Notice to Class Members and Aggrieved Employees: Defendants represent and warrant that
9 Class Members and Aggrieved Employees are able to read and write in English and/or Spanish such that
10 no translation of the Notice of Settlement into any other language is necessary. The Notice of Settlement
11 will provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the
12 Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the
13 individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement
14 will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net
15 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,
16 proposed Settlement Administrator Cost allocations, proposed PAGA Payment allocations, the scope of
17 the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class
18 Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
19 regarding Class Member's and Aggrieved Employee's estimated Individual Settlement Amount. The
20 Notice of Settlement will provide information on how to access electronic copies online of the Notice of
21 Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and
22 costs, and any other documents as the Court directs.

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

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

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

27 //

28 //

1 7.5 Responses to Notice of Settlement:

2 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
3 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
4 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
5 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
6 excluded from the settlement; (c) identify the case name and number (*i.e., Hart v. Aluminum Coating*
7 *Technologies, Inc.*, Case No. 34-2022-00320564); (d) be signed; and (e) be post-marked no later than the
8 conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must
9 personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class
10 Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to
11 determine whether a request to opt-out has been timely submitted. Any Class Member who requests to
12 opt-out of the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they
13 have any right to object, appeal or comment thereon. The name of any Class Member who submits a valid
14 and timely opt out request will be specifically identified in any proposed order granting final approval.
15 Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the
16 Agreement and any order or final judgment thereon. Regardless of whether an Aggrieved Employee opts
17 out of being a Class Member, they will still receive their share of the PAGA Payment as Aggrieved
18 Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims.

19 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
20 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
21 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
22 Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
23 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
24 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
25 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
26 number (*i.e., Hart v. Aluminum Coating Technologies, Inc.*, Case No. 34-2022-00320564) (e) be signed;
27 and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated
28 in Section 7.4. The Notice of Settlement will inform the Class Member that they should also file a notice

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

3 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
4 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
5 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
6 identify the case name and number (*i.e.*, *Hart v. Aluminum Coating Technologies, Inc.*, Case No. 34-2022-
7 00320564); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the
8 re-mailing timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more
9 than two business days) forward all such disputes to Defendants' Counsel and request that Defendants
10 review the dispute. Defendants' records shall presumptively control unless the Class Member can produce
11 documentation evidencing other periods of employment worked. If Defendants agree with submitted
12 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
13 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
14 Class Member's Individual Settlement Amount. If Defendants disagree with the submitted information,
15 Defendants' Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
16 documentation submitted by the Class Member as part of the dispute. Defendants' Counsel and Class
17 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
18 Counsel being advised of the dispute. Each dispute that Defendants' Counsel and Class Counsel cannot
19 timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

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

26 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
27 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
28

shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

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

7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and Plaintiffs: Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiffs, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel. Defendants shall send the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a QSF. Within seven (7) calendar days after Defendants fund the settlement, the Settlement Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to Plaintiffs, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs, and payment to Participating Class Members and/or Aggrieved Employees as required under this Agreement and approved by Court.

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

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

1 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
2 Individual Settlement Amount.

3 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
4 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
5 Agreement. Defendants agree to reasonably cooperate with the Settlement Administrator to the extent
6 necessary to determine the amount of the payroll tax payment required.

7 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
8 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
9 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
10 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
11 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
12 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
13 cashing deadline.

14 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
15 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
16 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class
17 Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete
18 and detailed report regarding the settlement administration documenting that all payments under the
19 Agreement have been made, that the Court's final approval order has been complied with, and that all the
20 obligations of the Settlement Administrator have been completed.

21 **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

22 8.1 The schedule may be modified depending on whether and when the Court grants necessary
23 approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The
24 schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as
25 described above. In the event of such modification, the Parties shall cooperate to complete the settlement
26 procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and
27 payment procedures carrying out the Agreement is as follows:
28

1	Last day for Defendants to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
2		
3		
4	Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendants
5		
6		
7	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
8		
9		
10	Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
11		
12	Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
13		
14		
15		
16		
17	Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
18		
19		
20	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
21		
22		
23	Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
24		
25		
26	Last day for Settlement Administrator to deliver value of uncashed settlement checks to the California State Controller's Unclaimed Property Fund	Within 14 calendar days after settlement check cashing deadline
27		
28		

Last day for Settlement Administrator to provide Parties with compliance declaration

Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

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

9.1.1 Plaintiffs' motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing Plaintiffs and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiffs; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)

1 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
2 approved as fair, reasonable and adequate as to the Class Members.

3 9.1.2 Defendants shall not oppose Plaintiffs' motion for approval of the proposed
4 Agreement.

5 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
6 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
7 appropriate to assure effective communication to individual Class Members of information about their
8 rights and obligations under this Agreement.

9 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
10 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
11 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
12 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
13 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
14 of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement
15 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid
16 request to opt out during the Notice Period.

17 9.2.1 Class Counsel and Defendants shall work in good faith to draft a mutually agreeable
18 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The
19 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall
20 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
21 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
22 Enhancement Payment to the Class Representatives; 3) Approving Class Counsel's application for an
23 award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the
24 Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee
25 administration and enforcement of the terms of the Agreement and the Court's orders.

26 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
27 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
28 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement

1 be filed, Class Counsel shall be solely responsible for defending against the appeal or opposing the motion
 2 to set aside the judgment, including drafting and filing of any required documents, and appearing at any
 3 hearings associated with the appeal. Plaintiffs will be responsible for their own costs or fees associated
 4 with such appeal. Defendants shall cooperate with Class Counsel's opposition and shall not support any
 5 challenge to the appeal of the final approval; 2) Class Counsel will assist the Settlement Administrator as
 6 needed or requested in the process of identifying and locating Participating Class Members and Aggrieved
 7 Employees entitled to payments under the Agreement and assuring delivery of such payments; 3) Class
 8 Counsel and Defendants' Counsel will cooperate with each other and assist the Settlement Administrator
 9 as needed or requested in completing the distribution of any residual amounts, as specified above, to the
 10 California State Controller's Unclaimed Property Fund; 4) Class Counsel, in conjunction with the
 11 Settlement Administrator, will certify to the Court completion of all payments required to be made by this
 12 Agreement.

13 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
 14 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and
 15 PAGA Settlement and Final Judgment.

16 9.4 Notice to LWDA: Plaintiffs will provide notice to the Labor and Workforce Development
 17 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

18 **10. MISCELLANEOUS TERMS**

19 10.1 Defendants' Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
 20 5% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with
 21 the provisions of the Agreement, Defendants may rescind the Agreement and all actions taken in its
 22 furtherance will be thereby null and void. Defendants must exercise this right of rescission, in writing, to
 23 Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the
 24 total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs
 25 shall be paid by Defendants. Defendants have represented that there are no more than 10,396 workweeks
 26 during the Class Period. In the event the number of workweeks during the Class Period is more than
 27 11,436 (i.e., greater than 10% more than 10,396), then Defendants shall have the option to either change
 28 end of the Class Period to the date when the Class Period had no more than 11,436 workweeks, or

1 increase the Gross Settlement Amount proportionally by the workweeks in excess of 11,436, multiplied
2 by the workweek value. For example, if it was agreed there would be no more than 11,900 workweeks
3 during the Class Period, but there are actually 15,000 workweeks in the Class Period, and the actual
4 workweek value is \$5.00 per workweek, Defendants would have to increase the Gross Settlement
5 Amount by \$9,550.00 (15,000 workweeks – 13,090 workweeks = 1,910 workweeks x \$5.00/workweek)
6 or exercise their option to cap the Class Period at 11,436 workweeks. To the extent Defendants elect to
7 modify the end of the Class Period under this paragraph, the PAGA Claim Period shall be similarly
8 modified to have the same end date.

9 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
10 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
11 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
12 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
13 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
14 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
15 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
16 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
17 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
18 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
19 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
20 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
21 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
22 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
23 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
24 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
25 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
26 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
27 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
28 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX

1 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
2 THIS AGREEMENT.

3 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
4 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
5 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
6 and discharged in this Agreement.

7 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
8 signing this Agreement Defendants are waiving any rights to appeal from the Court's approval of the
9 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
10 Plaintiffs are waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

11 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
12 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
13 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

14 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
15 be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
16 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
17 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the
18 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

19 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
20 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
21 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
22 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
23 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
24 otherwise, to effectuate this Agreement and the terms set forth herein.

25 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
26 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
27 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
28 Complaint, the representative character of the Action, the validity of any of the claims that were or could

1 have been asserted by Plaintiffs and/or Class Members in the Action, or of any liability or guilt of
2 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
3 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiffs, the Class Members,
4 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or
5 wrongdoing toward Plaintiffs, the Class Members, or any other person. Each of the Parties has entered
6 into this Stipulation with the intention to avoid further disputes and litigation.

7 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
8 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
9 third business day after mailing by United States certified mail, return receipt requested, addressed as
10 follows:

11 To Plaintiffs and the Class:

12 Galen T. Shimoda
13 Justin P. Rodriguez
14 Brittany V. Berzin
15 Shimoda & Rodriguez Law, PC
16 9401 East Stockton Blvd., Suite 120
17 Elk Grove, CA 95624

18 To Defendants:

19 Erica L. Rosasco
20 Michael G. Blankinship
21 Rosasco Law Group, APC
22 6540 Lonetree Blvd., Ste. 100
23 Rocklin, California 95765
24 Telephone: (916) 672-6552
25 Facsimile: (916) 672-6563

26 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
27 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
28 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
party or its counsel participated in the drafting of this Agreement.

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

1 10.12 No Modifications: This Agreement may be amended or modified only by a written
2 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
3 discharged except by performance in accordance with its terms.

4 10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
5 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and
6 to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
7 to effectuate its terms and to execute any other documents required to effectuate the terms of this
8 Agreement.

9 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
10 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
11 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
12 may be executed on behalf of all Class Members by the Class Representatives.

13 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
14 undersigned. Plaintiffs, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement
15 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
16 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
17 and effect of originals.

18 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
19 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
20 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
21 and governed by, the substantive laws of the State of California without giving effect to that State's choice
22 of law principles.

23 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
24 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
25 this Agreement, or any provision thereof.

26 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
27 construed as retaliation against any Class Members for participating or seeking to participate in this class
28 action settlement. The Parties will not discourage any class member from participating or seeking to

participate in this class action settlement. This is a material term of the Agreement and non-breaching Parties will seek court intervention if this provision is breached.

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

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

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

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

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

For Plaintiffs:

Date: _____

Clint Davidson

Date: 1/19/2024

DocuSigned by:
Patrick Wirth
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For Defendants:

Date: _____

By:
For Aluminum Coating Technologies, Inc.

participate in this class action settlement. This is a material term of the Agreement and non-breaching Parties will seek court intervention if this provision is breached.

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

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

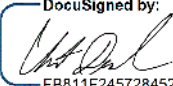
10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

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

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

For Plaintiffs:

Date: 1/24/2024

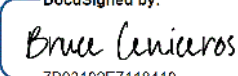
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Date: _____

Patrick Wirth

For Defendants:

Date: 1/30/2024

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By:

For Aluminum Coating Technologies, Inc.

1 Date: 1/30/2024

DocuSigned by:

Bruce Cenicerros

7B03102E7118410...

By:

For Bruce Cenicerros

4 Date: _____

By:

For Andrea Cenicerros

11 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

13 Dated: 1/24/24

By:

Brittany Berzin

Galen T. Shimoda

Justin P. Rodriguez

Brittany V. Berzin

Attorneys for Plaintiffs and Aggrieved
Employees

17 APPROVED AS TO FORM

ROSASCO LAW GROUP, APC

19 Dated: _____

By:

Erica L. Rosasco

Michael G. Blankinship

Attorney for Defendants

1 Date: _____

2
3 1/30/2024
4 Date: _____

By: _____
For Bruce Cenicerros

DocuSigned by:
Andrea Cenicerros
792C*31141DA41E...

By: _____
For Andrea Cenicerros

11 APPROVED AS TO FORM

12
13 Dated: 1/24/24
14

Shimoda & Rodriguez Law, PC

By: *Brittany Berzin*
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiffs and Aggrieved
Employees

17 APPROVED AS TO FORM

18
19 1/24/24
20 Dated: _____

ROSASCO LAW GROUP, APC

By: *Erica L. Rosasco*
Erica L. Rosasco
Michael G. Blankinship
Attorney for Defendants

Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

JOE HART, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

ALUMINUM COATING TECHNOLOGIES, INC., a
California Corporation;
BRUCE CENICEROS, an individual;
ANDREA CENICEROS, an individual; and DOES 1 to
100, inclusive,

Defendants.

Case No. 34-2022-00320564

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

ATTENTION: all individuals who have, or continue to, work for Defendants as non-exempt employees in California from May 23, 2018, up to [REDACTED] (the "Class Members").

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

You are receiving this notice pursuant to an order from the Sacramento County Superior Court ("Court") granting Plaintiffs' motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiffs Clint Davidson and Patrick Wirth ("Plaintiffs" or "Class Representatives") and Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros and Andrea Cenicerros ("Defendants") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendants' records indicate you fall within the definition of "Class Member." Defendants' records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

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

I. BACKGROUND OF THE CASE

On May 23, 2022, Joe Hart, the former class representative, filed a Complaint against Defendants in the Sacramento County Superior Court of California on behalf of himself and Class Members. On June 12, 2023, Plaintiffs Clint Davidson and Patrick Wirth were substituted in as class representatives. The term "Action" means this putative class action pending in Sacramento County Superior Court, Case No. 34-2022-00320564. The Class Period is from May 23, 2018, up to [REDACTED] (the "Class Period").

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves, Class Members, and Aggrieved Employees. Plaintiffs alleged that Defendants violated California law by 1) failing to pay overtime wages and sick time at the correct rates due to Defendants' failure to incorporate the value of nondiscretionary bonuses into Class Members' regular rates of pay; 2) failing to provide all meal periods and providing late meal periods; 3) failing to provide all rest periods; 4) failing to pay Class Members for all overtime hours worked; 5) failing to reimburse Class Members for the use of their personal cellphones; 6) failing to pay split shift premiums; 7) failing to provide accurate wage statements; 8) failing to pay all final wages; and 9) engaging in unfair competition. Plaintiffs further contend Defendants are liable for civil penalties for these violations. Defendants have denied all of Plaintiffs' allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks

associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have, or continue to, work for Defendants as non-exempt employees in California from May 23, 2018, up to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all individuals who have, or continue to, work for Defendants in California from May 17, 2021, up to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants have agreed to pay a total sum of Two Hundred Twenty-Five Thousand Dollars and No Cents (225,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, attorneys’ costs not to exceed \$15,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representatives’ Enhancement Payments of \$10,000 each, and \$10,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as May 17, 2021, up to [REDACTED]. Defendants’ records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

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

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

D. Release of Claims

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

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

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

The individuals released ("Released Parties") include Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, and insurers.

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

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

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

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.*, *Hart v. Aluminum Coating Technologies, Inc.*, 34-2022-00320564); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount.

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.*, *Hart v. Aluminum Coating Technologies, Inc.*, 34-2022-00320564); (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiffs and Defendants at the addresses identified in Section VI of this notice.

In addition to sending your written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiffs and Defendants.

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendants and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

The Court will hold a hearing in Department 28, 720 9th Street, Sacramento, California 95814 on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/join/joinid/16039062174>. To join by phone: (833) 568-8864 / ID: 16039062174. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court online at [web address]. You can also contact Class Counsel or Defendants' Counsel as follows:

Erica L. Rosasco
Michael G. Blankenship
Rosasco Law Group, APC
6540 Lonetree Blvd., Ste. 100
Rocklin, California 95765
Telephone: (916) 672-6552
On behalf of Defendants

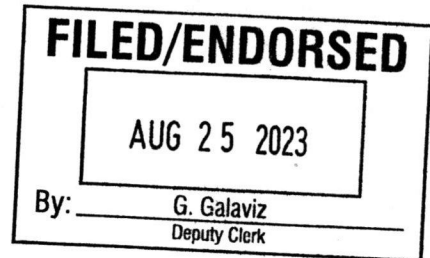
PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

Page 4 of 4

EXHIBIT B

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

5 Attorneys for Plaintiffs CLINT DAVIDSON
6 and PATRICK WIRTH



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

10 JOE HART, individually and on behalf of all
11 other similarly situated employees,

12 Plaintiff,

13 vs.

14 ALUMINUM COATING TECHNOLOGIES,
15 INC., a California Corporation;
16 BRUCE CENICEROS, an individual;
17 ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

18 Defendants.
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21
22

Case No. 34-2022-00320564

CLASS ACTION

**THIRD AMENDED COMPLAINT FOR
DAMAGES:**

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

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiffs CLINT DAVIDSON and PATRICK WIRTH ("Plaintiffs"), on behalf of themselves
2 and all other similarly situated employees, hereby file this Complaint against Defendants
3 ALUMINUM COATING TECHNOLOGIES, INC., a California Corporation; BRUCE
4 CENICEROS, an individual; ANDREA CENICEROS, an individual; and DOES 1 to 100, inclusive
5 (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiffs allege
6 the following:

7 **INTRODUCTION**

8 1. This is a class action and Private Attorneys General Act lawsuit brought by Plaintiffs for
9 failure to pay overtime wages, failure to provide meal periods or pay premiums in lieu thereof, failure to
10 provide rest periods or pay premiums in lieu thereof, failure to provide accurate wage statements, failure
11 to pay final wages, failure to maintain accurate records, failure to pay all paid sick time, failure to
12 reimburse expenses, and failure to pay split shift premiums.

13 **JURISDICTION AND VENUE**

14 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
15 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
16 Labor Code, California Business and Professions Code, and Wage Order No. 1.

17 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
18 Defendants reside in Sacramento County. In addition, some of the wrongful acts and violations of law
19 asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in
20 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
21 (1984).

22 4. On May 17, 2022, Joe Hart sought permission pursuant to California Labor Code section
23 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney
24 General on behalf of himself and other similarly situated employees, which included Plaintiffs. Pursuant
25 to California Labor Code section 2699.3, Mr. Hart gave written notice via online submission to the
26 Labor and Workforce Development Agency ("LWDA") on approximately May 17, 2022. Mr. Hart
27 provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted
28 under the Private Attorneys General Act cause of action. Mr. Hart also submitted the \$75.00 filing fee.

1 The May 17, 2022, notice was also sent via certified mail to Defendants on the same day. To date, the
2 LWDA has not provided any response to Mr. Hart's notice correspondence. The original notice was
3 amended on June 9, 2023, to include Plaintiffs as named representatives. *See Hutcheson v. Sup. Ct.*, 74
4 Cal. App. 5th 932, 945 (2022) (holding another individual may be substituted in to take over a pending
5 PAGA action and relation back will apply where the subsequent claims rest on the same general set of
6 facts, involve the same injury, and refer to the same instrumentality as the claims in the original
7 complaint). Plaintiffs' notice includes the same facts and legal bases for claims as Mr. Hart's notice.
8 The June 9, 2023, notice was also sent via certified mail to Defendants on the same day. To date, the
9 LWDA has not provided any response to Plaintiffs' notice correspondence. Accordingly, Plaintiffs have
10 exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") and may
11 bring this action on behalf of themselves and all similarly situated employees, *i.e.*, Aggrieved
12 Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal.
13 App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees includes but is not limited to the
14 following: all individuals who have, or continue to, work for Defendants in California from May 17,
15 2021 to the present.

16 **PARTIES**

17 5. CLINT DAVIDSON is an individual over the age of eighteen (18) and is a resident of
18 the State of California.

19 6. PATRICK WIRTH is an individual over the age of eighteen (18) and is a resident of
20 the State of California.

21 7. On information and belief, Plaintiffs allege, ALUMINUM COATING
22 TECHNOLOGIES, INC., is now and/or at all times mentioned in this Complaint was a California
23 Corporation and the owner and operator of an industry, business and/or facility doing business in the
24 State of California.

25 8. Plaintiffs are informed and believe, and thereupon allege, that BRUCE CENICEROS
26 is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiffs
27 further alleges that BRUCE CENICEROS is an owner, director, officer, and/or managing agent of
28 ALUMINUM COATING TECHNOLOGIES, INC. responsible for causing the violations outlined in

1 the First through Seventh and Ninth causes of action. As such BRUCE CENICEROS is individually
2 liable pursuant to California Labor Code section 558.1.

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4 9. Plaintiffs are informed and believe, and thereupon allege, that ANDREA
5 CENICEROS is an individual over the age of eighteen (18) and is a resident of the State of
6 California. Plaintiffs further alleges that ANDREA CENICEROS is an owner, director, officer,
7 and/or managing agent of ALUMINUM COATING TECHNOLOGIES, INC. responsible for
8 causing the violations outlined in the First through Seventh and Ninth causes of action. As such
9 ANDREA CENICEROS is individually liable pursuant to California Labor Code section 558.1.

10 10. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
11 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
12 are liable for the actions herein alleged. Plaintiffs will seek to amend this Complaint to allege the true
13 names and capacities of these DOE Defendants when they are ascertained.

14 11. At all times mentioned herein, each Defendant was the agent or employee of each of the
15 other Defendants and was acting within the course and scope of such agency or employment. The
16 Defendants are jointly and severally liable to Plaintiffs.

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

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

23 14. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
24 wrongs, complaints, injuries and/or damages alleged in this Complaint.

25 **CLASS ALLEGATIONS**

26 15. Plaintiffs bring the First through Eighth Causes of Action on behalf of themselves and
27 all others similarly situated as a class action pursuant to California Code of Civil Procedure section
28 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

1 All individuals who have, or continue to, work for Defendants as non-
2 exempt employees in California from May 23, 2018 to the present.

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

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

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

- 17 (1) Whether Defendants had a policy or practice to pay split shift premiums;
- 18 (2) Whether Defendants had a policy or practice to incorporate the value of all non-
19 discretionary remuneration when calculating putative class members' regular rates
20 of pay for the purpose of paying overtime wages;
- 21 (3) Whether Defendants had a policy or practice to incorporate the value of all non-
22 discretionary remuneration when calculating putative class members' regular rates
23 of pay for the purpose of paying paid sick time;
- 24 (4) Whether Defendants had a policy or practice to pay putative class members all
25 overtime and double time wages they were owed;
- 26 (5) Whether Defendants had a policy or practice authorizing and permitting all meal
27 periods owed;
- 28

- 1 (6) Whether Defendants had a policy or practice authorizing and permitting all rest
2 periods owed;
- 3 (7) Whether Defendants had a policy or practicing authorizing a second meal period
4 when putative class members worked shifts over 10 hours;
- 5 (8) Whether Defendants had a policy or practice authorizing a third rest period when
6 putative class members worked shifts over 10 hours;
- 7 (9) Whether Defendants required putative class members to use their personal
8 cellphones for work without paying any reimbursement;
- 9 (10) Whether Defendants had a policy or practice to reimburse putative class members
10 for expenses incurred for work;
- 11 (11) Whether as a result of Defendants' policies and practices putative class members
12 received all wages, due and owing, at the time of their termination or separation;
13 and
- 14 (12) Whether Defendants provided putative class members with wage statements that
15 complied with Labor Code section 226.

16 (c) Typicality: Plaintiffs' claims are typical of the claims of the members of the putative
17 class. The putative class also sustained damages arising out of Defendants' common
18 course of conduct in violation of the law as complained of herein. Plaintiffs and all
19 members of the putative class were non-exempt employees who received non-
20 discretionary remuneration that was not incorporated into the regular rate of pay, worked
21 uncompensated overtime and double time hours, worked split shifts, did not receive all
22 meal and rest periods owed, and used their personal cellphones for work resulting in
23 failure to pay overtime, failure to pay split shift premiums, meal and rest period
24 violations, and expenses that should have been reimbursed. Additionally, Defendants
25 issued Plaintiffs and all members of the putative class wage statements that did not
26 comply with Labor Code section 226. As a result, Plaintiffs and each member of the
27 putative class will have suffered the same type of harm and seek the same type of
28 recovery based on the same legal theories.

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

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

19 17. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
20 management of this action that would preclude its maintenance as a class action.

21 GENERAL ALLEGATIONS

22 18. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 17 as though fully
23 set forth herein.

24 19. Plaintiffs worked for Defendants within the claim period as non-exempt employees.
25 Similarly situated employees also worked for Defendants as non-exempt employees. Plaintiff and
26 similarly situated employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a
27 week, incurring overtime and were paid non-discretionary remuneration, including but not limited to
28 bonuses. Defendants did not correctly incorporate the value of the nondiscretionary remuneration into

1 Plaintiffs' and similarly situated employees' regular rates of pay when calculating overtime, double
2 time, or paid sick time.

3 20. Defendants failed to pay Plaintiffs and similarly situated employees all overtime and
4 double time premiums they were owed. If Plaintiff and similarly situated employees worked a
5 significant amount of overtime or double time, Defendants would spread those hours out over other days
6 to avoid paying all overtime and double time premiums owed.

7 21. Defendants required Plaintiffs and similarly situated employees to work split shifts
8 without paying split shift premiums.

9 22. Defendants failed to authorize and permit Plaintiffs and similarly situated employees to
10 take all meal and rest periods they were entitled to. Plaintiffs and similarly situated employees worked
11 on time sensitive tasks that prevented them from being able to take all meal and rest periods or
12 prevented them from being able to timely take their meal and rest periods. Additionally, Plaintiffs and
13 similarly situated employees worked shifts longer than ten (10) hours in a day and did not receive all
14 second meal periods and third rest periods they were entitled to. Defendants did not pay Plaintiffs and
15 similarly situated employees premiums for noncompliant meal and rest periods.

16 23. Defendants required Plaintiffs and similarly situated employees to use their personal
17 cellphone for task at work, such as tracking hours worked, placing online orders for parts, or looking up
18 parts and commutating what parts to order. Defendants did not reimburse Plaintiffs and similarly
19 situated employees for the use of their personal cellphones for work.

20 24. Defendants failed to provide Plaintiffs and similarly situated employees with legally
21 compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, accurate
22 regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate
23 gross and net wages earned. As a result, Plaintiffs and similarly situated employees were not able to
24 determine the total wages owed to them from their paystubs alone.

25 25. To date, Defendants have not paid Plaintiffs and similarly situated employees all
26 overtime and double time wages, paid sick time, split shift premiums, and meal and rest period
27 premiums owed to them.

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26. Defendant Aluminum Coating Technologies, Inc. identified Defendant Bruce Cenicerros in its filings with the California Secretary of State from 2020 to the present as its Chief Executive Officer, Chief Financial Officer, and Director. Defendant Aluminum Coating Technologies, Inc. identified Defendant Andrea Cenicerros in its filings with the California Secretary of State from 2020 to January 2022 as its Secretary and Director and from January 2022 to present as its Secretary. Plaintiffs are informed and believe that Bruce Cenicerros and Andrea Cenicerros are owners of Aluminum Coating Technologies, Inc. Plaintiffs are informed and believe that Bruce Cenicerros and Andrea Cenicerros were responsible for creating and electing to implement or participating in creating and electing to implement Aluminum Coating Technologies, Inc.'s payroll and compensation policies and practices, or that Bruce Cenicerros and Andrea Cenicerros were aware of such policies and practices and ratified them.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

27. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 26 as though fully set forth herein.

28. During the period Plaintiffs were employed by Defendants, Defendants were required to compensate Plaintiffs at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 1, section (3)(A); Cal. Lab. Code §§ 510, 1194.

29. Plaintiffs and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiffs and similarly situated employees for all overtime and double time hours worked at their regular rate of pay.

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

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

4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY SPLIT SHIFT PREMIUMS**
6 **(As to all Defendants)**

7 32. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 31 as though fully
8 set forth herein.

9 33. For the period preceding the filing of this Complaint, Defendants were required to
10 compensate Plaintiffs and similarly situated employees with at least one hour's pay at the State's
11 minimum wage for each split shift that they worked. See MW-Order; IWC Wage Order, No. 1, section
12 4(A); Cal. Lab. Code § 1194.

13 34. Plaintiffs and similarly situated employees were not exempt from the State's Minimum
14 Wage Order. Defendants aware of their obligation to pay split shift premiums but failed to do so.

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

18 **THIRD CAUSE OF ACTION**
19 **MEAL PERIOD VIOLATIONS**
20 **(As to all Defendants)**

21 36. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 35 as though fully
22 set forth herein.

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

25 38. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 1, section
26 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
27 minutes for each work period of more than five (5) hours.

28 39. California Labor Code section 512 and Wage Order No. 1 section 11(B) further
provide that employers may not employ employees for a work period for more than ten (10) hours
per day without providing the employee with a second meal period of at least thirty (30) minutes.

1 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
2 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
3 (1) hour of pay at their regular rate of compensation for each meal period not provided.

4 40. Defendants employed Plaintiffs and similarly situated employees for periods of more
5 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
6 period of at least thirty (30) minutes when Plaintiffs and similarly situated employees worked more
7 than ten (10) hours in a day. Defendants also failed to allow Plaintiffs and similarly situated
8 employees to take their first meal period before the completion of their fifth hour of work and failed
9 to allow Plaintiffs and similarly situated employees to take their second meal period before the
10 completion of their tenth hour of work. Plaintiffs and similarly situated employees did not waive
11 their rights to all meal periods throughout their employment.

12 41. Defendants further failed to pay Plaintiffs and similarly situated employees the
13 applicable meal period premiums for any such missed meal breaks.

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

17 **FOURTH CAUSE OF ACTION**
18 **REST PERIOD VIOLATIONS**
(As to all Defendants)

19 43. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 42 as though fully
20 set forth herein.

21 44. An employer must provide an employee a rest period in accordance with the
22 applicable Wage Order and California Labor Code section 226.7.

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

26 46. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly
27 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
28 they worked more than four (4) hours or a major fraction thereof.

47. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable rest period premiums for any such missed rest periods.

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

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

49. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 48 as though fully set forth herein.

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

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

51. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, meal and rest premiums, and gross and net wages

1 earned. Plaintiffs and similarly situated employees suffered confusion over whether they received all
2 wages owed and were prevented from effectively challenging information on their wage statements.

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

6 **SIXTH CAUSE OF ACTION**
7 **WAITING TIME PENALTIES**
8 **(As to all Defendants)**

9 53. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 52 as though fully
10 set forth herein.

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

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

15 56. Plaintiffs and similarly situated employees did not receive all wages, including split shift
16 premiums, overtime wages, meal and rest period premiums, or all sick leave pay owed at their
17 termination or within the required time after their separation from employment.

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

21 58. Defendants knew of their obligation to pay Plaintiffs and similarly situated employees
22 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiffs
23 and similarly situated employees worked split shifts, did not receive all meal and rest periods, worked
24 overtime and double time worked, and were paid non-discretionary remuneration, but failed to correctly
25 compensate putative class members for all wages owed. Such conduct shows Defendants had
26 knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the
27 remaining wages owed.

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

4 **SEVENTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE EXPENSES**
6 **(As to all Defendants)**

6 60. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 59 as though fully
7 set forth herein.

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

13 62. Defendants required Plaintiffs and similarly situated employees to use their personal
14 cellphones for work but failed to reimburse them for such use.

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

18 **EIGHTH CAUSE OF ACTION**
19 **UNFAIR COMPETITION**
20 **(As to Aluminum Coating Technologies, Inc. and DOES 1 to 100)**

20 64. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 63 as though fully
21 set forth herein.

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

26 66. Plaintiffs and similarly situated employees were not paid all wages owed, including split
27 shift premiums, overtime wages, and paid sick leave during their employment or any time thereafter.
28

Moreover, through Defendants conduct Plaintiffs and similarly situated employees were denied statutory protections regarding meal and rest periods.

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

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

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

69. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 68 as though fully set forth herein.

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

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 1, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 1, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 1, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

- Violation of Labor Code §§ 226.3, 1174, 1198 and IWC Wage Order No. 1, § 7 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 1, § 4 (Failure to Pay Split Shift Premiums)

71. Plaintiffs seek civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

72. Plaintiffs seek these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

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

DAMAGES

WHEREFORE Plaintiffs requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;

1 4. As to the Third Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 4 section 1021.5;

5 5. As to the Fourth Cause of Action:

- 6 a. Wages in an amount to be proven at trial;
- 7 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 8 section 1021.5;

9 6. As to the Fifth Cause of Action:

- 10 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 11 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 12 violation occurred and one hundred dollars (\$100.00) per employee for each
- 13 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 14 (\$4,000.00);
- 15 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 16 226(e);

17 7. As to the Seventh Cause of Action:

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

20 8. As to the Ninth Cause of Action:

- 21 a. For civil penalties as provided in the Labor Code for each enumerated
- 22 violation;
- 23 b. For those Labor Code sections where there is no civil penalty provided for their
- 24 violation, the default penalty provided in Labor Code section 2699(f): for any
- 25 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 26 period; For any subsequent violation, two hundred dollars (\$200) for each
- 27 aggrieved employee per pay period;
- 28 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

1 d. For any other remedies as allowed by law and/or deemed appropriate by the
2 Court;

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

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

11 Dated: August 22, 2023

Shimoda & Rodriguez Law, PC

12
13 By: *Brittany Berzin*
14 Galen T. Shimoda
15 Justin P. Rodriguez
16 Brittany V. Berzin
17 Attorneys for Plaintiffs
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1 *Hart v. Aluminum Coating Technologies, Inc.*
2 *Sacramento County Superior Court of California 34-2022-00320564*

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

5 I, Shaniya Baird, declare that:

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

8 On August 24, 2023, I served the following documents on the party below:

- 9 • THIRD AMENDED COMPLAINT FOR DAMAGES

10 Erica L. Rosasco (SBN 220836) 11 Michael Blankinship (SBN 302659) 12 Rosasco Law Group, APC 13 6540 Lonetree Blvd., Ste. 100 14 Rocklin, California 95765 15 Phone: (916) 672-6552 16 Fax: (916) 672-6563 17 Email: erica@rosascolawgroup.com mike@rosascolawgroup.com accounting@rosascolawgroup.com	
--	--

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

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct, and that this declaration was executed on August 24, 2023, at Salt Lake City, Utah.

Shaniya Baird
Shaniya Baird

EXHIBIT C



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

June 9, 2023

For Online Filing:

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

Re: *Hart v. Aluminum Coating Technologies, Inc.*

Dear Labor Commissioner,

We previously submitted this notice on behalf of Joe Hart on May 17, 2022. We now amend this notice to include Clint Davidson and Patrick Wirth (“Plaintiffs”). The facts and theories and claims alleged have not changed. I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

Aluminum Coating Technologies, Inc.
8290 Alpine Ave.
Sacramento, CA 95826

Bruce Cenicerros
8290 Alpine Ave.
Sacramento, CA 95826

Andrea Cenicerros
8290 Alpine Ave.
Sacramento, CA 95826

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Aluminum Coating Technologies, Inc, Bruce Cenicerros and Andrea Cenicerros (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiffs and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all individuals who have, or continue to, for Defendants in California as non-exempt employees in California from May 17, 2021 to the present. Plaintiffs are clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a Plaintiffs has PAGA standing if affected by one of the alleged violations; the Plaintiffs need not have personally experienced all the violations pursued in PAGA action).



A. FACTS

Plaintiffs worked for Defendants as non-exempt employees. Aggrieved Employees also worked for Defendants as non-exempt employees. Plaintiffs and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week, incurring overtime and were paid non-discretionary remuneration, including but not limited to bonuses. Defendants did not correctly incorporate the value of the non-discretionary remuneration into Plaintiffs' and Aggrieved Employees' regular rates of pay when calculating overtime, double time, or paid sick time.

Defendants failed to pay Plaintiffs and Aggrieved Employees all overtime and double time premiums they were owed. If Plaintiffs and Aggrieved Employees worked a significant amount of overtime or double time, Defendants would spread those hours out over other days to avoid paying all overtime and double time premiums owed.

Defendants required Plaintiffs and Aggrieved Employees to work split shifts without paying split shift premiums.

Defendants failed to authorize and permit Plaintiffs and Aggrieved Employees to take all meal and rest periods they were entitled to. Plaintiffs and Aggrieved Employees worked on time sensitive tasks that prevented them from being able to take all meal and rest periods or prevented them from being able to timely take their meal and rest periods. Additionally, Plaintiffs and Aggrieved Employees worked shifts longer than ten (10) hours in a day and did not receive all second meal periods and third rest periods they were entitled to. Defendants did not pay Plaintiffs and Aggrieved Employees premiums for noncompliant meal and rest periods.

Defendants required Plaintiffs and Aggrieved Employees to use their personal cellphone for task at work, such as tracking hours worked, placing online orders for parts, or looking up parts and commutating what parts to order. Defendants did not reimburse Plaintiffs and Aggrieved Employees for the use of their personal cellphones for work.

Defendants failed to provide Plaintiffs and Aggrieved Employees with legally compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, accurate regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and net wages earned. As a result, Plaintiffs and Aggrieved Employees were not able to determine the total wages owed to them from their paystubs alone.

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



B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 1, § 3 (Failure to Pay Overtime Wages)

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

Count Two - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 1, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 1, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 1, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Three – Violation of Labor Code § 226.7 and Wage Order No. 1, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 1, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.



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

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

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

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

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

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



Count Seven – Violation of Labor Code §§ 226.3, 1174, 1198 and IWC Wage Order No. 1, § 7 (Failure to Maintain Accurate Records)

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

Labor Code section 1198 provides the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The records requirement in Wage Order No. 1, § 7 is a "standard condition of labor fixed by the commission." See Cal. Labor Code § 1198. It provides, "Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including ... time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded ... Total hours worked during the payroll period and applicable rates of pay..." See Wage Order No. 1, § 7. Defendants failed to keep accurate records in compliance with Wage Order No. 1, § 7 and Labor Code § 1198. This was against the law.

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

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



leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiffs and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiffs will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

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

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for personal cellphone use by Plaintiffs and Aggrieved Employees. This was in violation of the law.

Count Ten – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 1, § 4 (Failure to Pay Split Shift Premiums)

During the period Plaintiffs and Aggrieved Employees were employed by Defendants they were entitled to be paid at least one hour's pay at the State's minimum wage rate for each split shift that they worked. See IWC Wage Order No. 1, § 4; Cal. Lab. Code §§ 1194, 1197.1. Defendants did not pay the added split shift premium as a minimum wage for scheduled split shifts worked by Plaintiffs and Aggrieved Employees. Thus, Plaintiffs and Aggrieved Employees are owed split shift premiums. This is against the law.

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

Very truly yours,

Shimoda & Rodriguez Law, PC

By: 
Brittany V. Berzin

cc: Clients via e-mail

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

5 I, Elias Tapia, declare that:

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

8 On June 9, 2023, I served the following documents on the party below:

- 9 • AMENDED PRIVATE ATTORNEYS GENERAL ACT (PAGA)

10 Andrea Cenicerros 8290 Alpine Ave. Sacramento, CA 95826	Aluminum Coating Technologies, Inc. 8290 Alpine Ave. Sacramento, CA 95826
12 Bruce Cenicerros 8290 Alpine Ave. Sacramento, CA 95826	

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

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

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

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

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct, and that this declaration was executed on June 9, 2023, at Elk Grove, California.

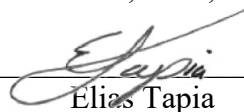
27 
28 Elias Tapia

EXHIBIT D

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

5 Attorneys for Plaintiffs CLINT DAVIDSON
6 and PATRICK WIRTH

7
8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SACRAMENTO**

10 JOE HART, individually and on behalf of all
11 other similarly situated employees,

12 Plaintiff,

13 vs.

14 ALUMINUM COATING TECHNOLOGIES,
15 INC., a California Corporation;
16 BRUCE CENICEROS, an individual;
17 ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

18 Defendants.

Case No. 34-2022-00320564

CLASS ACTION

**DECLARATION OF SEAN HARTRANFT
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No.: A-320564-001

Date: March 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: May 23, 2022

FAC Filed: July 29, 2022

SAC Filed: June 13, 2023

Trial Date: None set

DECLARATION OF SEAN HARTRANFT

I, Sean Hartranft, declare as follows:

1. I am the Chief Executive Officer of Apex Class Action LLC., a class action settlement administration company headquartered in Irvine, California. I have personal knowledge of the facts outlined in this declaration and, if called as a witness, I could and would competently testify thereto.

2. Apex Class Action's team has been directly involved with class action administration for a combined 15 years and has successfully managed numerous class action cases during that time. Our team comprises experienced professionals with extensive knowledge of class action settlement administration. In addition, Apex Class Action has the necessary technology and infrastructure to efficiently manage large-scale class action cases. We utilize state-of-the-art software and systems to ensure that all aspects of the administration process are executed accurately and efficiently.

3. The legal practitioners or parties involved do not possess any form of ownership stake or affiliation with Apex Class Action.

4. Apex Class Action has extensive expertise in the dissemination of class action notices and administration of class action settlements. Our range of services includes first-class mail via the United States Postal Service, a bilingual toll-free call center, interactive & static website development and support, enterprise database management, response processing, and Qualified Settlement Fund (QSF) distribution for class actions of various sizes. We uphold the highest level of confidentiality in all our operations, and any class data and communication received by us will be treated with the utmost confidentiality and will not be disclosed to any unauthorized party. Attached is our current CV as **Exhibit A**, highlighting our primary competencies in class action administration.

5. Apex Class Action ensures that Client and Class Member Information is only used for the purposes specified in the relevant agreements or court orders governing the provision of its legal services. To safeguard class member information, Apex Class Action has implemented a comprehensive process to identify, assess, and mitigate risks in all areas of its operations, regularly evaluating the effectiveness of its security measures. Access to class member information is limited to employees, agents, or subcontractors who require it to perform their duties, and Apex Class Action conducts background checks on all personnel with access to sensitive personal information, to ensure they do not pose a threat to the

1 security of client or class member information. To guarantee the security of the settlement administration
2 process, Apex Class Action maintains Professional Liability and Cyber Liability Insurance coverage, as
3 required by legal standards and best practices in the legal profession.

4 6. Apex Class Action disbursement process involves (i) obtaining a Federal Employer
5 Identification Number (FEIN) from the Internal Revenue Service (IRS) under the name of the settlement
6 case; (ii) establishing a QSF to manage the distribution of settlement funds; (iii) conducting preliminary
7 and final calculations to determine the individual settlement amounts, including attorneys' fees, costs,
8 enhancement awards, and any other court-approved designees; (iv) calculating and reporting state and
9 federal taxes as applicable; (v) and disseminating approved settlement funds and tax forms via First-Class
10 USPS mail.

11 7. The administration fees for Apex Class Action's management of this settlement are
12 estimated at \$7,900.00, as specified in **Exhibit B**. This document presents a comprehensive plan detailing
13 the specific administration services that will be provided.

14
15 I declare under penalty of perjury under the laws of the state of California that the foregoing is
16 true and correct. Executed this 5th day of January 2024, in Irvine, California.

17
18
19 
Sean Hartranft

EXHIBIT A



CASE TYPES

- Wage & Hour
- Private Attorneys
General Act (PAGA)
- Belaire West
- Class Certification
- Fair Labor Standards
Act (FLSA)
- Telephone Consumer
Protection Act (TCPA)
- Employee Retirement
Income Security Act
(ERISA)
- Consumer
- Product Liability

SUMMARY

Apex Class Action is a team of experienced professionals with a strong understanding of the legal processes and procedures surrounding the settlement of class action lawsuits. As an organization, we possess excellent communication and organizational skills that are combined with innovative technology to efficiently manage complex projects and timelines.

From pre-settlement consultation to final disbursement, our technology platform and data security management measures are centered around integration, automation, and observability to ensure that class members are quickly and accurately paid.

PRELIMINARY CONSULTATION

Our complimentary preliminary consultation is used to create a framework for ensuring that all parties understand the project's scope, timeline, and budget. After establishing objectives and expectations between the plaintiff and defense counsel, our team will explore any additional opportunities to identify potential class members. Going as far as providing a detailed interactive banner ad campaign and print media options to achieve maximum reach.

CASE MANAGEMENT

Our expert Data Managers and Senior Case Executives oversee the administration of all class action lawsuits, ensuring compliance with court orders, settlement agreements, and industry standards. We work closely with the plaintiff and defense counsel to manage the settlement process, including the funding and distribution of settlement funds to eligible class members.

Our mailing and notification services start with data scrubbing and creation of a class database to ensure the correct contact information of all class members. Furthermore, the class data base will then be validated using the USPS National Change of Address (NCOA) database. Court certified translation with over 65 languages are available.. If mail is returned as undeliverable, all notices will be re-mailed after obtaining an updated address through skip tracing the class members' contact information.



To ensure transparency throughout the entire process, a steady cadence of reports, as defined during the preliminary consultation, is generated throughout the administration process for both the plaintiff and defense counsel.

Our ability to offer cost-effective pricing is based on our expertise in utilizing cutting-edge technology, highly skilled professionals, and an optimized process. If the courts approve the use of the latest electronic notification methods, such as email and banner ads, this solution will provide both certainty and cost-effectiveness. By utilizing electronic disbursement, we can offer a highly efficient strategy where settlement awards are delivered directly to class members without the potential drawbacks associated with traditional mail delivery.

TAX COMPLIANCE & CASE RESOLUTION

Apex's proprietary technology to manage the qualified settlement fund (QSF) administration allows us to efficiently handle the process from procurement of an FDIC-insured bank account all the way to preparing and filing 1120-SF tax returns. Our full suite of QSF services includes:

- Preparing Documents
- Opening FID-Insured Bank Account
- Timely Reporting of QSF Balance
- Prepare And File 1120-SF Tax Returns with Quarterly Tax Obligations
- Obtaining QSF Tax ID
- Treasury Management
- QSF Audit Reports

CONTACT

Address
PO Box 54668
Irvine, CA 92619

Email
Info@apexclassaction.com

Phone
1.800.355.0700

EXHIBIT B



Quotation Request:

Brittany Berzin
Shimoda & Rodriguez Law, PC
bberzin@shimodalaw.com
833.201.0213

Case Name:

Date:
RFP Number:

Hart v. Aluminum Coating Technologies, Inc.

Wednesday, December 20, 2023
02130010

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications	
Estimated Class Size:	175
Certified Language Translation:	Yes
Static Settlement Website	Yes
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	2	\$250.00
Data Analyst	Per Hour	\$150.00	2	\$300.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$550.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	\$120.00
Print & Mail Class Notice	Per Piece	\$1.50	175	\$262.50
USPS First Class Postage	Per Piece	\$0.87	175	\$152.25
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$2.50	35	\$87.50
Receive and Process Undeliverable Mail	Per Hour	\$75.00	0.5	\$37.50
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	1	\$75.00
NCOA Address Update (USPS)	Static Rate	\$49.62	1	\$49.62
Certified Language Translation: Spanish	Static Rate	\$1,200.00	1	\$1,200.00
Sub Total:				\$1,984.37

Project Management				
Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	2	\$180.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$620.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
-----------------------	-----------------	---------	----------	----------------

Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$50.00	1	\$50.00
Settlement Website: Static Apex URL	Static Rate	\$500.00	1	\$500.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
			Sub Total:	\$550.00

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	2	\$240.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	175	\$262.50
USPS First Class Postage	Per Piece	\$0.66	175	\$115.50
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.15	18	\$37.63
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	8	\$800.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
Unclaimed Funds: State Controller's Unclaimed Property Fund	Static Rate	\$500.00	1	\$500.00
			Sub Total:	\$3,485.63

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	2	\$270.00
Project Management Reconciliation	Per Hour	\$100.00	2	\$200.00
Declarations	Per Hour	\$120.00	2	\$240.00
			Sub Total:	\$710.00

TOTAL ESTIMATED ADMINISTRATION COST:				\$7,900.00
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants** that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership** of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT E

Hart v. Aluminum Coating Technologies - Shimoda & Rodriguez Law, PC Costs

Date	Description	Total
5/17/2022	Payment to LWDA - PAGA Filing Fee	75.00
05-17-2022	Certified Mail for PAGA	14.04
6/1/2022	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	500.00
6/2/2022	One Legal Fee - Complaint fee \$435, Complex fee \$1000, filing fee \$121.09	1,556.09
6/6/2022	ALS Service Fee - Aluminum Coating inv 176872	74.45
6/7/2022	Service Fee to Court - Complex Fees	40.00
8/10/2022	One Legal Service Fee - First Amended Complaint #18638487	78.76
8/18/2022	Certified Mail - N&As to OC	2.64
9/20/2022	One Legal Service Fee - Proof of Service Summons, Proof of Service of Summons - 18921978	61.26
10/24/2022	One Legal Service Fee - declaration on Brittany V. Berzin ISO motion ascertain substitute class representative support motion to ascertain substitute class representative 19156190	271.79
12/29/2022	One Legal Service Fee - Reply Brief In Support of Motion to Ascertain A Substitute Class Representative 19544674	61.26
1/18/2023	One Legal Service Fee - Filing of Joint Case Management Statement	50.00
2/6/2023	One Legal Service Fee - Proposed order 19768887	78.76
2/7/2023	One Legal Service Fee - Case Management Statement 19654800	61.26
5/2/2023	One Legal Service Fee - Case Management Statement 20290192	61.26
6/9/2023	Certified Mail - Amended PAGA	14.97
6/19/2023	One Legal Service Fee - Second amended complaint order 20583156	78.76
6/25/2023	Expenses - Phoenix class administration fee	420.21
7/5/2023	One Legal Service Fee - Case Management statement order 20697012	61.26
7/5/2023	One Legal Service Fee - Stipulation order regarding mediation order 20714878	81.85
8/24/2023	One Legal Service Fee - \$20 court fee, \$102.51 filing fee order 21058997	122.51
8/31/2023	One Legal Service Fee - Amended complaint order 21074552	101.92
12/19/2023	Mediation Fee	7,500.00
Anticipated	One Legal - CMC	81.85
Anticipated	PAM Motion	60.00
Anticipated	One Legal - PAM	300.00
Anticipated	FAM Motion	60.00
Anticipated	One Legal - FAM	\$300
Anticipated	One Legal - Compliance Decl	81.85
		12,251.75

EXHIBIT F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

JOE HART, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

ALUMINUM COATING TECHNOLOGIES, INC., a
California Corporation;
BRUCE CENICEROS, an individual;
ANDREA CENICEROS, an individual; and DOES 1 to
100, inclusive,

Defendants.

Case No. 34-2022-00320564

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

ATTENTION: all individuals who have, or continue to, work for Defendants as non-exempt employees in California from May 23, 2018, up to [REDACTED] (the "Class Members").

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

You are receiving this notice pursuant to an order from the Sacramento County Superior Court ("Court") granting Plaintiffs' motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiffs Clint Davidson and Patrick Wirth ("Plaintiffs" or "Class Representatives") and Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros and Andrea Cenicerros ("Defendants") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendants' records indicate you fall within the definition of "Class Member." Defendants' records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

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

I. BACKGROUND OF THE CASE

On May 23, 2022, Joe Hart, the former class representative, filed a Complaint against Defendants in the Sacramento County Superior Court of California on behalf of himself and Class Members. On June 12, 2023, Plaintiffs Clint Davidson and Patrick Wirth were substituted in as class representatives. The term "Action" means this putative class action pending in Sacramento County Superior Court, Case No. 34-2022-00320564. The Class Period is from May 23, 2018, up to [REDACTED] (the "Class Period").

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves, Class Members, and Aggrieved Employees. Plaintiffs alleged that Defendants violated California law by 1) failing to pay overtime wages and sick time at the correct rates due to Defendants' failure to incorporate the value of nondiscretionary bonuses into Class Members' regular rates of pay; 2) failing to provide all meal periods and providing late meal periods; 3) failing to provide all rest periods; 4) failing to pay Class Members for all overtime hours worked; 5) failing to reimburse Class Members for the use of their personal cellphones; 6) failing to pay split shift premiums; 7) failing to provide accurate wage statements; 8) failing to pay all final wages; and 9) engaging in unfair competition. Plaintiffs further contend Defendants are liable for civil penalties for these violations. Defendants have denied all of Plaintiffs' allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks

associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have, or continue to, work for Defendants as non-exempt employees in California from May 23, 2018, up to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all individuals who have, or continue to, work for Defendants in California from May 17, 2021, up to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants have agreed to pay a total sum of Two Hundred Twenty-Five Thousand Dollars and No Cents (225,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, attorneys’ costs not to exceed \$15,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representatives’ Enhancement Payments of \$10,000 each, and \$10,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as May 17, 2021, up to [REDACTED]. Defendants’ records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

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

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

D. Release of Claims

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

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

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

The individuals released ("Released Parties") include Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, and insurers.

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

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

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

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.*, *Hart v. Aluminum Coating Technologies, Inc.*, 34-2022-00320564); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount.

Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (i.e., *Hart v. Aluminum Coating Technologies, Inc.*, 34-2022-00320564); (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiffs and Defendants at the addresses identified in Section VI of this notice.

In addition to sending your written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiffs and Defendants.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendants and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 28, 720 9th Street, Sacramento, California 95814 on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/join/9222222222>. To join by phone: (833) 568-8864 / ID: 16039062174. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court online at [web address]. You can also contact Class Counsel or Defendants' Counsel as follows:

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

Erica L. Rosasco
Michael G. Blankenship
Rosasco Law Group, APC
6540 Lonetree Blvd., Ste. 100
Rocklin, California 95765
Telephone: (916) 672-6552
On behalf of Defendants

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT G

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

5 Attorneys for Plaintiffs CLINT DAVIDSON
6 and PATRICK WIRTH

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

10 JOE HART, individually and on behalf of all
11 other similarly situated employees,

12 Plaintiff,

13 vs.

14 ALUMINUM COATING TECHNOLOGIES,
15 INC., a California Corporation;
16 BRUCE CENICEROS, an individual;
17 ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

18 Defendants.
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Case No. 34-2022-00320564

CLASS ACTION

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

Reservation No. A-320564-001

Date: March 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: May 23, 2022

FAC Filed: July 29, 2022

SAC Filed: June 13, 2023

Trial Date: none set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on March 8, 2023 at 9:00 a.m., in Department 22 before
4 the Honorable Lauri A. Damrell, presiding. Named Plaintiffs Clint Davidson and Patrick Wirth
5 (“Plaintiffs”) filed this putative class action on May 23, 2022. The operative Complaint alleges that
6 Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros, and Andrea Cenicerros
7 (“Defendants”) violated California law by failing to pay overtime wages, failing to pay split shift
8 premiums, failing to provide meal and rest periods or pay premiums in lieu thereof, failing to timely
9 pay final wages, failing to reimburse expenses, and engaging in unfair competition. Plaintiffs have
10 also alleged Defendants are liable for a civil penalties under the Private Attorneys General Act
11 (“PAGA”) based on these violations. Plaintiffs sought attorneys’ fees and costs as part of this Action.
12 Defendants denied all of Plaintiffs' claims and denied that this case was appropriate for class
13 treatment. No class has been certified.

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

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

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

26 all individuals who have, or continue to, work for Defendants as non-
27 exempt employees in California up to either (1) the Preliminary Approval
Date.

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

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

3 The Court finds that Class Members meet the ascertainability and numerosity requirements since
4 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
5 the definition and the number of Class Members would make joinder impractical. The commonality and
6 predominance requirements are met for settlement purposes since there are questions of law and fact
7 common to Class Members. The common questions of law or fact in this case all stem from Plaintiffs'
8 contentions that Defendants caused the violations outlined above by 1) failing to pay overtime wages
9 and sick time at the correct rates due to Defendants' failure to incorporate the value of nondiscretionary
10 bonuses into Class Members' regular rates of pay; 2) failing to provide all meal periods and providing
11 late meal periods; 3) failing to provide all rest periods; 4) failing to pay Class Members for all overtime
12 hours worked; 5) failing to reimburse Class Members for the use of their personal cellphones; and 6)
13 failing to pay split shift premiums. The PAGA, waiting time penalty, wage statement violation, and
14 unfair competition claims also derive from these violations. Additionally, Class Members seek the
15 same remedies under state law. The typicality requirement for settlement purposes is also satisfied since
16 the claims of the Class Representatives are based on the same facts and legal theories as those applicable
17 to the class members.

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

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

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

27 The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit
28 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and

adequate and falls within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to weigh the potential value of the disputed claims against the risks of continued litigation. The Court also acknowledges that Class Members may present any objections to the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms therein as if stated here in full, including the 225,000 Gross Settlement Amount.

The Court approves of Apex Class Action acting as the Settlement Administrator in this case and hereby appoints them to fulfill those duties as outlined in the Agreement.

The Court finds that an award of fees under the common fund doctrine may be appropriate in this case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that Plaintiffs and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”). The amounts allocated under the Agreement for attorney’s fees and costs, for an Enhancement Payment to the Class Representatives, and Settlement Administrator Costs shall be included in the Notice of Settlement to enable Class Members to review and comment thereon. The Court will consider the reaction of Class Members when evaluating the reasonableness of the requested amounts at final approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class counsel’s fee request further supports finding the fee request reasonable”). Plaintiffs and Class Counsel are directed to provide information in connection with the motion for final approval that will enable the Court to assess the appropriateness of any requested fee percentage, to perform a lodestar cross check of the requested fee percentage, and to quantify the amount of time spent by Plaintiffs on this case and any

1 further risks and/or burdens incurred as a result of acting as Class Representatives. Class Counsel is also
2 directed to provide an updated declaration and itemization regarding actual litigation costs incurred.
3 The Settlement Administrator shall also submit a declaration attesting to Settlement Administrator Costs
4 incurred. The Court will review these amounts and allocations in connection with the final approval
5 hearing. To the extent the Court ultimately awards less than the amounts allocated under the Agreement
6 for attorney's fees and costs, for an Enhancement Payment to the Class Representatives, and/or
7 Settlement Administrator Costs, the difference between the amounts awarded and the amounts requested
8 shall be added to the Net Settlement Amount for distribution to Participating Class Members pro rata as
9 set forth in the Agreement.

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

17 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
18 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
19 deadline to do so shall be paid to the California State Controller's Unclaimed Property Fund. *See In re*
20 *Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will
21 revert to Defendants for any reason.

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

25 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
26 **INCLUDING THE NOTICE OF SETTLEMENT**

27 The Court finds that the proposed Notice of Settlement, attached to this Order as Exhibit 1 and
28 incorporated by reference, fairly and adequately advises Class Members of the terms of the Agreement,

the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice of Settlement and proposed distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comports with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Class Members the opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last name, last known mailing address, social security number, and hire and termination dates, total number of workweeks during which the Class Member performed any actual work to the Settlement Administrator only, and not to Plaintiffs or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for the purposes identified in the Agreement and shall keep this information confidential consistent with the terms of the Agreement.

IV. IMPLEMENTATION SCHEDULE

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

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

Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiffs' Motion and sets final approval hearing on the proposed date of July 26, 2024 at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Participating Class Members who object in a

1 timely manner as set forth in the Agreement, may appear and present such objections at the fairness
2 hearing in person or by counsel.

3 If for any reason the Court does not grant final approval of the Agreement, all evidence and
4 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
5 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
6 purpose other than approving a settlement class. The parties will revert to their respective positions as if
7 no settlement had been reached at all.

8 **IT IS SO ORDERED.**

9
10 Date: _____

By: _____
Judge of the Superior Court

EXHIBIT 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

JOE HART, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

ALUMINUM COATING TECHNOLOGIES, INC., a
California Corporation;
BRUCE CENICEROS, an individual;
ANDREA CENICEROS, an individual; and DOES 1 to
100, inclusive,

Defendants.

Case No. 34-2022-00320564

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

ATTENTION: all individuals who have, or continue to, work for Defendants as non-exempt employees in California from May 23, 2018, up to [REDACTED] (the "Class Members").

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

You are receiving this notice pursuant to an order from the Sacramento County Superior Court ("Court") granting Plaintiffs' motion for preliminary approval of a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiffs Clint Davidson and Patrick Wirth ("Plaintiffs" or "Class Representatives") and Defendants Aluminum Coating Technologies, Inc., Bruce Cenicerros and Andrea Cenicerros ("Defendants") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendants' records indicate you fall within the definition of "Class Member." Defendants' records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

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

I. BACKGROUND OF THE CASE

On May 23, 2022, Joe Hart, the former class representative, filed a Complaint against Defendants in the Sacramento County Superior Court of California on behalf of himself and Class Members. On June 12, 2023, Plaintiffs Clint Davidson and Patrick Wirth were substituted in as class representatives. The term "Action" means this putative class action pending in Sacramento County Superior Court, Case No. 34-2022-00320564. The Class Period is from May 23, 2018, up to [REDACTED] (the "Class Period").

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of themselves, Class Members, and Aggrieved Employees. Plaintiffs alleged that Defendants violated California law by 1) failing to pay overtime wages and sick time at the correct rates due to Defendants' failure to incorporate the value of nondiscretionary bonuses into Class Members' regular rates of pay; 2) failing to provide all meal periods and providing late meal periods; 3) failing to provide all rest periods; 4) failing to pay Class Members for all overtime hours worked; 5) failing to reimburse Class Members for the use of their personal cellphones; 6) failing to pay split shift premiums; 7) failing to provide accurate wage statements; 8) failing to pay all final wages; and 9) engaging in unfair competition. Plaintiffs further contend Defendants are liable for civil penalties for these violations. Defendants have denied all of Plaintiffs' allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks

associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have, or continue to, work for Defendants as non-exempt employees in California from May 23, 2018, up to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all individuals who have, or continue to, work for Defendants in California from May 17, 2021, up to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants have agreed to pay a total sum of Two Hundred Twenty-Five Thousand Dollars and No Cents (225,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, attorneys’ costs not to exceed \$15,000, Settlement Administrator Costs estimated not to exceed \$10,000, Class Representatives’ Enhancement Payments of \$10,000 each, and \$10,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as May 17, 2021, up to [REDACTED]. Defendants’ records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

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

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

D. Release of Claims

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

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

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

The individuals released ("Released Parties") include Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, and insurers.

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

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

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

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.*, *Hart v. Aluminum Coating Technologies, Inc.*, 34-2022-00320564); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount.

Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (i.e., *Hart v. Aluminum Coating Technologies, Inc.*, 34-2022-00320564); (e) be signed; and (f) be post-marked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiffs and Defendants at the addresses identified in Section VI of this notice.

In addition to sending your written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiffs and Defendants.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendants and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 28, 720 9th Street, Sacramento, California 95814 on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom link: <https://saccourt-ca-gov.zoomgov.com/join/9222222222>. To join by phone: (833) 568-8864 / ID: 16039062174. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court online at [web address]. You can also contact Class Counsel or Defendants' Counsel as follows:

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

Erica L. Rosasco
Michael G. Blankenship
Rosasco Law Group, APC
6540 Lonetree Blvd., Ste. 100
Rocklin, California 95765
Telephone: (916) 672-6552
On behalf of Defendants

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

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

Attorneys for Plaintiffs CLINT DAVIDSON
and PATRICK WIRTH

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOE HART, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

ALUMINUM COATING TECHNOLOGIES,
INC., a California Corporation;
BRUCE CENICEROS, an individual;
ANDREA CENICEROS, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00320564

CLASS ACTION

PROOF OF SERVICE

Reservation No. A-320564-001

Date: March 8, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: May 23, 2022

FAC Filed: July 29, 2022

SAC Filed: June 13, 2023

Trial Date: none set

Hart v. Aluminum Coating Technologies, Inc.
Sacramento County Superior Court of California 34-2022-00320564

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

I, Shaniya Baird, declare that:

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

On February 9, 2024, I served the following documents on the party below:

- **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **DECLARATION OF BRITTANY V. BERZIN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **DECLARATION OF CLINT DAVIDSON IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **DECLARATION OF PATRICK WIRTH IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

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[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action

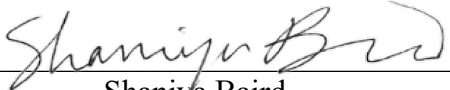
1 by placing a true copy thereof enclosed in a sealed envelope with postage
2 thereon fully prepaid, for collection and mailing on this date, following
ordinary business practices, at Elk Grove, California, addressed as set forth
above.

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

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

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

8
9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct, and that this declaration was executed on February 9, 2024, at Salt Lake City, Utah.

10 
11 _____
Shaniya Baird