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

HECTOR MENDOZA PAZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BORREGO SOLAR SYSTEMS, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2022-00030081-CU-OE-CTL

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

*[Assigned for all purposes to Hon. Gregory
W. Pollack, Dept. C-71]*

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

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

PRELIMINARY APPROVAL HEARING

Date: November 3, 2023

Time: 9:30 a.m.

Dept: C-71

Complaint filed: July 29, 2022

FAC filed: May 25, 2023

Trial date: Not Set

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

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked in California as hourly-paid or non-exempt employees for Defendant Borrego Energy, LLC (formerly known as Borrego Solar Systems, Inc.) during the class period. Defendant is a third-party operations and maintenance provider in California. Plaintiff was employed with Defendant as a technician in Defendant’s San Diego office from roughly December 2021 to March 2022.

4. On July 29, 2022, Plaintiff filed a putative wage-and-hour class action complaint (“Class Action”) against Defendant for: (1) failure to pay minimum and straight-time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to reimburse business expenses; and (8) violation

1 of California’s Unfair Competition Law, California Business and Professions Code §§ 17200,
2 et seq. On July 29, 2022, Plaintiff sent a notice to Defendant and the California Labor &
3 Workforce Development Agency(“LWDA”) alleging wage-and-hour violations pursuant to
4 PAGA, Cal. Lab. Code §§ 2699, et seq. The operative complaint is the First Amended Complaint
5 deemed filed on May 25, 2023, pursuant to a stipulation submitted by the Parties and granted by
6 the Court, Plaintiff’s First Amended Complaint adds claims for civil penalties under PAGA in
7 addition to adding claims for sick leave and regular rate of pay violations. Plaintiff also filed and
8 submitted an amended PAGA notice to the LWDA on May 19, 2023.

9 DISCOVERY AND INVESTIGATION

10 5. Following the filing of the Complaint, the Parties exchanged documents and
11 information before mediating this action. Defendant produced a sample of time and pay records
12 for class members. Defendant also provided documents of its wage and hour policies and practices
13 during the class period and information regarding the total number of current and former employees
14 in its informal discovery responses.

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

21 SETTLEMENT NEGOTIATIONS

22 7. On February 13, 2023, the Parties participated in private mediation with experienced
23 class action mediator, Hon. Ronald S. Prager (Ret.). The mediation was conducted via Zoom.
24 The settlement negotiations were at arm’s length and, although conducted in a professional manner,
25 were adversarial. The Parties went into the mediation willing to explore the potential for a
26 settlement of the dispute, but each side was also prepared to litigate their position through trial and
27 appeal if a settlement had not been reached.

28 8. After extensive negotiations and discussions regarding the strengths and

1 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a
2 resolution, the material terms of which are encompassed within the Settlement Agreement.
3 Attached as **Exhibit 1** is a true and correct copy of the Joint Stipulation of Class Action and PAGA
4 Settlement ("Settlement Agreement"), and the Notice of Class and PAGA Action Settlement
5 ("Notice") agreed to by the Parties attached as **Exhibit 2**.

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

8 10. The Parties requested several bids from experienced class action settlement
9 administrators to handle the responsibilities of the Settlement Administrator under this Settlement.
10 The Parties accepted the bid of ILYM Group, Inc. ILYM has multiple years of experience in the
11 field of Class Action Administration, particularly in the wage-and-hour arena. In its bid, ILYM
12 agreed to cap its costs at \$5,350.00 if there are 45 class members. The Parties agreed that the class
13 consists of English speakers, and thus, a Spanish translation of the Notice is not necessary. A true
14 and correct copy of the bid is attached hereto as **Exhibit 3**.

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

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

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

22 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

23 14. Class Counsel has conducted a thorough investigation into the facts of this case.
24 Based on the foregoing discovery and their own independent investigation and evaluation, Class
25 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
26 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
27 of significant delay, the defenses that could be asserted by Defendant both to certification and on
28 the merits, trial risk, and appellate risk.

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

9 Total Class Members: 42

10 Total Workweeks: 4,465

11 PAGA Eligible Employees: 30

12 PAGA Weekly Pay Periods: 2,323

13 Avg. Hourly Rate: \$35.64

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

22 17. Specifically, Plaintiff alleges that Defendant failed to pay for all hours worked,
23 including minimum wages, straight-time wages, and overtime wages. For purposes of calculating
24 Defendants' liability based on a best-case scenario for Plaintiff and the Class, I estimate that
25 Defendants' maximum potential exposure by assuming that all unpaid work time should have been
26 paid at the overtime rate, not minimum or straight time wages, even though my expert found that
27 only 83.3% of all shifts worked by class members were over 8 hours long, and I assumed that
28 Defendants is liable for 2 hours of unpaid work time per week. This results in an estimate of

1 \$477,397.80 (4,465 weeks * \$35.64 hourly overtime rate * 1.5 overtime rate * 2 hours of unpaid
2 work per week), but I discounted this figure by 80% to account for the difficulty of prevailing on
3 a motion for class certification and a trial on the merits, yielding a realistic damage estimate of
4 **\$95,479.56.¹**

5 18. With respect to the meal period claim, Plaintiff alleges that Defendant required him
6 and similarly situated class members to either work in lieu of taking meal periods, or their meal
7 periods were untimely or interrupted. My expert analyzed Defendant's timekeeping records and
8 opined that approximately 69.4 % of all meal breaks had violations of short, missed, or no meal
9 periods. Potential liability for the meal period claim, which includes shifts 5-6 hours long, shifts
10 over six hours long, shifts over ten hours long, and shifts over 12 hours long, is \$552,190.12 (4,465
11 weeks * 69.4% * \$35.64 * reasonable estimated 5 shifts a week); however, I discounted this figure
12 by 80% to account for the difficulty of certifying and proving meal period claims, to account for
13 Defendants' contention that class members voluntarily chose to forego a meal period, yielding a
14 realistic damage estimate of **\$110,438.02.**

15 19. With respect to the rest period claim, Plaintiff alleges that Defendants required him
16 and similarly situated class members to work in lieu of taking rest periods, or their rest periods
17 were untimely or interrupted. Assuming a 50% violation rate for the class period based on
18 Plaintiff's and other class members' experience working for Defendants, Defendants' potential
19 liability for the rest period claim is \$397,831.50 (4,465 weeks * 50% * \$35.64 * reasonable
20 estimated 5 shifts a week); however, I discounted this figure by 90% to account for the difficulty
21 of certifying and proving rest period claims, particularly because rest periods do not have to be
22 recorded, and to account for the possibility of class members voluntarily choosing to forego a rest
23 period, yielding a realistic damage estimate of **\$39,783.15.**

24 20. With respect to the reimbursement claim, Plaintiff alleges that Defendant failed to
25 _____

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

1 reimburse employees for necessary business expenses incurred by employees. Plaintiff estimates
2 that each employee incurred approximately \$550 each for uniform and work-related materials that
3 were not reimbursed, for a total of \$23,100 ($\550×42). However, I discounted this figure by 90%
4 to account for the difficulty of certifying and proving the reimbursement claim, for a total of **\$2,310**
5 as a reasonable damage estimate.

6 21. With respect to the failure to pay sick pay and overtime at the appropriate rate of
7 pay, in my expert consultant's review of the records, the expert determined that there was **\$1,486**
8 in unpaid overtime based on Defendant's failure to calculate overtime at the appropriate rate of
9 pay, and underpayment of **\$3,743** in sick pay on the same basis.

10 22. In sum, I estimated that Plaintiff's maximum recovery for the off-the-clock claim,
11 meal period violations, rest period violations, the reimbursement issue, and the regular rate of pay
12 issues (overtime and sick pay) is \$1,455,748.42, but, after factoring in the risk and uncertainty of
13 prevailing at certification and trial, I estimate that Plaintiffs' realistic estimated recovery for the
14 non-penalty claims is **\$253,239.73**.

15 23. With respect to Plaintiff's derivative claims for statutory and civil penalties,
16 Plaintiff estimated that Defendants' realistic potential liability is **\$43,310.10**. Our consultant found
17 that Defendants' maximum potential liability for penalties as follows: \$247,001 (waiting time
18 penalties for 27 employees), \$92,300 (wage statement penalties for 30 employees), and \$93,800
19 (PAGA penalties for 30 employees) for a total of \$433,101 in maximum potential liability.
20 However, considering Defendants' defenses, the contested nature of Plaintiff's claims, and the
21 discretionary nature of penalties, and considering that the underlying claims are realistically
22 estimated to be \$253,239.73, such a disproportionate award would also raise due process concerns.
23 Weighing these factors and applying a discount of 90% to account for the risk and uncertainty of
24 prevailing at trial, I arrived at \$43,310.10 for statutory and civil penalties.

25 24. Using these estimated figures, Plaintiff predicted that the realistic maximum
26 recovery for all claims, including penalties, would be **\$296,549.83**. This means that the \$145,000
27 settlement figure represents **49%** of the realistic maximum recovery ($\$145,000 / \$296,549.83 =$
28 **49%**). Considering the risk and uncertainty of prevailing at class certification and at trial, this is

1 an excellent result for the Class.² Indeed, because of the proposed Settlement, class members will
2 receive timely, guaranteed relief, and will avoid the risk of an unfavorable judgment.

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

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

14 27. The Net Settlement Amount available for Class Member settlement payments is
15 estimated to be \$56,666.67, for a class of 42 persons.³ As a result, each Settlement Class Member
16 is eligible to receive an average net benefit of approximately \$1,349.20.

17 28. The proposed Settlement of \$145,000, therefore, represents a substantial recovery
18 when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of
19 litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary
20 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement
21 amount of \$145,000 is within the "ballpark" of reasonableness, and preliminary settlement
22

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

27 ³ The Net Settlement Amount is: \$145,000 minus \$48,333.33 for Class Counsel's
28 attorneys' fees, minus \$15,000 for Class Counsel's litigation expenses, minus \$10,000 in
administration costs, minus \$10,000 for the PAGA payment, and minus \$5,000 for the class
representative service award to Plaintiff.

1 approval is appropriate.

2 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

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

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

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

24 32. In turn, class members will now have the opportunity to participate in a settlement,
25 reimbursing them for alleged wage violations they may have never known about on their own or
26 been willing to pursue on their own. If these class members would have each tried to pursue their
27 legal remedies on their own, that would have resulted in each having to expend a significant amount
28 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the

1 line on behalf of these other class members.

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

14 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

15 34. The Settlement provides for attorney's fees payable to Class Counsel in an amount
16 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$48,333.33,
17 plus actual costs and expenses not to exceed \$15,000.00. Our costs to date in this matter are
18 \$13,988.94. The proposed award of attorneys' fees to Class Counsel, in this case, can be justified
19 under either method – lodestar or percentage recovery. Class Counsel, however, intends to base
20 the proposed award of fees, costs, and expenses on the percentage method as many of the entries
21 in the time records will have to be redacted to preserve attorney-client and attorney work product
22 privileges.

23 35. I am informed and believe that the fee and costs provision is reasonable. The fee
24 percentage requested is less than that charged by my office for most employment cases. My office
25 invested significant time and resources into the case, with payment deferred to the end of the case,
26 and then, of course, contingent on the outcome.

27 36. It is further estimated that my office will need to expend at least another 50 to 100
28 hours to monitor the process leading up to the final approval and payments made to the class. My

1 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

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

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

18 MY EXPERIENCE AND QUALIFICATIONS

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

24 40. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys
25 are experienced in litigating Labor Code violations in both individual, class action, and
26 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
27 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
28 and data privacy litigation.

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

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

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

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

18 45. I am also a past member of the Consumer Attorneys of California ("CAOC"). In
19 2020, I was selected for a position on CAOC's Board of Directors. I am also a past member of
20 CAOC's Diversity Committee, and I helped assist the CAOC in defeating bills that harm
21 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC,
22 in defeating AB 443, which proposed legislation that sought to limit the enforceability of California
23 Labor Code § 226.

24 46. As the attorney responsible for day-to-day management of this matter at the
25 Wilshire Law Firm, PLC, I have over thirteen years of experience with litigating wage and hour
26 class actions. Over the last thirteen years, I have managed and assisted with the litigation and
27 settlement of several wage and hour class actions. In those class actions, I performed similar tasks
28 as those performed in the course of prosecuting this action. My litigation experience includes:

- 1 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
2 million in gross recovery to class members for each year since 2020, including over
3 \$37.5 million in 2022.
- 4 b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*
5 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a
6 data breach class action holding that consumer plaintiffs adequately alleged injury
7 in fact under the benefit of the bargain theory and monitoring-costs theory.
- 8 c. In 2022, Top Verdict recognized Wilshire Law Firm and myself for having one case
9 in the Top 20 Labor & Employment Settlements (including number 19 for the \$1.6
10 million settlement in *Moreno v. Pretium Packaging, L.L.C.*) and four additional
11 cases in the Top 50 Labor & Employment Settlements (numbers 27, 30, 33, and 37).
- 12 d. To my knowledge, I am the only attorney to appear on each of the following Top
13 Verdict lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
14 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 15 e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
16 winning class certification on behalf of hundreds of thousands of consumers for
17 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
18 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 19 f. As lead counsel, I prevailed against Bank of America by: winning class certification
20 on behalf of thousands of employees for California Labor Code violations; defeating
21 appellate review of the court's order certifying the class; defeating summary
22 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
23 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
24 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
25 2018)). The decision certifying the class in *Frausto* is also discussed in Class
26 Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call
27 Center Employees for Violation of State Law Wage and Hour Rules, 35 A.L.R. Fed.
28 3d Art. 8.

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

12 h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d
13 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims
14 under California’s Private Attorney Generals Act (“PAGA”) cannot be used to
15 calculate the amount in controversy under the Class Action Fairness Act (“CAFA”).
16 This case is cited in several leading treatises such as Wright & Miller’s Federal
17 Practice & Procedure, and Newberg on Class Actions. In October 2016, the U.S.
18 Supreme Court denied review of a case that primarily concerned Yocupicio. That
19 effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus
20 support from a brief authored by Andrew J. Pincus.⁵ Considering that leading
21 Supreme Court practitioners from the class action defense bar were very motivated
22 in undermining Yocupicio case, but failed, this demonstrates the national
23 importance of the Yocupicio decision.

24 i. On December 13, 2018, the United States District Court granted final approval of

25
26 ⁴ As a California district court observed before the *ABM Industries Overtime* decision,
27 “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE*
28 *Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL
1758048, *7.)

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

the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (Id. at p. *10.)

- j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered Defendants to pay for the cost of *Belaire-West* notice.
- k. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (qui tam) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- l. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:
 - m. 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting plaintiff’s motion to strike Defendants’ affirmative defenses based on *Twombly/Iqbal*).
 - n. 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).
 - o. 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge’s discovery ruling which held that “evidence of other sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA”).

1 p. 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery
2 because “an FLSA plaintiff is entitled to discovery from locations where he never
3 worked if he can provide some evidence to indicate company-wide violations”).

4 q. From 2012 to 2013, I was part of a team of attorneys that obtained class certification
5 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*
6 *Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also
7 successfully opposed subsequent appeals to the California Court of Appeal and
8 California Supreme Court.

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

24 48. Zachary D. Greenberg is a Fourth-year associate at Wilshire Law Firm, PLC.
25 Zachary was admitted to the State Bar of California in 2020 and has since been admitted to the
26 United States District Court for the Central, Eastern, and Southern Districts of California and the
27 United States Court of Appeals for the Ninth Circuit. Zachary received a Bachelor of Arts in
28 International Business and a Minor in Economics from Western Washington University. He

received his Juris Doctor from Loyola Law School. Zachary's practice has been primarily focused on complex class and representative action litigation. His current contingent billing rate for this case is \$450 per hour.

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

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

b. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court in Puerto Rico approved my \$850 hourly rate when he granted final approval of the class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).

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

d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District

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

- 6 e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
7 Court approved my \$750 hourly rate when he granted final approval of the class
8 action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No.
9 19STCV32396.

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

12 Executed on October 12, 2023, at Los Angeles, California.

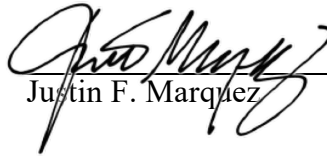
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15 Justin F. Marquez
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Exhibit 1

Justin F. Marquez (SBN 262417)
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Attorneys for Defendant BORREGO ENERGY,
LLC (formerly known as BORREGO SOLAR
SYSTEMS, INC.)

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

HECTOR MENDOZA PAZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

BORREGO SOLAR SYSTEMS, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 37-2022-00030081-CU-OE-CTL

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

[Assigned for all purposes to The Honorable
Gregory W. Pollack, Dept. C-71]

Action Filed: July 29, 2022
Trial Date: None Set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement (“Joint Stipulation of Settlement” or
3 “Settlement” or “Agreement”) is made and entered into by and between Plaintiff HECTOR PAZ,
4 individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and
5 Defendant BORREGO ENERGY, LLC (formerly known as BORREGO SOLAR SYSTEMS, INC.)
6 (“Defendant”). Plaintiff and Defendant are sometimes referred to individually as a “Party” or collectively
7 referred to herein as “the Parties.”

8 **THE PARTIES STIPULATE AND AGREE** as follows:

9 **DEFINITIONS**

10 1. For purposes of this Settlement, “Complaint” refers to the First Amended Class Action and
11 Representative Complaint filed in the Action.

12 2. For purposes of this Settlement, the “Action” refers to the above-captioned action entitled *Paz*
13 *v. Borrego Solar Systems, Inc., et al.*, San Diego County Superior Court Case No. 37-2022-00030081-
14 CU-OE-CTL.

15 3. For purposes of this Settlement, the “Class Period” is February 1, 2018 through the date the
16 court enters an order granting preliminary approval of the Agreement.

17 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt
18 or hourly-paid employees of Defendant who worked for Defendant in California during the Class Period.

19 5. For purposes of this Settlement, “Class Counsel” means WILSHIRE LAW FIRM, PLC.

20 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class
21 Member worked at Defendant’s locations in California during the Class Period. Defendant estimates there
22 were 4,465 Covered Workweeks as of December 31, 2022.

23 7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) calendar days
24 after the Settlement Administrator initially mails the Notice to Class and PAGA Members (“Notice”) and
25 the last date on which Class Members may submit a workweek dispute, request for exclusion, or written
26 objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of
27 60 calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may
28 be extended only as expressly described herein.

1 8. For purposes of the Settlement, “Defendant’s Counsel” means OGLETREE, DEAKINS,
2 NASH, SMOAK & STEWART, P.C.

3 9. For purposes of the Settlement, “Effective Date” means the date the court enters its order
4 granting final approval of the Settlement and judgment thereon, if there are no objections to the
5 Settlement. If there are any objections to the Settlement, the Effective Date shall be extended to 75
6 days after the date of entry of the Final Approval Order. If there are any objections to the settlement
7 and an appeal of the judgment and/or final approval order is filed, the Effective Date shall be 20 days
8 following the final resolution of any such appeal with no right to pursue further remedies or relief. In
9 this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court’s
10 order approving the Settlement is completely final, and there is no further recourse by an appellant or
11 objector who seeks to contest the Settlement.

12 10. For purposes of this Settlement, “Final Approval Order” means the court’s order granting
13 final approval of this Settlement and entry of the Judgment thereon.

14 11. For purposes of this Settlement, “PAGA” means the California Labor Code Private
15 Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

16 12. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross
17 Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims.
18 The Parties have agreed that the PAGA Allocation will be \$10,000 from the Gross Settlement Amount.
19 Pursuant to PAGA, Seventy-Five Percent (75%), or \$7,500, of the PAGA Allocation will be paid to the
20 Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty-Five
21 Percent (25%), or \$2,500, of the PAGA Allocation will be paid to the PAGA Employees (“PAGA
22 Settlement Payment”).

23 13. For purposes of this Settlement, “PAGA Period” means the period from July 29, 2021 through
24 the date the court enters an order granting preliminary approval of the Agreement.

25 14. For purposes of this Settlement, “PAGA Employee” means all non-exempt or hourly-paid
26 employees of Defendant who worked in California during the PAGA Period.

27 15. For purposes of this Settlement, “PAGA Letter” means the written notice dated July 29, 2022
28 and amended on May 19, 2023 that Plaintiff submitted to the LWDA alleging various wage-and-hour

violations under the Labor Code, to exhaust his administrative remedies as required by PAGA.

16. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods each PAGA Employee worked during the PAGA Period.

17. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

18. For purposes of this Settlement, “Released Claims” means any and all claims for wages, damages, unpaid costs, penalties, liquidated damages, benefits, fringes, interest, attorney fees, litigation costs, restitution, or equitable relief, against any of the Released Parties, that were pled or could have been pled based on the factual allegations, circumstances, and/or primary rights set forth in the Action and/or PAGA Letter, including all claims under the California Labor Code, Industrial Welfare Commission Wage Orders and applicable law for: failure to pay wages (including minimum wages, regular wages, overtime wages, and regular rates of pay); failure to failure to pay sick leave at the proper rate of pay; failure to provide compliant meal and/or rest periods or proper premiums in lieu thereof; failure to pay wages timely during employment and upon termination; failure to maintain accurate records (including without limitation records of hours worked and meal periods, and payroll records); failure to provide legally-compliant wage statements; failure to reimburse business expenses; all claims for violation of California Business and Professions Code §§ 17200, et seq., arising from the above-referenced claims and those claims in the Actions; and all claims for penalties under California Labor Code § 2698, et. seq.

19. For purposes of this Settlement, “Released PAGA Claims” means all Released Claims arising under PAGA during the PAGA Period.

20. For purposes of this Settlement, “Released Parties” means Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, employees, agents, representatives, attorneys, insurers, investors, parent companies, subsidiaries, affiliates, and any individual or entity that could be jointly liable with Defendant.

21. For purposes of this Settlement, the “Settlement Class” or “Settlement Class Members” are those Class Members who do not submit timely and compliant exclusion requests to the Settlement Administrator.

22. For purposes of this Settlement, “Settlement Payments” means all of the payments to Settlement Class Members (the “Settlement Class Payments”) and all of the payments to PAGA

Employees (the “PAGA Settlement Payments”).

BACKGROUND

23. On July 29, 2022 and amended on May 19, 2023, Plaintiff submitted the PAGA Letter to the LWDA, to satisfy his administrative exhaustion requirement under PAGA.

24. On July 29, 2022, Plaintiff initiated the Action. The operative complaint is the First Amended Complaint that alleges Defendant, among other things: (1) failed to pay minimum, regular, and overtime wages (due in part to alleged off-the-clock work and regular rate of pay violations); (2) failed to provide meal periods or pay proper premiums in lieu thereof; (3) failed to authorize and permit rest periods or pay proper premiums in lieu thereof; (4) failed to timely pay all wages during employment and at termination; (5) failed to maintain accurate records, including records about the hours worked and meal breaks taken, and payroll records; (6) failed to furnish accurate and legally-compliant itemized wage statements; (7) failed to reimburse business expenses; (8) engaged in unfair business practices, in violation of California Business and Professions Code section 17200 et seq.; and (9) violated provisions of the Labor Code giving rise to civil penalty liability under PAGA. Plaintiff asserts these claims on an individual basis and on a class and PAGA representative basis on behalf of all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the relevant time period.

25. Solely for purposes of settling the Action, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met.

26. Should, for whatever reason, the Settlement be terminated or not approved by the Court or the judgment not become final, the fact that the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. And Defendant expressly reserves its right to oppose claim or class certification in this or any other action. Additionally, if the Settlement is terminated or not approved by the Court or the judgment not become final, this Agreement and all negotiations, court orders, and proceedings related thereto shall be without prejudice to the rights of all Parties hereto, and evidence relating to this Agreement and all negotiations shall not be admissible in the Action or otherwise.

1 Certification for purposes of this Settlement will have no force or effect and will be revoked immediately.

2 27. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
3 claims alleged or which could have been alleged in the Complaint, and Defendant further denies that, for
4 any purpose other than settling this lawsuit, that the Action is appropriate for class or representative
5 treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and
6 the Class Members have been paid proper wages, have been provided meal periods or they have been
7 made available as required, have been provided rest periods or they have been authorized and permitted
8 as required, have been paid timely throughout their employment and upon separation, have been provided
9 with accurate and complete itemized wage statements, and have been reimbursed for any business
10 expenses. Defendant contends, among other things, that it has maintained proper records at all times and
11 has otherwise complied with the California Labor Code and the applicable Wage Orders of the Industrial
12 Welfare Commission. Furthermore, with respect to all claims, Defendant contends that it has complied
13 at all times with the California Business and Professions Code.

14 28. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
15 all disputes and claims arising from or related to the Complaint.

16 29. Class Counsel has conducted a thorough investigation into the facts of this Action, including
17 an extensive review of relevant documents, and has diligently pursued an investigation of the claims of
18 the Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel
19 is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this
20 Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in
21 light of all known facts and circumstances, including the risk of significant delay, the risk the Class will
22 not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues.
23 Defendant and Defendant's Counsel also agree that the Settlement is fair, adequate and reasonable and in
24 the best interest of the Class.

25 30. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
26 preliminary and final approval of this Settlement.

27 31. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to
28 implement and complete the Settlement, pending the Final Approval hearing to be conducted by the

Court. No party, nor any of its attorneys or agents, shall solicit or encourage any Class Member to opt out of or object to the Settlement.

PRIMARY TERMS OF SETTLEMENT

32. Gross Settlement Amount: The Gross Settlement Amount is \$145,000 and is all-inclusive, meaning it covers all Settlement Payments, Plaintiff's attorney's fees and costs, the Service Payment to Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement ("Gross Settlement Amount"), except as provided in the Escalator Clause and Defendant will be separately responsible for any employer-side payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Defendant shall not be required to pay any additional sums under this Agreement or to otherwise settle the Action.

33. Escalator Clause: The Parties agree that in the event the actual number of Covered Workweeks exceeds 4,912, Defendant shall increase the Gross Settlement Amount by the percentage that that actual number of Covered Workweeks exceeds 4,912 (the "Escalator Clause"). For example, if the actual number of Covered Workweeks exceeds 4,912 by 1%, the Gross Settlement Amount shall be increased by 1%. The Gross Settlement Amount will not be reduced for any reason.

34. Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.

35. No Claims Required: Class and PAGA Members will not be required to submit a claim to receive their Settlement Payments.

36. Net Settlement Amount: The "Net Settlement Amount" shall be calculated by deducting from the Gross Settlement Amount (\$145,000.00) the following sums, subject to approval by the Court: (1) Plaintiff's attorney's fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$48,333.33); (2) Plaintiff's attorney's reasonable litigation costs (not to exceed \$15,000.00); (3) the Service Payment (not to exceed \$5,000.00 to Plaintiff); (4) the PAGA Allocation (\$10,000.00); and (5) costs of settlement administration (estimated not to exceed \$10,000). Any amounts not approved by the court shall become part of the Net Settlement Amount for distribution to Settlement Class Members and shall not be grounds to void or reject this Settlement. Settlement Class Payments will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

1 37. Payroll Taxes and Required Withholdings: The portion of Settlement Class Payments
2 attributable to wages shall be subject to all applicable taxes and other withholdings and shall be net of the
3 Settlement Class Member's share of all federal, state, and local taxes and required withholdings, including
4 without limitation, FICA, Medicare tax, FUTA, and state unemployment taxes. Defendant will be
5 separately responsible for any employer-side payroll taxes required by law, including the employer FICA,
6 FUTA, and SDI contributions ("Employer-Side Payroll Taxes"). The Settlement Administrator will
7 calculate and submit the Defendant's employer- share of payroll taxes after advising Defendant of the
8 total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from
9 Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement
10 Administrator.

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

1 TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
2 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
3 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
4 CONTEMPLATED BY THIS AGREEMENT.

5 39. Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be
6 paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of
7 the Net Settlement Amount as calculated by the Settlement Administrator. The pro-rata share will be
8 determined by comparing the individual Settlement Class Member's Covered Workweeks employed
9 during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members
10 during the Class Period as follows: $[Workweeks\ worked\ by\ a\ Settlement\ Class\ Member] \div [Sum\ of\ all\ Covered\ Workweeks\ worked\ by\ all\ Settlement\ Class\ Members] \times [Net\ Settlement\ Amount] = individual$
11 Settlement Class Payment for a Settlement Class Member. Settlement Class Payments in the appropriate
12 amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members.
13 Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the
14 California State Controller's Office, as set forth below.

16 40. PAGA Payments: PAGA Settlement Payments will be paid out of the PAGA Allocation
17 deducted from the Gross Settlement Amount after the PAGA Penalty Amount (75 percent of the PAGA
18 Allocation) is paid to the LWDA. Each PAGA Employee will be paid a pro-rata share of the PAGA
19 Settlement Payment, as calculated by the Settlement Administrator. Class Members who are PAGA
20 Employees will not be permitted to exclude themselves from this portion of the Settlement. Each PAGA
21 Employee's pro-rata share will be determined by comparing the individual PAGA Employees' PAGA
22 Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during
23 the PAGA Period as follows: $[PAGA\ Pay\ Periods\ worked\ by\ a\ PAGA\ Employee] \div [Sum\ of\ all\ PAGA\ Pay\ Periods\ worked\ by\ all\ PAGA\ Employees] \times [PAGA\ Settlement\ Payment] = individual\ PAGA$
24 Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA
25 Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the
26 PAGA Employees at the same time Settlement Class Payments issued to the Settlement Class. Settlement
27 Class Members who are also PAGA Employees may receive their settlement payments in a single check.
28

1 Class Members who exclude themselves from the Class Settlement will still receive their PAGA
2 Settlement Payment and be bound by the release of the Released PAGA Claims, notwithstanding their
3 exclusion from the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted by
4 the Settlement Administrator to the California State Controller's Office, as set forth below. The Settlement
5 Administrator will send the PAGA Penalty Payment to the LWDA at the same time the Settlement
6 Administrator sends Settlement Payments to the Settlement Class and PAGA Settlement Payments to the
7 PAGA Employees

8 41. Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments
9 will be allocated as follows: 20% to wages and 80% to penalties and interest. The PAGA Settlement
10 Payments will be entirely allocated to penalties. Appropriate federal, state, and local withholding taxes
11 will be taken out of the wage allocations, and each Settlement Class Member will receive an IRS Form
12 W-2 with respect to this portion of the Settlement Class Payment. The Settlement Class Member's share
13 of payroll taxes and other required withholdings will be remitted by the Settlement Administrator to the
14 appropriate taxing authorities as set forth above, along with Defendant's employer portion of FICA and
15 FUTA contributions, based on the payment of claims to the Settlement Class Members. IRS Forms 1099
16 will be issued by the Settlement Administrator to each Settlement Class Member and/or PAGA Employee
17 reflecting the payments for penalties and interest. Settlement Class Members and PAGA Employees are
18 responsible to pay appropriate taxes due on the Settlement Class Payments and PAGA Settlement
19 Payments they receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each
20 Settlement Class Member and PAGA Employee with respect to such payments.

21 42. Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement Payments to
22 individual Settlement Class Members and PAGA Employees shall be deemed to be paid to such
23 Settlement Class Member or PAGA Employee solely in the year in which such payments actually are
24 received by the Settlement Class Member or PAGA Employee. It is expressly understood and agreed
25 that the receipt of such Settlement Payments will not entitle any Settlement Class Member or PAGA
26 Employee to additional wages, compensation or benefits under any company bonus, contest or other
27 compensation or benefit plan or agreement in place during the period covered by the Settlement up to and
28 including the date the Settlement becomes effective, nor will it entitle any Settlement Class Member or

1 PAGA Employee to any increased retirement, 401(k) benefits or matching benefits or deferred
2 compensation benefits. It is the intent of all Parties that the Settlement Payments provided for in this
3 Settlement are the sole payments to be made by Defendant to the Settlement Class Members and PAGA
4 Employees, and that the Settlement Class Members and PAGA Employees are not entitled to any new or
5 additional compensation or benefits as a result of having received the Settlement Payments
6 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
7 might have been in effect during the period covered by this Settlement).

8 43. Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not object to
9 Class Counsel's application for attorney's fees of up to 33 1/3% of the Gross Settlement Amount
10 (meaning \$48,333.33) and reimbursement of litigation costs and expenses not to exceed \$15,000.00,
11 subject to proof. Any amount not approved by the Court shall be added to the Net Settlement Amount
12 and shall not be grounds to object to or terminate this Agreement.

13 44. Service Payment: Subject to Court approval, and in exchange for a general release from
14 Plaintiff, Defendant will not object to Class Counsel's application for an additional payment of up to
15 \$5,000.00 to Plaintiff for service as a Class Representative ("Service Payment"). The Service Payment is
16 in addition to any individual Settlement Payment to which Plaintiff may be entitled under this Agreement.
17 The Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff.
18 Plaintiff will be individually responsible for correctly characterizing this compensation on personal
19 income tax returns for tax purposes and for paying any taxes on the amounts received. Any amount not
20 approved by the Court shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or
21 object to the Service Payment as the Class Representative.

22 45. Settlement Administrator: The Settlement Administrator will be ILYM GROUP, Inc. or such
23 Settlement Administrator as may be mutually agreeable to the Parties and approved by the Court.
24 Settlement Administration Costs are estimated not to exceed \$10,000. The costs of the Settlement
25 Administrator for work done shall be paid regardless of the outcome of this Settlement. If the Settlement
26 does not become final and effective, the cost of the Settlement Administrator will be shared equally by
27 Plaintiff and Defendant.

28 46. Funding of Settlement Account: Defendant will wire the Gross Settlement Amount and

Employer-Side Payroll Taxes as determined by the Settlement Administrator, to the QSF within 14 business days after the Effective Date or the establishment of the QSF, whichever is later.

47. Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within 14 calendar days of the receipt of funding.

48. Notice of Settlement: Each Class Member will be mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the class portion of the proposed Settlement (“Notice”), in substantially the same form as the attached **Exhibit A**. For each Class Member, there will be pre-printed information on the mailed Notice, based on Defendant’s records, stating the Class Member’s Covered Workweeks during the Class Period, PAGA Pay Periods during the PAGA Period, and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment.

49. Settlement Notice Language: The Notice will issue in English only. The Parties agree a Spanish translation or other non-English translation is not necessary.

50. Class Members Cannot Exclude Themselves from the Released PAGA Claims: Class Members submitting a Request for Exclusion will nevertheless receive their pro-rata share of the PAGA Settlement Payment and be bound by the release of the Released PAGA Claims. Plaintiff shall serve a notice of settlement on the LWDA at or before the time Plaintiff files the motion for preliminary approval.

51. Resolution of Workweek Disputes: If a Class Member disputes the number of Covered Workweeks or PAGA Pay Periods as stated in the Notice, he or she may dispute that figure by informing the Settlement Administrator of the number of Covered Workweeks and PAGA Pay Periods he or she claims to have worked and provide any supporting documentation (such as, without limitation, payroll or timekeeping records, and paystubs) on or before the Response Deadline. If there is a dispute, the Settlement Administrator will consult with Defendant’s Counsel to determine whether an adjustment is warranted. However, Defendant’s records shall be presumed to be accurate and the Settlement Administrator shall have the sole discretion to determine any such disputes. The Settlement Administrator shall use best efforts to resolve any disputes within fourteen (14) business days of receipt of the dispute.

52. Right of Class Member to Request Exclusion from the Settlement: Any Class Member may request to be excluded from the Settlement Class by mailing a “Request for Exclusion” from the

1 Settlement within the Response Deadline.

2 Any Request for Exclusion must include the name, address, telephone number, last four digits of
3 the Class Member's Social Security Number, and the signature of the Class Member requesting exclusion.

4 Any such request must be made in accordance with the terms of the Notice, and the Notice will advise
5 Class Members of these requirements. Any Class Member who timely requests exclusion in compliance
6 with these requirements (i) shall not have any rights under this Settlement other than a right to receive a
7 pro-rata share of the PAGA Settlement Payment if the Class Member is also PAGA Employee; (ii) shall
8 not be entitled to receive any Settlement Class Payments under this Settlement other than as stated herein;
9 and (iii) shall not be bound by this Settlement or the Court's Order and Final Judgment other than as it
10 applies to the Released PAGA Claims.

11 53. Right of Settlement Class Member to Object to The Settlement: Any Settlement Class
12 Member may object to the Settlement as it relates to the settlement of class claims. To object, the
13 Settlement Class Member may (1) appear at the Final Approval Hearing, remotely or in person, to explain
14 any objection, (2) have an attorney object for the Settlement Class Member, or (3) submit a simple written
15 brief or statement of objection to the Settlement Administrator. If any Settlement Class Member chooses
16 to submit a written objection, the written objection should contain sufficient information to confirm the
17 identity of the objector and the basis of the objection, including (1) the full name of the Settlement Class
18 Member; (2) the signature of the Settlement Class Member; (3) the grounds for the objection; and (4) be
19 postmarked within the Response Deadline to permit adequate time for processing and review by the
20 Parties of the written statement or objection. The Settlement Administrator shall notify Class Counsel and
21 Defendant's Counsel of any objection to the Settlement, and provide copies of written objections to same,
22 within 10 business days of receiving the objection. Class Counsel shall ensure that any written objections
23 are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to a
24 declaration from the Settlement Administrator). Regardless of the form, an objection alone will not satisfy
25 the requirement that a Settlement Class Member must either make a timely complaint in intervention
26 before final judgment or by filing a motion to set aside and vacate the class judgment under Code of Civil
27 Procedure §663, to have standing to appeal entry of judgment approving this Settlement, as is required
28 under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260

(2018). A Settlement Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Settlement Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Settlement Class Member's objection, the Settlement Class Member will still be bound by the terms of this Agreement and the Settlement. Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court. Class counsel will not represent any Class Members with respect to any objections to the Settlement.

THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES

54. Subject to the Court's approval, the Parties have agreed to the appointment of ILYM GROUP, Inc. to perform the customary duties of Settlement Administrator.

55. The Settlement Administrator's duties shall include, without limitation: establishing and maintaining the Qualified Settlement Fund ("QSF"); preparing and distributing the Notice; calculating and directing the disbursement of payments to Settlement Class Members, PAGA Employees, Class Counsel, the Class Representative, and the LWDA; calculating and timely paying any and all payroll taxes from the wages portion of the Net Settlement Amount to the appropriate tax authorities, as required under this Agreement and applicable law; handling inquiries about the calculation of individual settlement payments; preparing and filing any tax returns and information returns and any other filings required by any governmental taxing authority or other governmental agency, and providing copies to Settlement Class Members, PAGA Employees, and Defendant, where appropriate; providing weekly status reports to the Parties' counsel; advising Defendant and Class Counsel of any Class Members who submit objections and/or Requests for Exclusion; providing a due diligence declaration for submission to the Court prior to the final approval hearing; printing and providing Settlement Class Members and the Class Representative with W-2 and 1099 forms as required under this Agreement and applicable law; preparing and mailing reminder postcards to Settlement Class Members who do not cash their settlement payment within sixty (60) days of disbursement; arranging for and remitting funds from any uncashed settlement payment to the designated recipient, as determined by the Court; resolving any disputes submitted by

1 Class Members regarding the number of Covered Workweeks and PAGA Pay Periods attributed to them
2 for purposes of settlement calculations; and for such other tasks as the Parties mutually agree or the Court
3 orders the Settlement Administrator to perform.

4 56. The Settlement Administrator shall establish a settlement payment center address, telephone
5 number and email address to receive Class Members' inquiries about the Notice, requests to be excluded
6 from the Settlement, objections to the Settlement, and disputes concerning workweek calculations.

7 57. In addition, the Settlement Administrator shall establish a static website and, on the website,
8 post this stipulation, any preliminary approval order and the Final Approval Order and Judgment, for a
9 duration of at least 180 days after the Effective Date, unless otherwise ordered by the Court. Posting of
10 the Final Approval Order and Judgment on such website shall constitute notice of judgment to the
11 Settlement Class, as required by California Rule of Court 3.771(b).

12 58. The Parties confirm, and Class Counsel and Defendant's Counsel confirm, they do not
13 have any financial interest in the Settlement Administrator or otherwise have a relationship with the
14 Settlement Administrator that could create a conflict of interest.

15 59. All disputes relating to the Settlement Administrator's performance of its duties shall be
16 referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions
17 of this Settlement until all payments and obligations contemplated by this Settlement have been fully
18 carried out.

19 **ATTORNEY'S FEES AND COSTS**

20 60. In consideration for resolving this matter and in exchange for the release of all claims by the
21 Settlement Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not
22 object to Class Counsel's application for attorney's fees of up to 33 1/3% of the Gross Settlement Amount
23 (\$48,333.33 of \$145,000.00) and litigation costs of up to \$15,000.00. These amounts will cover all work
24 performed and all fees and costs incurred to date, and all work to be performed and all fees and costs to
25 be incurred in connection with the approval by the Court of this Settlement and administration of the
26 Settlement. Should Class Counsel request a lesser amount and/or the Court approve a lesser amount(s)
27 of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s) and the maximum
28 amount set forth above shall be added to the Net Settlement Amount and shall not be grounds to object

1 to, revoke, or terminate this Agreement. The Parties agree that there is no prevailing party, and the Class
2 and Class Counsel shall not be entitled to any fees or costs other than those awarded out of and deducted
3 from the Gross Settlement Amount. As with the Class Settlement Payments to the Settlement Class, the
4 attorney's fees and costs approved by the Court shall be distributed by the Settlement Administrator to
5 Class Counsel within 14 calendar days of the receipt of settlement funds by the Settlement Administrator.

6 **THE NOTICE PROCESS**

7 61. Within 14 business days from the date of preliminary approval of this Settlement by the Court,
8 Defendant shall provide to the Settlement Administrator a class database containing the following
9 information for each Class Member: (1) name; (2) last known address; (3) social security number; (4)
10 dates of employment for Defendant in California during the relevant time period; (5) the number of
11 workweeks actually worked by the Class Member during the Class Period, taking into account leaves of
12 absence and any gaps in employment; and (6) the number of pay periods actually worked by the Class
13 Member during the PAGA Period, if any, taking into account leaves of absence and any gaps in
14 employment. This database shall be based on Defendant's payroll and other business records and shall
15 be provided in a reasonable format to the Settlement Administrator. The Settlement Administrator will
16 run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National
17 Change of Address List; this check need only be performed once per Class Member by the Settlement
18 Administrator. The Settlement Administrator will keep this database confidential and secure and use it
19 only for the purposes described herein, and will return this database to Defendant upon final approval of
20 the settlement or destroy electronic records containing the database after the Settlement is final and all
21 payments are distributed as required under this Agreement.

22 62. Within 14 calendar days after the Class database is provided to the Settlement Administrator,
23 the Settlement Administrator will mail the Notices to the Class Members by First Class United States
24 mail.

25 63. Notices returned to the Settlement Administrator as non-deliverable on or before the initial
26 Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned
27 Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided
28 with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer

1 search for a new address using the Class Member's social security number or other information. In any
2 instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline
3 as described above to submit objections or request exclusion. A letter prepared by the Settlement
4 Administrator will be included in the re-mailed Notice in that instance, stating the extended Response
5 Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement
6 Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected
7 Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be
8 bound by all the terms of the Settlement and the Court's Order and Final Judgment.

9 64. Class Counsel shall provide to the Court, at least five calendar days prior to the final
10 approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator
11 of due diligence and confirming mailing of the Notices.

12 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

13 65. As set forth above, each Settlement Class Member will have until the expiration of the
14 applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the
15 Settlement Class Member's Covered Workweek or PAGA Pay Period information on the Notice. No
16 disputes will be honored if they are submitted after the Response Deadline, unless the Parties mutually
17 agree to accept the untimely dispute. Each Settlement Class Member is responsible to maintain a copy of
18 any documents sent to the Settlement Administrator and a record of proof of mailing.

19 66. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
20 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
21 PAGA Settlement Payments may be combined into one check. Settlement Payment checks shall remain
22 valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks
23 will automatically be cancelled by the Settlement Administrator if they are not cashed by the Settlement
24 Class Member within that time, and the Settlement Class Member's relevant claims will remain released
25 by the Settlement. Settlement Payment checks which have expired will not be reissued.

26 67. Funds from uncashed or abandoned Settlement Class Payment checks or PAGA Settlement
27 Checks, based on a 180-day void date, shall be transmitted by the Settlement Administrator to the
28 California State Controller's Office for Unclaimed Property in the name of each Settlement Class Member

1 and/or PAGA Employee who failed to cash their Settlement Payment check prior to the void date, unless
2 otherwise ordered by the Court.

3 68. Upon completion of its calculation of Settlement Class Payments and PAGA Settlement
4 Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a
5 report listing the amounts of all payments to be made to Class Members (to be identified anonymously
6 by employee number or other identifier). A Declaration attesting to completion of all payment obligations
7 will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

8 **RELEASES**

9 69. Release by Settlement Class Members. Upon final approval by the Court of this Settlement
10 and Defendant's payment of the Gross Settlement Amount and Employer-Side Payroll Taxes, and except
11 as to such rights or claims as may be created by this Settlement, the Settlement Class Members shall be
12 deemed to have released the Released Parties from the Released Claims arising during the Class Period.

13 70. Release by PAGA Employees. Upon final approval by the Court of this Settlement and
14 Defendant's payment of the Gross Settlement Amount and Employer-Side Payroll Taxes, the PAGA
15 Employees will be deemed to have released the Released Parties from the Released PAGA Claims,
16 regardless of whether they submitted a request for exclusion from the Settlement of Class claims.

17 71. General Release by Plaintiff and Class Representative. Upon the final approval by the Court
18 of this Settlement and Defendant's payment of the Gross Settlement Amount and Employer-Side Payroll
19 Taxes, and except as to such rights or claims as may be created by this Settlement, the Plaintiff and Class
20 Representative, will be deemed to have released and discharged the Released Parties from any and all of
21 the Released Claims and from any and all other claims, charges, complaints, liens, demands, agreements,
22 contracts, covenants, actions, suits, causes of action, penalties, wages, obligations, debts, expenses,
23 damages, attorneys' fees, costs, judgments, orders, and liabilities of whatever kind or nature in law, equity,
24 or otherwise, known or unknown, suspected or unsuspected, that the Plaintiff and Class Representative
25 had, now has, or may hereafter claim to have against the Released Parties arising out of, or relating in any
26 way to, the Plaintiff and Class Representative's hiring by, employment with, separation of employment
27 with, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever,
28 known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of any

Released Party (the “Class Representative’s Released Claims”), arising or accruing from the beginning of time up through the Effective Date (“Class Representative’s Released Period”). The Class Representative’s Released Claims include, but are not limited to, claims arising from or dependent on the California Labor Code; the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 et seq.; the California Fair Employment and Housing Act, Cal. Gov’t Code § 12900 et seq.; the California Healthy Workplaces, Healthy Families Act, Cal. Labor Code § 245 et seq., the California common law of contract and tort; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., the Portal to Portal Act, 29 U.S.C. § 251 et seq., and the Families First Coronavirus Response Act.

The Plaintiff and Class Representative also acknowledges that he has read Section 1542 of the Civil Code of the State of California, which provides as follows:

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

The Plaintiff and Class Representative further warrants that he understands that Section 1542 gives him the right not to release existing claims of which he is not now aware, unless he voluntarily chooses to waive this right. Having been so apprised, Plaintiff and Class Representative nevertheless voluntarily waives the rights described in Section 1542, and elects to assume all risks and to release the claims set forth herein, that now exist in his favor, whether known or unknown.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

72. Upon execution of this Agreement, Class Counsel shall submit the Agreement to the Court as part of Plaintiff’s motion for preliminary approval of the Settlement. The motion shall request entry of an order:

- (a) Scheduling a preliminary approval hearing and later final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney’s fees and costs, settlement administration costs, the Class

Representative's service payment, and PAGA Allocation, should be finally approved as fair, reasonable, and adequate;

- (b) Conditionally certifying a Class for settlement purposes only;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice by the Settlement Administrator;
- (e) Preliminarily approving the Settlement subject only to the objections of Settlement Class Members and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing CPT Group as the Settlement Administrator.

73. Class Counsel shall provide Defendant's counsel with the opportunity to review and comment on drafts of all papers to be filed in connection with the motion for preliminary approval (notice of motion, memorandum of points and authorities, and declarations) before filing such motion with the Court. Plaintiff's motion for preliminary approval shall also include a proposed order that is mutually agreed upon by the Parties. Defendant shall not oppose Plaintiff's motion for preliminary approval to the extent it is consistent with the terms and conditions herein. Defendant may, however, provide a written response to any characterization of the law or facts contained in the motion.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

74. On or before the date set by the Court, Class Counsel will file a motion for final approval of this Settlement pursuant to California Rule of Court 3.769. In connection therewith, Class Counsel will submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representative;
- (d) Approving the PAGA Allocation;
- (e) Adjudging the Settlement Administrator has fulfilled its initial notice and

1 reporting duties under the Settlement and approving payment of fees to the
2 Settlement Administrator;

- 3 (f) Adjudging Plaintiff and Class Counsel as adequately representing the Settlement
4 Class Members for the purpose of entering into and implementing the Agreement;
5 (g) Entering a final judgment in the action; and
6 (h) Adjudging that notwithstanding the submission of a timely request for exclusion,
7 Class Members are still bound by the settlement and release of the Released
8 PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior*
9 *Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do
10 not apply to the Released PAGA Claims, and further affirming that the State's
11 claims for civil penalties pursuant to PAGA are also extinguished.

12 75. Class Counsel will provide Defendant's counsel with the opportunity to review and comment
13 on drafts of all papers to be filed in connection with the motion for final approval (notice of motion,
14 memorandum of points and authorities and declarations) before filing such motion with the Court.
15 Plaintiff's motion for final approval will also include a proposed order and judgment that are mutually
16 agreed-upon by the Parties. Defendant shall not oppose Class Counsel's motion for final approval of the
17 settlement to the extent it is consistent with the terms and conditions of this Agreement. Defendant may,
18 however, provide a written response to any characterization of the law or facts contained in the motion
19 for final approval.

20 76. The Final Approval Order will be posted on the Settlement Administrator's website for at
21 least 180 days from the Effective Date. The posting of the Final Approval Order on the Settlement
22 Administrator's website will constitute notice of entry of the judgment, as required by California Rule
23 of Court 3.771(b).

24 **NULLIFICATION AND TERMINATION**

25 77. This Settlement will be null and void if any of the following occur: (a) the Court should for
26 any reason fail to certify a Class for settlement purposes; (b) the Court should for any reason fail to
27 preliminarily or finally approve this Settlement in the form agreed to by the Parties, other than adjustments
28 made to the attorney's fees and costs, settlement administration costs, Plaintiff's service award, and

1 PAGA Allocation; (c) the Court should for any reason fail to enter the final judgment; (d) the final
2 judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final
3 for any other reason. Under those circumstances, neither this Settlement, nor any of the related
4 negotiations or proceedings, will be of any force or effect, and all Parties will stand in the same position,
5 without prejudice, as if the Settlement had not been entered or filed.

6 78. If 10% or more of the Class Members opt out of this Settlement, then Defendant in its sole
7 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
8 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
9 less frequently than on a weekly basis. To terminate this Settlement under this paragraph, Defendant's
10 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 30
11 calendar days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be
12 responsible for the costs incurred to-date by the Settlement Administrator for the settlement
13 administration.

14 79. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
15 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
16 proceedings shall have any force or effect and no Party shall be bound by any of its terms, and (iii) all
17 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
18 neither entered into nor filed with the Court.

19 **PARTIES' AUTHORITY**

20 80. The signatories hereto hereby represent that they are fully authorized to enter into this
21 Settlement and bind the Parties hereto to the terms and conditions thereof.

22 **MUTUAL FULL COOPERATION**

23 81. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement
24 including, but not limited to, execution of such documents and taking such other action as reasonably may
25 be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best
26 efforts, including all efforts contemplated by this Settlement and any other efforts that may become
27 necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein.
28 As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and

1 cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's
2 preliminary and final approval of this Settlement.

3 **NO PRIOR ASSIGNMENTS**

4 82. The Parties and their respective counsel represent, covenant, and warrant that they have not
5 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
6 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
7 released and discharged except as set forth herein, and that they are not on notice of any liens as to the
8 Gross Settlement Amount or any right to attorneys' fees or costs.

9 **NO ADMISSION OF LIABILITY**

10 83. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
11 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
12 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. Defendant does not
13 admit, and specifically denies, that it has violated any federal, state, or local law; violated any regulations
14 or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal
15 requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or
16 deception; or engaged in any other unlawful conduct with respect to its current or former employees.
17 Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations
18 connected with it, will be construed as an admission or concession by Defendant of any such violations
19 or failures to comply with any applicable law. Defendant has entered into this Settlement solely with the
20 intention to avoid further disputes and litigation with the attendant inconvenience and expenses. Except
21 as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement
22 Agreement and its terms and provisions will not be offered or received as evidence in any action or
23 proceeding to establish any liability or admission on the part of Defendant or to establish the existence of
24 any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable
25 law.

26 **ENFORCEMENT ACTIONS**

27 84. In the event that one or more of the Parties to this Settlement institutes any legal action or
28 other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare

rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

NOTICES

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

Class Counsel:

Justin F. Marquez
Christina M. Le
Zachary D. Greenberg
WILSHIRE LAW FIRM
3055 Wilshire Blvd, 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Fax: (213) 381-9989
justin@wilshirelawfirm.com
cle@wilshirelawfirm.com
zgreenberg@wilshirelawfirm.com

Counsel for Defendant:

Marlene Moffitt
**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**
4660 La Jolla Village Drive, Suite 900
San Diego, CA 92122
Telephone: 858-652-3110
Facsimile: 858-652-3101
marlene.moffitt@ogletree.com

CONSTRUCTION

86. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, including but not limited to an all-day mediation with Hon. Ronald Prager (ret.), and this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

88. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance

1 in accordance with its terms or by a writing signed by the Parties hereto.

2 **CONFIDENTIALITY**

3 89. Confidentiality Agreement. The Parties and their counsel agree that none of them will issue
4 any marketing materials, press release, social media post, internet or website announcement, or otherwise
5 initiate any contact with the press, respond to any press inquiry or have any communication with the press
6 regarding the Settlement or the terms of this settlement. Class Counsel will not communicate with other
7 wage-hour plaintiffs' counsel about this settlement, nor utilize it in any way in their marketing or
8 advertising materials or website, prior to Preliminary Approval. Plaintiff will not discuss the Settlement
9 with anyone other than his counsel, tax advisors or spouses, except as required or authorized by law.
10 Additionally, Class Counsel agree that the fact that the Action was filed and/or settled will not be included
11 in any filing or court submission in any other case or controversy unless required to do so by applicable
12 law or done in submissions to courts or arbitrators in connection with establishing adequacy as class
13 counsel or relevant experience in wage and hour lawsuits.

14 **INTEGRATION CLAUSE**

15 90. This Settlement contains the entire agreement between the Parties relating to the Settlement
16 and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings,
17 representations, and statements, whether oral or written and whether by a Party or such Party's legal
18 counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties expressly
19 recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a),
20 which provide that a written agreement is to be construed according to its terms and may not be varied or
21 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
22 representations or terms will modify, vary or contradict the terms of this Agreement.

23 **AMENDMENT**

24 91. This Settlement Agreement may be amended or modified only by a written instrument
25 mutually signed by counsel for all Parties or their successors-in-interest, and approved by the Court.

26 **WAIVER OF APPEALS**

27 92. The Parties agree to waive appeals and to stipulate to class certification for purposes of
28 implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the

1 amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the
2 Gross Settlement Amount as attorney's fees.

3 **BINDING ON ASSIGNS**

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

6 **CLASS COUNSEL SIGNATORIES**

7 94. It is agreed that because the members of the Class are so numerous, it is impossible or
8 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
9 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release
10 shall have the same force and effect as if this Settlement were executed by each member of the Class.

11 **COUNTERPARTS**

12 95. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
13 and when each Party has signed and delivered at least one such counterpart, each counterpart shall be
14 deemed an original, and, when taken together with other signed counterparts, shall constitute one
15 Settlement, which shall be binding upon and effective as to all Parties.

16 **FINAL JUDGMENT**

17 96. The Parties agree that, upon final approval of the Settlement, final judgment of this Action
18 will be made and entered in its entirety at or following the final approval hearing. The final judgment
19 may be included in the Order granting Final Approval of the Settlement.

20 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
21 Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

22 IT IS SO STIPULATED.

23
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25 [Signatures on next page]
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Plaintiff & Class Representative:
Dated: 10/5/2023

DocuSigned by:
By: 
HECTOR PAZ

Plaintiff's Counsel:
Dated: October 5, 2023

WILSHIRE LAW FIRM

By: 
Justin F. Marquez
Christina M. Le
Zachary D. Greenberg
Attorneys for Plaintiff

Defendant:
Dated:

BORREGO ENERGY, LLC (formerly known as BORREGO SOLAR SYSTEMS, INC.)

By: _____
Print Name

Signature

Title

Plaintiff & Class Representative:

Dated:

By:

HECTOR PAZ

Plaintiff's Counsel:

Dated:

WILSHIRE LAW FIRM

By:

Justin F. Marquez
Christina M. Le
Zachary D. Greenberg
Attorneys for Plaintiff

Defendant:

Dated: June 6, 2023

BORREGO ENERGY, LLC (formerly known as BORREGO
SOLAR SYSTEMS, INC.)

By:

Devin McDonell

Print Name

Devin McDonell

box SIGN LDPMULINKA-42787878

Signature

VP, Deputy General Counsel

Title

1 **Defendant's Counsel:**

2
3 DATED: June 6, 2023

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

4
5
6 By: 

Marlene M. Moffitt
David Szwarczstejn

7
8 Attorneys for Defendant BORREGO ENERGY,
9 LLC (formerly known as BORREGO SOLAR
10 SYSTEMS, INC.)
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Exhibit 2

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

Paz v. Borrego Solar Systems, Inc., et al.
Superior Court of California – San Diego County
Case No. 37-2022-00030081-CU-OE-CTL

IF YOU WERE EMPLOYED BY BORREGO SOLAR SYSTEMS, INC. (NOW KNOWN AS BORREGO ENERGY, LLC) IN CALIFORNIA AS A NON-EXEMPT, HOURLY-PAID EMPLOYEE YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS AND REPRESENTATIVE ACTION SETTLEMENT

The Court approved this notice. This is not an advertisement.

You are not being sued. However, your legal rights are affected whether you act or not.

PLEASE READ THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
INCLUDE THE FOLLOWING:	
OPTION #1: DO NOTHING	You will receive a payment from the Settlement and be bound by its release. No action is required for you to receive a share of this Settlement.
OPTION #2: EXCLUDE YOURSELF	<u>You will not receive a share of the Settlement.</u> ¹ This is the only option that allows you to file your own lawsuit against Defendant for the claims released in this Settlement.
OPTION #3: OBJECT	If you choose, you may object to this Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from receiving a portion of the Settlement. You cannot object if you exclude yourself from the Settlement.

WHAT IS IN THIS NOTICE

1. Why Should You Read This Notice?..... Page 2
2. What Is the Case About?..... Page 2
3. What are the Terms of the Proposed Settlement?Page 3
4. How Much Can I Expect to Receive?..... Page 4
5. When Will I Receive My Payment? Page 4
6. Who Are the Attorneys Representing the Parties? Page 5
7. What are my Options? Page 5
8. What are the Effects of the Settlement on My Rights?.....Page 6
9. How Do I Get More Information?Page 7

¹ Regardless of whether you exclude yourself from the Settlement, you will still receive a PAGA Settlement Payment and be bound by the release of Released PAGA Claims under the Settlement.

1. Why Should You Read This Notice?

You have received this Notice because Borrego Solar Systems, Inc.'s (now known as Borrego Energy, LLC) ("Borrego") records indicate you work, or used to work, for Borrego as an hourly-paid, non-exempt employee in California. You are receiving this notice because you may be a member of a class on whose behalf a lawsuit has been brought and settled. The lawsuit is known as *Hector Mendoza Paz v. Borrego Solar Systems, Inc., et al.*, San Diego County Superior Court, Case No. 37-2022-00030081-CU-OE-CTL (the "Action").

Plaintiff Hector Mendoza Paz ("Plaintiff") and Borrego (together with Plaintiff, the "Parties") reached a settlement ("Settlement"). The settlement class ("Class Members") is comprised of all current and former hourly-paid, non-exempt persons employed by Defendant in the State of California, at any time during the Class Period (defined as February 1, 2018 through [REDACTED]).

This Notice tells you of your rights to share in the Settlement. There was a Preliminary Approval hearing on [REDACTED] DATE, 2023, at [REDACTED] 10:00 a.m., in the San Diego County Superior Court. The Honorable Gregory W. Pollack determined there is sufficient evidence to suggest the Settlement may be fair, adequate and reasonable and that a final determination of the issues will be made at the final approval hearing. Judge Pollack also ordered that you receive this Notice.

The Court has made no ruling on the merits of Plaintiff's claims or Borrego's defenses. The Court will decide whether to give final approval to the Settlement at a Final Approval Hearing scheduled for [REDACTED], 2022, at [REDACTED] 10:00 a.m. in Department C-71, of the San Diego County Superior Court located at 330 West Broadway, San Diego, CA 92101. The Final Approval Hearing may be continued to another date without further notice.

2. What Is the Case About?

The Action alleges Class Members were not paid all wages due to them (including minimum, regular, overtime wages, and regular rates of pay); were not paid sick leave at the proper rate of pay; were not provided compliant meal or rest periods or payments in lieu thereof; were not paid all wages timely during employment and upon termination; were not provided legally-compliant wage statements; were not reimbursed for business expenses; and that Borrego failed to maintain accurate records concerning hours worked, meal breaks taken, and payroll records. The Action further alleges these actions constituted unfair and unlawful business practices under California law. Among other things, the Action seeks penalties under the California Labor Code Private Attorneys General Act ("PAGA") set forth in California Labor Code §§ 2698 *et seq.*

The Action was filed by Plaintiff Hector Mendoza Paz ("Plaintiff"). He asserts the above claims in his individual capacity, as a class representative, and as a representative under PAGA.

Borrego denies all of Plaintiff's allegations and denies any wrongdoing. Among other things, Borrego contends all employees have been properly compensated and Borrego complied with all applicable laws.

The Parties reached a Settlement subject to Court approval as represented in the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement Agreement”). Class Counsel believes the Settlement is fair, reasonable, and adequate, and that it is in the best interests of Class Members, PAGA Members, and the California Labor and Workforce Development Agency (“LWDA”). Likewise, Borrego has decided settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and settlement immediately resolves, finally and completely, the pending and potential claims. By settling the Action, Borrego does not admit, concede, or imply it has done anything wrong or legally actionable.

3. What are the Terms of the Proposed Settlement?

The following is a summary of the settlement. The specific and complete terms of the proposed Settlement are stated in the Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”), a copy of which is filed with the Court. You can obtain a copy of the Settlement Agreement from the Settlement Administrator or review it on the following website: www. [REDACTED].

Borrego has agreed to pay \$145,000 to settle any and all obligations for the claims alleged in the Action. This amount is called the Gross Settlement Amount. As discussed below, the Gross Settlement Amount will be used to cover all payments to the Settlement Class Members and PAGA Members, settlement administration costs, attorneys’ fees and costs, service payment to the Plaintiff, and funds owed to the State of California in settlement of penalties. The amounts of these payments are subject to court approval and will be paid from the Gross Settlement Amount.

(a) Attorneys’ Fees and Costs: Class Counsel has worked on this matter without compensation and has advanced funds to pay for expenses necessary to prosecute the Action. Accordingly, under the settlement, Class Counsel may request an amount not to exceed \$48,333.33 to compensate them for their work on the case, plus their reasonable and actual costs and expenses incurred in the litigation, not to exceed \$15,000. The amount of the attorneys’ fees and costs is subject to court approval and will be paid from the Gross Settlement Amount.

(b) Service Payment: The Plaintiff is requesting a service award not to exceed \$5,000, in addition to the amount he will receive as a Settlement Class Member and PAGA Member, to compensate him for undergoing the burden and expense of prosecuting the action and for the broader release of claims he is required to provide to Borrego. The amount of the service award is subject to court approval and will be paid from the Gross Settlement Amount.

(c) Settlement Administration Costs: The Settlement Administrator is ILYM Group, Inc. [REDACTED] and has advised the parties that the settlement administration costs will not exceed \$10,000 [REDACTED]. The amount of the settlement administration costs is subject to court approval and will be paid from the Gross Settlement Amount.

(d) Payment to State of California: A total of \$10,000 of the Gross Settlement Amount (“PAGA Allocation”) will be allocated to settle allegations that Borrego owes penalties to the State of California for alleged violations of the California Labor Code. Of this amount, \$7,500 (75%) will be paid to the California Labor & Workforce Development Agency (“LWDA”). The other 25%, which is \$2,500, will be distributed to those Class Members who were employed by Borrego at any time from July 29, 2021 to [REDACTED] (“PAGA Member”). The PAGA Allocation is subject to court approval and will be paid from the Gross Settlement Amount.

(e) Payments to Settlement Class Members: The remainder of the Gross Settlement Amount (called the Net Settlement Amount) will be distributed to Class Members who do not exclude themselves from the settlement (called Settlement Class Members). The amount of each Settlement Class Member’s share of the Net Settlement Amount will be calculated based on the number of weeks they actually worked for Borrego, taking into account leaves of absence and gaps in employment (“Workweeks”). The Settlement Administrator will calculate each Settlement Class Payment by dividing the Workweeks worked by the Settlement Class Member during the Class Period by the total Workweeks worked by all Settlement Class Members during the Class Period, and multiplying the result by the Net Settlement Amount. Class Members who worked for Borrego at any time between July 29, 2021 to [REDACTED] (“PAGA Period”) will also receive a portion of the \$2,500 penalty allocation mentioned above in section 5(d). The amount of each such employee’s share of the \$2,500 penalty allocation will be calculated by dividing the number of Workweeks worked by the PAGA Member during the PAGA Period by the total number of Workweeks worked by all PAGA Members during the PAGA Period, and multiplying this result by \$2,500.

4. How Much Can I Expect to Receive?

According to Borrego’s records, you worked a total of approximately [REDACTED] qualifying workweeks during the Class Period. Under the Settlement, your estimated payment as a Settlement Class Member will be \$ [REDACTED], minus deductions and withholdings. You will only receive this amount if you do not exclude yourself from or opt out of the Settlement.

According to Borrego’s records, you also worked approximately [REDACTED] qualifying workweeks during the PAGA Period, and based thereon, you will receive an additional amount of approximately \$ [REDACTED], which is your share of the PAGA Allocation. You will receive this amount regardless of whether you opt out of or otherwise exclude yourself from the Settlement.

The Settlement Administrator may, in its discretion, send you the Settlement Class Payment and PAGA Settlement Payment by way of a single check that combines both payments.

5. When Will I Receive My Payment?

The Settlement Administrator will send out settlement checks to class members after the settlement is finally approved by the Court. You will have 180 days after the Settlement Administrator mails your settlement check to cash it; otherwise, it will be voided, and the amount of your settlement

payment will be sent to the California State Controller as unclaimed property in your name, and you will need to contact that agency to obtain your funds. Therefore, it is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your payment under the Settlement.

For tax purposes, 80% of your Settlement Class Payment will be considered 1099 income and the remaining 20% will be considered W-2 wage income. Your PAGA Settlement Payment, if you are eligible for one, will be reported on an IRS Form 1099.

Nothing in this Notice should be construed as providing you with tax advice. You should consult with your tax advisor concerning the tax consequences of the payment you receive.

6. Who Are the Attorneys Representing the Parties?

Class Counsel

Justin F. Marquez, Esq.
Christina M. Le, Esq.
Zachary D. Greenberg, Esq.
Wilshire Law Firm
3055 Wilshire Blvd., 12th Floor
Los Angeles, CA 90010
Tel. : (213) 381-9988 / Fax : (213) 381-9989
Email : justin@wilshirelawfirm.com
Email : cle@wilshirelawfirm.com
Email : zgreenberg@wilshirelawfirm.cm

Defense Counsel

Marlene M. Moffitt, Esq.
OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
Tel: (858) 652-3110/ Fax: (858) 652-3101
Email: marlene.moffitt@ogletree.com

7. What are my Options?

As a Class Member, you have three options:

OPTION #1: Participate in the Settlement

Under the Settlement, you will **automatically** receive a settlement payment unless you opt out by following the opt-out procedure set forth below under Option #2.

This Notice states the total number of workweeks you worked for Borrego during the Class Period. Your individual settlement payment as a Class Member will be based on that number. If you believe the information is correct, you do not need to take any further action to receive your settlement payment.

If you believe the workweek information shown above in Section 4 is incorrect, you must submit a workweek dispute to the Settlement Administrator, stating why you believe the listed workweeks are not correct. The workweek dispute must be in writing, signed by you, and contain your full name, address, telephone number, the last four digits of your Social Security Number, and the number of workweeks you contend is correct, and must be mailed or faxed to the Settlement Administrator (whose address and fax number is listed below) and must be faxed or postmarked no later than , **2023**. You should submit to the Settlement Administrator

documentation to support the number of workweeks you believe is correct. The Settlement Administrator will review the records and resolve any dispute.

If you are a current employee of the Borrego, your decision as to whether or not to participate in this Settlement will not affect or in any way impact your employment.

OPTION #2: Opt Out of the Settlement

If you wish to be excluded from the Settlement, you must submit a written statement (“Opt Out”) indicating you desire to be excluded or otherwise opt out of the Settlement. Your Opt Out must be in writing, clearly state that you do not wish to be included in the Settlement, be signed by you, and contain your full name, address, telephone number, and the last four digits of your Social Security Number. You must submit your completed, signed Opt Out to the Settlement Administrator via fax or by mail at the address/fax number below. To be considered timely, your Opt-Out must be faxed or postmarked no later than [REDACTED], 2023. Late Opt-Outs will not be considered.

If you timely fax or mail a complete and valid Opt-Out, you will no longer be a member of the class and you will not be eligible to object to the Settlement or receive a Settlement Class Payment. You also will not be bound by the terms of the Settlement, and may pursue any valid claims you may have, at your own expense, against Borrego; however, individuals who qualify as PAGA Members will still receive a PAGA Settlement Payment and be bound by the PAGA Release.

OPTION #3: Object to the Settlement

If you wish to Object to the Settlement, you may submit a written Objection stating why you object to the Settlement. The Objection should be signed by you and include your full name, address, telephone number, a written statement of all grounds for the objection accompanied by any legal support for such objection, and copies of any papers, briefs, or other documents upon which the objection is based. The Objection should be mailed or faxed to the Settlement Administrator (whose address/fax number is listed below) no later than [REDACTED], 2023.

You may also, if you wish, appear at the Final Approval Hearing set for [REDACTED], 2023 at 10:00 a.m. in Department C-71 of the San Diego County Superior Court – Hall of Justice and discuss your objections with the Court and the Parties. The Final Approval Hearing may be continued to another date without further notice.

IF YOU OBJECT TO THE SETTLEMENT, YOU WILL STILL RECEIVE YOUR SHARE OF THE SETTLEMENT IF THE COURT APPROVES THE SETTLEMENT. YOU CANNOT OBJECT TO THE SETTLEMENT IF YOU OPT OUT OF THE SETTLEMENT.

8. What are the Effects of the Settlement on My Rights?

Upon final approval of the Settlement by the Court, all Settlement Class Members will be deemed to have released the Released Parties from all Released Claims and Released PAGA Claims, as defined below. Regardless of whether an individual opts out of the Settlement, all PAGA Members will be deemed to have released the Released Parties from all Released PAGA Claims.

“Released Parties” means Borrego and its past, present and/or future, direct and/or indirect, officers, directors, members, employees, agents, representatives, attorneys, insurers, investors, parent companies, subsidiaries, affiliates, and any individual or entity that could be jointly liable with Borrego.

“Released Claims” any and all claims for wages, damages, unpaid costs, penalties, liquidated damages, benefits, fringes, interest, attorney fees, litigation costs, restitution, or equitable relief, against any of the Released Parties, that were pled or could have been pled based on the factual allegations, circumstances, and/or primary rights set forth in the Action and/or PAGA Letter, including all claims under the California Labor Code, Industrial Welfare Commission Wage Orders and applicable law for: failure to pay wages (including minimum wages, regular wages, overtime wages, and regular rates of pay); failure to failure to pay sick leave at the proper rate of pay; failure to provide compliant meal and/or rest periods or proper premiums in lieu thereof; failure to pay wages timely during employment and upon termination; failure to maintain accurate records (including without limitation records of hours worked and meal periods, and payroll records); failure to provide legally-compliant wage statements; failure to reimburse business expenses; all claims for violation of California Business and Professions Code §§ 17200, et seq., arising from the above-referenced claims and those claims in the Actions; and all claims for penalties under California Labor Code § 2698, et. seq.

“Released PAGA Claims” means all Released Claims arising under PAGA during the PAGA Period.

“PAGA Letter” means the July 29, 2022 letter, amended on May 19, 2023, that Plaintiff sent to the LWDA pursuant to Labor Code §2699.3(a)/(c) seeking to exhaust his administrative remedies under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code §§2698, *et seq.*

9. How Do I Get More Information?

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call the Settlement Administrator at the telephone number listed below, toll free.

Borrego Solar Systems, Inc. Settlement Administrator
c/o [SETTLEMENT ADMINISTRATOR]
[SA ADDRESS AND FAX NUMBER]
[SA TOLL-FREE NUMBER]
[SETTLEMENT-SPECIFIC WEBSITE]

DO NOT TELEPHONE THE COURT FOR LEGAL ADVICE OR FOR INFORMATION ABOUT THIS SETTLEMENT.

By Order of the San Diego County Superior Court, the Honorable Gregory W. Pollack.

Exhibit 3

Case Name: Paz v. Borrego Solar Systems, Inc.

Friday, February 17, 2023

Attorney Contact:	Marlene M. Moffitt
E-Mail Address:	marlene.moffitt@ogletree.com
ILYM Contact:	Lisa Mullins
E-Mail:	Lisa@ilymgroup.com
Contact Number:	714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	45
Estimated Percentage of Undeliverable Mail	20%
NCOA	Yes
Case Duration (Years)	1

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

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

Subtotal \$325.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Return Mail	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	1	\$70.00
NCOA	Flat Fee	\$50.00	1	\$50.00
Toll-Free Customer Support	Flat Fee	\$50.00	1	\$50.00
Status Reports	Flat Fee	\$750.00	6	Waived

Subtotal \$670.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice	Per Piece	\$1.50	45	\$67.50
USPS First Class Postage	Per Piece	\$0.60	45	\$27.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	9	\$18.00
Storage, Photocopies, Deliveries	Flat Fee	\$269.00	1	\$269.00

Subtotal **\$381.50**

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check, Print & Mail (Including W2/1099 Stub & Release)**	Per Check	\$1.50	45	\$67.50
USPS First Class 1oz Postage	Per Piece	\$0.60	45	\$27.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	5	\$9.00
Preparation of Taxes*	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return*	Per Year	\$1,500.00	1	\$1,500.00

***Additional Bank fees may apply*

Subtotal **\$2,753.50**

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Process Uncashed Funds to the State Controller	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	2	\$250.00

Subtotal **\$1,220.00**

Total Case Estimate: **\$5,350.00**

Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hector Mendoza Paz v. Borrego Solar Systems, Inc., et al.
37-2022-00030081-CU-OE-CTL

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

On October 12, 2023, I served the foregoing **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

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Attorneys for Defendant

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

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

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

Executed on October 12, 2023, at Los Angeles, California.


Sandy Sespene