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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ERIK CLEMENTE, individually, and on behalf of all others similarly situated, *Plaintiff*, vs. MIDWAY CONSTRUCTION CORP., a California corporation; and DOES 1 through 10, inclusive, *Defendants*	Case No.: CIVSB2228816 [Assigned for all purposes to the Hon. Christian Towns] CLASS ACTION **DECLARATION OF H. SCOTT LEVIANT IN SUPPORT OF PLAINTIFF CLEMENTE'S MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT** Date: September 29, 2025 Time: 8:30 a.m. Courtroom: Dept. S-26 Judge: Hon. Christian Towns Action Filed: December 27, 2022 Trial Date: Not Set

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DECLARATION OF H. SCOTT LEVIANT

I, H. Scott Leviant, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States Supreme Court, the Eighth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Eastern, Northern and Southern Districts of California. I have never been subject to discipline by the State Bar of California. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am employed as a Senior Counsel at the law firm of Moon Law Group, PC (formerly Moon & Yang, APC). My business address is 725 S. Figueroa St., 31st Floor, Los Angeles, California 90017, and my business telephone number is (213) 232-3128. I am counsel for Plaintiff Erik Clemente, and I am proposed counsel for the Settlement Class.

3. This Declaration is submitted in support of Plaintiff Clemente's Motion for Final Approval of Class and Representative Action Settlement.

BACKGROUND

4. On December 27, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay minimum and regular rate wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, and unfair business practices. Defendant operates in the commercial and residential construction industry, focusing on painting and drywall work.

5. Plaintiff sent a letter to the Labor and Workforce Development Agency ("LWDA"), pursuant to California Labor Code § 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq*. ("PAGA Letter"). The LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-

day time period permitted for the LWDA to provide such a notification expired. On April 21, 2023, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for violation of the Private Attorneys General Act ("PAGA"). The First Amended Class and Representative Action Complaint is the operative complaint in the Action (the "Operative Complaint").

6. The Parties conducted informal discovery and investigation of the facts and law. Such investigation included, *inter alia*, the exchange of extensive data and discoverable information in preparation for the mediation session. The Parties have analyzed time clock, pay and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of the Class, average workweeks and pay periods, and average rate of hourly pay. Time and pay data for was used for Plaintiff's pre-mediation analysis. In addition, Defendant also provided other data pertaining to Plaintiff and the Class during the relevant Class Period, including but not limited to documents reflecting wage and hour policies and practices during the Class.

7. After reviewing documents regarding Defendant's wage and hour policies and practices and other information obtained during the exchange of informal discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation.

8. On June 25, 2024, the Parties participated in mediation with Hon. Carl J. West (Ret.) which ultimately led to a proposed settlement. The Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of claims and defenses. After the mediation, and the eventual settlement, the Parties then signed a long form settlement agreement (the "Agreement"). ***In particular, the extreme risk posed by arbitration agreements was discussed extensively during the mediation***.

9. Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class.

10. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. If this Settlement is not approved by the Court for any reason, Defendant reserves its right to contest class certification. This Settlement, if approved, will result in the termination of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class.

SUMMARY OF THE SETTLEMENT TERMS

11. Key provisions of the proposed settlement include the following:

(a) Defendant agrees not to oppose certification for purposes of Settlement. (Agreement, ¶ 12.1.)

(b) Class: All persons who worked for Defendant in California as non-exempt employees during the Class Period (the "Class Period" is the period from December 27, 2021, through August 24, 2024). "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Agreement, ¶¶ 1.5, 1.9, 1.12, 1.34.)

(c) Settlement Amount: Defendant will pay a maximum of **$350,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** benefit per Class Member of about **$466.04**. (Agreement, ¶¶ 1.21, 3.1; Leviant Decl., ¶ 17.)

(d) Funding of Gross Settlement Amount: Defendant shall fund half of the Gross Settlement Amount within 60 days of the Effective Date and fund the remaining portion of the Gross Settlement Amount within six months of the first payment, along with Defendant's share of any employer taxes owed on the Wage Portion of the Individual Class Payments. (Agreement, ¶ 4.3.)

(e) Class Size: **751** individuals who worked 34,321 workweeks. (Castro Decl., ¶ 5.)

(f) PAGA Group Size: **751** aggrieved employees who worked 17,369 pay periods during the PAGA Period. (Castro Decl., ¶ 13.)

(g) PAGA Period: December 27, 2021, through August 24, 2024. (Agreement, ¶ 1.30.)

(h) *Kullar/Munoz* Analysis: Plaintiff addresses the claims analysis in the Motion, at Part VI.B.3, and below, at Paragraph 18.

(i) No Reversion: The Settlement is a ***non-reversionary*** settlement. (Settlement, ¶ 3.1.)

(j) Certification: Plaintiff addresses certification requisites in the Motion, at Part VI.A. Certification was addressed in greater detail in the Motion for Preliminary Approval.

(k) No Claim Form: No claim form is required. (Agreement., ¶ 3.1.)

(l) Class Release: The Settlement will release wage-and-hour claims for Participating Class Members (those Class Members who do not opt out of the Settlement) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint. (Agreement, ¶ 5.2.)

(m) PAGA Release: Aggrieved Employees and the LWDA will release all PAGA penalties that were alleged, or could have been alleged, based on the facts stated in the PAGA Notice, regardless of whether they opt out of the class portion of the Settlement. (Agreement, ¶ 5.3.)

(n) Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of Workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **$170,783.33**, resulting in an average **net** payment per Class Member of approximately **$227.41**, before any tax withholdings. (Agreement, ¶ 1.27.)

(o) Tax Allocation: The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 80% to interest and penalties, and PAGA Settlement payments to Aggrieved Employees will be allocated as 100% penalties, (Agreement, ¶¶ 3.2.4.1, 3.2.5.)

(p) Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA. (Agreement, ¶ 3.1.)

(q) Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, ILYM Group, Inc., with the costs of administration at a flat rate of up to $8,550.00. ILYM's estimate for settlement administration services in the amount of **$8,550.00** was selected as the lowest bid from a competitive bidding process, and is below the Parties' estimated cost of $10,000.00. (Agreement, ¶ 3.2.3; Castro Decl., ¶ 14.)

(r) Class Data for Administration: The Settlement Administrator will receive the Class Data within 14 calendar days of Preliminary Approval, use the National Change of Address ("NCOA") database to update the Class Data, and then use skip tracing on returned Notices. (Agreement, ¶¶ 4.2; 1.10.)

(s) Notice: The Notice will issue within 14 days of receipt of the Class Data. (Agreement, ¶ 7.4.2.) The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion. (Agreement, ¶¶ 7.5 – 7.7.)

(t) Notice Language: Notice will issue in English and Spanish. (Agreement, ¶ 1.11; 7.4.2.)

(u) Objections: Objections can be submitted in person, by attorney, or in writing to the Administrator, with no pre-requisite to being heard. (Agreement, ¶¶ 7.7.1 – 7.7.3.)

(v) Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection. (Agreement, ¶¶ 7.5.1 and 7.7.2.)

(w) PAGA Allocation: From the GSA, **$35,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq*. ("PAGA"), and seventy-five percent (75%), or **$26,250.00**, will be paid to the California Labor & Workforce Development Agency. (Agreement, ¶ 1.33; 3.2.5.)

(x) Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached hereto.

(y) Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to **$5,000.00** for Plaintiff, to be paid from the GSA. (Agreement, ¶ 3.2.1.)

(z) Fees and Costs: Defendant will not oppose Class Counsel's application for fees not to exceed 33 1/3% of the GSA **($116,666.66**), and actual costs, in an amount not to exceed **$14,000.00**, to be paid out of the GSA. (Agreement, ¶ 3.2.2.)

(aa) Check Void Period: Settlement checks will be valid for 180 days (Agreement, ¶ 4.4.1.)

(bb) Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the *cy pres* recipient, the State Bar's Justice Gap Fund. (Agreement, ¶ 4.4.3.)

(cc) Judgment Notice: Judgment will be posted on the Settlement Administrator's website after entry. (Agreement, ¶ 7.8.1.)

(dd) Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members. (Agreement ¶ 12.2.)

12. A true and correct copy of the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Agreement") is attached hereto as Exhibit "1."

THE SETTLEMENT IS FAIR, JUST AND REASONABLE

13. Plaintiff and counsel have diligently investigated the claims of the Class Members. Plaintiff and Class Counsel concluded, after taking into account the disputed factual and legal issues involved in this Action, the substantial risks attending further prosecution, including risks related to the outcome of certification and possible summary judgment efforts, and the substantial benefits to be received pursuant to the compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the putative Class and are fair and reasonable. Plaintiff's counsel brought to bear a great deal of experience with class actions in negotiating the settlement of this case.

14. One fundamental purpose of the class action device is to promote efficiency. Resolution at this time will forestall the need for additional expensive and time-consuming litigation that could very well result in an outcome less satisfactory than that proposed under this settlement. But, before any other consideration, we have agreed to this settlement because it is objectively reasonable. The potential for resolution benefits the class members, since they do not have to wait additional years for a similar recovery. The efficiency of this litigation benefits the Court, the parties and their counsel. A class-wide resolution is the most realistic method for addressing the claims raised in this matter.

15. We have engaged in the necessary investigation in this case that made it possible for us to exercise informed judgment in those aspects of the settlement process in which we were involved. The exchange of time and wage data, wage and hour policy documents, and data about the composition of the Class, were sufficient to permit us counsel to adequately evaluate the settlement. We had more than enough information upon which to evaluate a fair and reasonable settlement amount.

16. In addition to disputing the merits of Plaintiff's claims at trial, Defendant intended to aggressively challenge the case at the certification stage. Defendant contends that Plaintiff could not prevail on a certification motion. We believe that the case was viable through to a trial. However, while Plaintiff asserts a belief that this is a viable case for trial, we realize that there are always very significant risks associated with certification and trials, and those risks cannot be eliminated in this

case. Continued litigation of this lawsuit presented Plaintiff and Defendant with substantial legal risks and costs that were (and continue to be) difficult to assess. The risks in this matter include:

- the risk that Plaintiff would be unable to establish liability for allegedly unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial);
- the risk that Defendant's challenged employment policies might not ultimately support class certification or a class-wide liability finding, *see*, *Duran*, 59 Cal. 4th at 14 & fn. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition);
- the risk that uncertainties pertaining to the legality of Defendant's policies and practices could preclude class-wide awards of penalties under Labor Code §§ 203 and 226(e);
- the risk that individual differences between Class Members could be construed as pertaining to liability, and not solely to damages, *see*, *Duran*, 59 Cal. 4th at 19;
- the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, see Labor Code § 2699(e)(1);
- the risk that lengthy trial or appellate litigation could ensue;
- the risk violation rate estimates could prove lower than expected; and,
- ***the extreme risk that arbitration agreements would preclude class treatment.***

These risks are non-exhaustive. While we remain confident that we possess credible strategies for responding to the legal and factual risks facing them, those risks cannot be disregarded. We carefully considered the risks created by all of these uncontrollable factors when evaluating the reasonableness of this proposed settlement. This Settlement provides a benefit to the Class Members that is very reasonable in light of these particular risks.

17. The Settlement is the product of arm's-length negotiations between the Parties occurring throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery for the Class Members. The settlement amount is, of course, a compromise figure. By

necessity it took into account risks related to liability, damages, and the defenses asserted by Defendants. Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. For the **751** members of the Class, the average ***gross*** benefit is **$466.04** per class member, and the estimated average ***net*** recovery for each Class Member would be approximately **$227.41**. Given that Defendant could potentially defeat certification, particularly in light of the arbitration agreements signed by Class Members, this is a significant sum to have achieved in settlement. Moreover, <u>a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement</u> than a Class Member who worked for a shorter amount of time during the class period.

18. After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement is fair, adequate, and reasonable. The Gross Settlement Amount of <u>**$350,000.00**</u> is about 97.22% of the **$360,006.24** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. While Plaintiff would certainly have preferred to recover more (and Defendant would have preferred to pay less), this outcome is in line with a carefully constructed estimate of the current fair value of the case. On that basis, it would be unwise to pass up this settlement opportunity. The risk-adjusted value of each claim, on a claim-by-claim basis, is as follows:

- A reasonably estimated exposure for unpaid wages due to regular rate issues was A reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the assistance of an expert, to be approximately **$51,039.50**. However, with the high risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$4,083.16**, assuming certification probability of 20% and merits success at 40%. The off-the-clock time resulted from employees having to perform cleanup tasks after clock-out times were recorded, and from waiting to start their shifts. Here, a $4,083.16 exposure has a value of about 8% of its maximum, given a likelihood of success on both certification and the merits, which is an approximation of the chain probability of certification multiplied by merits chances: $0.2 \times 0.4 = 0.08$. Arbitration agreements pose a very high risk for this claim. This theory of recovery also has a high degree of risk because it depends on Class Member estimates of the frequency and duration and is testimony dependent.

- A reasonably estimated exposure for rest break violations over the class period was calculated at **$152,595.00**, but with chances of certification and proof of liability (20% and 20% respectively) for a risk-adjusted exposure of **$6,103.80**. This claim is based entirely on class member testimonials that rest breaks were sometimes missed due to work demands, Plaintiff asserted value for settlement purposes, while understanding that this theory carries the potential for high risk given that employees were often allowed to determine when to take rest breaks. Arbitration agreements pose a very high risk for this claim. The exposure assumes about a quarter of the class at any one time missed a rest break every single week.

- A reasonably calculated exposure for meal break violations over the class period was calculated at **$76,297.50**, with chances of certification and liability risks (30% and 30% respectively) resulting in a risk-adjusted exposure of **$6,866.78**. This exposure is based upon assumed violations from class member testimony, given that the records overwhelmingly show identical, 30-minute meal periods for all class members. Employee choice is a serious issue in the context of a meal period claim. So long as an employee has the opportunity to take a lawful meal period, an employee can choose to take it late, cut it short, or skip it. Arbitration agreements pose a very high risk for this claim.

- The risk-adjusted penalty recovery for Labor Code § 203 penalties was estimated to be approximately **$64,921.50**, on a maximum exposure of **$1,082,025.00** (with certification and merits success chances of 20% and 30% respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The need to show a knowing and intentional violation constitutes an additional risk factor.

- The risk-adjusted penalty recovery for wage statement penalties were estimated to be approximately **$23,706.00**, on a maximum exposure of **$395,100.00** (with certification and merits success chances of 20% and 30% respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The value of this claim was just dealt a severe blow by the recent California Supreme Court decision of *Naranjo v. Spectrum Security Services, Inc*. (May 6, 2024), which significantly strengthened the good faith defense to Section 226 penalties.

- Performing risk-adjusted valuations for all claims yields a total value in the range of **$105,681.24**, excluding PAGA.[1]

- PAGA penalties exposure was calculated to be **$1,695,500**. But, assuming issues with proof and cooperation of aggrieved employees, along with the Court's power to reduce penalties, the realistic exposure was calculated to be **$254,325.00**. As an alternative method of calculating exposure, if the most common $100 penalty per pay period is applied to the total number of pay periods (17,369), the approximated exposure is $1,736,900, which is very close to the calculated exposure derived from actual data.

19. The $350,000.00 settlement here is fully supportable. Many risks are eliminated through settlement. And, with respect to those risks, certification rates in California are ***lower*** than conventional

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[1] It is difficult to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel. The numbers explain with math what can also be described conceptually in words.

wisdom holds. Arbitration agreements present a very high risk to all class claims. The Judicial Council's Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 ("Second Interim Report"), at page 5, states that "less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification ***or*** as part of a classwide settlement agreement." *See*, Second Interim Report, at 5 (emphasis added).[2] That "***or***" is significant. The certification rates identified in the study of less that 25% includes ***both*** contested certifications and settlement certifications, which are the majority of certifications. In other words, one must assume in any wage and hour class action prior to certification that a contested certification motion will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk evaluation. The facts of each case have significant bearing on these percentages. But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified and the result for the class is *zero* dollars. Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California, based upon data available through the California Courts websites showing that well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. The recovery falls within the expected outcome under the likelihood of success metric.[3] It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately $279,932.00, *with no risk reduction*), excluding penalties and interest.[4] Because the total Settlement amount and the proportion of

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[2] The report is available at https://www.courts.ca.gov/documents/classaction-certification.pdf (last viewed March 12, 2024).

[3] *See, e.g.*, *Ferrell v. Buckingham Property Mgmt*. (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042, *17-20 (granting preliminary approval of settlement that represented 5.2% of the original valuation of the claims); *Thomas v. Cognizant Tech. Sols. U.S. Corp*. (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622, at *6 (granting final approval of settlement that encompassed between 4.4% and 5% of the maximum estimated liability).

[4] The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser

the Settlement allocated to PAGA penalties fall within the range of what is reasonable, the Settlement should be approved.

20. To the best of my knowledge there are no other like claims asserted or filed by Class Members. To the best of my knowledge, no Class Member has refrained from bringing an action with claims similar to those raised in the Action, whether in reliance on the Action or otherwise, and who thus might be prejudiced by dismissal of the Action.

<u>THE EXPERIENCE OF CLASS COUNSEL</u>

21. Moon Law Group, PC (former named Moon & Yang, APC), has been engaged in the practice of employment and labor law for almost a decade and presently focuses exclusively on plaintiffs' employment law. The firm and its lawyers have handled many hundreds of wage-related class actions between them. The firm and its lawyers have successfully settled more than 300 class action matters during that time span. The firm and its lawyers have also tried both bench and jury trials (representing both plaintiffs and defendants) relating to employment matters. Moon Law Group, PC, is routinely appointed lead or co-lead class counsel (or counsel for representative plaintiffs in FLSA representative actions) in federal and state courts in California and elsewhere, by way of motion for class certification or motion for settlement approval. I personally participated in the litigation of more than 500 class actions since 1999, and more than 90 percent of those cases were wage and hour matters. While I have not maintained a comprehensive list, I have been appointed as lead or co-lead counsel in many hundreds of class actions.

22. Mr. Kane Moon received a B.A. in History in 1998 from UCLA. He received his J.D. from Loyola Marymount Law School in 2006. He became an Active Member of the State Bar of California in June 2007 and has been an Active Member in good standing continuously since then. He is a current member of the California Employment Lawyers Association (CELA).

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amount than the maximum civil penalty amount specified by this part…")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.,* 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015).

23. Mr. Moon co-founded Moon & Yang, APC, now Moon Law Group, PC, in March 2010. Since that time, Mr. Moon built his practice to have an emphasis on employment and related civil litigation cases. In fact, the practice is focused almost exclusively on advocating for the rights of employees in wage-and-hour litigation through class and representative actions. Moon Law Group, PC is presently class counsel for many dozens of other putative wage-and-hour class and representative action lawsuits pending in various state and federal jurisdictions throughout California. Moon Law Group, PC has also successfully settled hundreds of wage-and-hour cases; tried both bench and jury trials in employment-related matters, representing both plaintiffs and defendants; and been appointed lead or co-lead class counsel in numerous federal and state courts in California. The following is a list of some of the firm's class action settlements that have received preliminary and final approval: *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 20,2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 (class size approx. 2,650; lead counsel) (In approving my $650 hourly rate, the Court found: "Class Counsel's declarations show that the attorneys are experienced and successful litigators. Other courts have approved the attorneys' current rates for the Moon & Yang, APC attorneys." (*Id*. at *10.); *Sison v. Cha Hollywood Medical Center, L.P.*, LASC BC6441 29 (class size approx. 2,100; co-counsel); *Jones v. Fitness Alliance, LLC*, Riverside Superior Court PSC1404079 (class size approx. 1,000; lead counsel); *Gomez v. H Mart Companies, Inc.*, LASC BC671525 (class size approx. 2,500; co-counsel); *Montoya v. Golden 1 Credit Union*, Sacramento Superior Court 34-2018-00228252 (class size approx. 1,900; lead counsel); *Campa v. Bloomingdeals, Inc*., LASC BC700366 (class size approx. 1,500; lead counsel); *Black v. Mission Healthcare Services, Inc*., LASC 19STCV04602 (class size approx. 1,000; lead counsel); *Onofre v. Caitac Garment Processing, Inc*., LASC BC702283 (class size approx. 750; lead counsel); *Martinez v. Bail Hotline Bail Bonds, Inc.*, LASC BC700131 (class size approx. 173; lead counsel); *Jones v. Citiguard, Inc.*, LASC BC664890 (class size approx. 587; lead counsel); *Slaughter v. ACA Security Stems, LP*, LASC BC699137 (class size approx. 300; lead counsel); *Taylor v. Sherman's Delicatessen & Bakery, LLC*, LASC BC722765 (class size approx. 515; lead counsel); *Vertti v. Bagcraft Papercon III, LLC*, LASC 19STCV12729 (class size approx. 260; lead counsel); *Rodriguez v. Rossmoyne, Inc.,* LASC BC699137 (class size approx. 220; lead counsel); *Vargas v. AMS Paving, Inc*., LASC BC722767

(case size approx. 260; lead counsel); *Garcia v. Comfy U.S.A. Apparel, Inc.*, LASC BC709630 (class size approx. 210; lead counsel); *Lagos v. ThyssenKrupp Elevator Corporation*, LASC BC682972 ($750,000 for 79 Class Members; lead counsel); *Aparicio v. Lineage Logistics, LLC*, LASC BC722764 (class size approx. 155; lead counsel). Mr. Moon's experience is and has been invaluable in assessing the reasonableness of settlements such as the one at issue here.

24. Aside from myself and supervising Partner Kane Moon, attorneys and paralegals who worked on this matter include Mariam Ghazaryan, Jaeyoung Lee, and Sophia Tu. Mariam Ghazaryan is an associate at Moon Law Group, PC. Ms. Ghazaryan's practice is focused on labor and employment class action lawsuits involving various violations of California and federal labor laws. Ms. Ghazaryan received her law degree from the Southwestern School of Law. Ms. Ghazaryan was admitted to the California bar in December 2021. Ms. Ghazaryan's billing rate is $700 per hour. Jaeyoung Lee is an associate at Moon Law Group, PC. Mr. Lee's practice is focused on labor and employment class action lawsuits involving various violations of California and federal labor laws. Mr. Lee received his law degree from U.C. Davis. Mr. Lee was admitted to the California bar in May 2022. Mr. Lee's billing rate is $600 per hour. Sophia Tu was a law clerk at Moon Law Group, PC.

25. I received my undergraduate degree from Occidental College. Graduating cum laude, I majored in economics and received a "minor" emphasis in mathematics. Along with my study of economics and mathematics, I also had an emphasis in physics. This combination of scientific and economic education has been of assistance during my litigation of complex civil actions. I received my Juris Doctor degree from the University of Southern California Law Center.

26. My experience relevant to class action litigation includes the following:

(a) I have been involved in the litigation of class actions since 1997, working as a law clerk on a number of class action matters. Since 1999, I have participated as an attorney in the litigation of hundreds of class actions, in California Superior Courts and in federal courts in California, Illinois, and Louisiana. I emphasized litigation of wage and hour class actions beginning in 2005, but I have focused on complex litigation of different types at all times since 1999.

(b) Dating back to 1999, some of the earliest cases in which I contributed to my then-firm's efforts as co-lead/liaison counsel include:

1) *In re Paradise Memorial Park Litigation*, Los Angeles Superior Court Lead Case No. BC130375; and,

2) *In re Lincoln Memorial Park Litigation*, Los Angeles Superior Court Lead Case No. BC133643.

(c) I have litigated contested class certification motions multiple times, prevailing on many. Examples include the following:

1) In 2025, I certified multiple wage and hour claims against Sun Valley Group, in the matter of *Duran v. Sun Valley Group*.

2) In 2023, I certified a rest break claim against SMS Transportation, in the matter of *Beard v. SMS Transportation*. Rest break claims are notably difficult to certify.

3) In 2023, I certified a regular rate claim against Downtown Women's Center, in the matter of *Evans v. Downtown Women's Center*.

4) In 2018, I certified wage and hour claims against Home Depot, in the matter of *Utne v. Home Depot*, in the United Stated District Court, Northern District of California. The contested certification resulted in a certified class of roughly 140,000 individuals.

5) In 2019, I certified a Fair Credit Reporting Act claim related to employment background checks against Wal-Mart Stores, Inc., in the matter of *Pitre v. Wal-Mart Stores, Inc*., in the United Stated District Court, Central District of California. The contested certification resulted in a certified class of over 5,000,000 individuals.

6) In 2018, I fully briefed a contested class certification motion in the matter of *Harelson v. U.S. Aviation*, in the United Stated District Court, Northern District of California. After certification was fully briefed, the matter successfully settled.

7) In 2013, I certified an investment fraud suit, in the matter of *Larsen v. Coldwell Banker*, in the United Stated District Court, Central District of California.

8) In 2012, I fully briefed a contested class certification motion, in the wage and hour matter of *Gillings v. Time Warner*, in the United Stated District Court, Central District of California. In that matter, summary judgment was granted against my clients and the certification motion was deemed moot. I appealed to the Ninth Circuit and obtained a reversal of the District Court's decision. Upon remand, the matter settled.

9) In approximately 2011, I fully briefed a contested class certification motion, in the wage and hour matter of *Gomez v. Lincare, Inc*., in the Superior Court of California, County of Orange. Certification was denied. The result was appealed, and a partial reversal was obtained.

10) In approximately 2008, I fully briefed a contested class certification motion, in the wage and hour matter of *Ghazaryan v. Diva Limousine, LTD.*, Superior Court of California, County of Los Angeles. Certification was denied. I appealed, handling all briefing, and, in *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal.App.4th 1524 (2009), pet. for rev. denied, I obtained a decision directing the trial court to certify the class. *Ghazaryan* is now widely cited, including by the California Supreme Court, as a comprehensive source for the standards applied to certification motions in California.

11) In approximately 2006, I fully briefed a contested class certification motion, in the wage and hour matter of *Laliberte v. Pacific Mercantile Bank*, Superior Court of California, County of Orange. Certification was denied. I appealed, handling all briefing. The published opinion of *Laliberte v. Pacific Mercantile Bank*, 147 Cal.App.4th 1 (2007), rev.

denied, pet. for cert. den. resulted, and I petitioned for a Writ of Certiorari related to certification due process issues.

12) In approximately 2008, I assisted with briefing of a contested class certification motion, in the wage and hour matter, against the Automobile Club of Southern California (AAA). A class was certified and the matter tried.

(d) I have prosecuted appeals in more than 20 class action matters alone, arguing before the United States Court of Appeals for the Ninth Circuit Court and several of California's Courts of Appeal. I have taken several appeals through to Petitions for Writs of Certiorari to the United States Supreme Court. In connection with the appeals I have handled, I have participated in appeals resulting in decisions concerning or relating to class actions or wage and hour issues. Among others, those include:

1) *Camp v. Home Depot, U.S.A., Inc*., 84 Cal. App. 5th 638 (October 24, 2022), *rev. granted* (February 1, 2023);

2) *Donohue v. AMN Services, Inc*., (February 25, 2021) (amicus counsel)

3) *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. Jan. 29, 2019), pet. for rehearing and pet. for *en banc* rehearing den.;

4) *Troester v. Starbucks Corporation*, 5 Cal. 5th 829 (2018), *as modified on denial of reh'g* (Aug. 29, 2018);

5) *Gillings v. Time Warner Cable LLC*, 583 Fed.Appx. 712 (9th Cir. 2014);

6) *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal. App. 4th 1524 (2009), pet. for rev. denied;

7) *Laliberte v. Pacific Mercantile Bank*, 147 Cal. App. 4th 1 (2007), rev. denied, pet. for cert. denied;

8) *Alvarez v. May Dept. Stores Co*., 143 Cal. App. 4th 1223 (2006), rev. denied, pet. for cert. denied;

9) *Johnson v. Glaxosmithkline, Inc*., 166 Cal. App. 4th 1497 (2008), rev.

denied;

10) *Howard, et al. v. America Online, Inc.,* 208 F.3d 741 (9th Cir. 2000), pet. for cert. denied;

11) *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489 (2011) (amicus counsel);

12) *D. R. Horton, Inc. and Michael Cuda*, Case 12–CA–25764, 357 NLRB No. 184 (January 3, 2012) (amicus counsel). This NLRB matter is of particular note, as it is at the center of a dispute regarding the interplay between the Federal Arbitration Act (FAA) and two labor relations laws, the National Labor Relations Act (NLRA) and Norris-LaGuardia Act. Cases highlighting that issue have been accepted by the United States Supreme Court.

(e) I was the lead appellate author in a matter before the California Supreme Court that generated substantial interest in the field of wage and hour litigation. That matter, *Troester v. Starbucks Corporation*, resolved a significant issue of whether, under California law, a *de minimis* defense exists to the employer's obligation to pay all wages for all compensable time worked by an employee.

(f) I was the lead appellate counsel in a matter before the California Court of Appeal (Sixth Appellate District) that generated substantial interest in the field of wage and hour litigation. That matter, *Camp v. Home Depot, U.S.A., Inc.*, held that prior jurisprudence erroneously concluded that, under California law, underpayment of wages as a result of rounding of time clock punches is lawful so long as the rounding was neutral on its face and as applied. *Camp* is now pending before the California Supreme Court but remains citable as authority pursuant to an Order of the California Supreme Court.

(g) In addition to my work on complex litigation matters and class actions, I have authored published articles and columns on issues related to class actions and other litigation issues, including:

1) H. Scott Leviant, *Unintended Consequences*, 6 U.C. Davis Bus. L.J. 18 (2006), at http://blj.ucdavis.edu/article.asp?id=636 (May 1, 2006);

2) H. Scott Leviant and Lilit Ter-Astvatsatryan, *Where Troester Stops Not Even Troester Knows*, DAILY JOURNAL (Los Angeles), July 2, 2019;

3) H. Scott Leviant and Lilit Ter-Astvatsatryan, *Unaccounted Time: Reading the Tea Leaves of Troester*, DAILY JOURNAL (Los Angeles), September 12, 2018;

4) Dennis F. Moss and H. Scott Leviant, *Class Actions: One step forward after two steps back*, DAILY JOURNAL (Los Angeles), January 11, 2012;

5) H. Scott Leviant, *Arbitration: A Look Back, a Look Ahead*, DAILY JOURNAL (Los Angeles), December 28, 2010;

6) H. Scott Leviant, *Witnesses Cannot Hide*, Daily Journal (Los Angeles), April 21, 2010;

7) H. Scott Leviant, *Divide and Conquer: The New Paradigm of Class Action Defense?*, FORUM, January/February 2009

8) H. Scott Leviant, *Class Action Appellate Report*, FORUM, 2009-2010 (Ongoing series);

9) H. Scott Leviant & Linh Hua, *Legislature Using Purse Strings to Bind Judiciary*, Daily Journal (San Francisco), March 15, 2010;

10) H. Scott Leviant, *Wrongfully Recused?*, DAILY JOURNAL (Los Angeles), December 2, 2009;

11) H. Scott Leviant, *Cutting Class*, DAILY JOURNAL (Los Angeles), April 15, 2008;

12) H. Scott Leviant, *Leveling The Playing Field*, DAILY JOURNAL (Los Angeles), May 4, 2007;

13) H. Scott Leviant, *A Bad Meal Deal: 'Brinker' Gets the Incentive Question Wrong*, DAILY JOURNAL (Los Angeles), August 6, 2008;

14) H. Scott Leviant & Jason E. Barsanti, *Maximize Recovery in Unpaid*

Wage Cases, FORUM, January/February 2008;

15) H. Scott Leviant, et al., *Electronic Evidence: No Longer an Optional Element in a Comprehensive Litigation Plan*, ADVOCATE, April 2006;

16) H. Scott Leviant, *Improving Rule 12(b)(6) survival odds: Some considerations for effective RICO pleading*, CIVIL RICO REPORT, Volume 15, Number 22, April 26, 2000 (LRP Publications).

(h) In addition to publications in industry newspapers, periodicals and journals, I am the Supervising Editor, primary author and founder of the legal blog The Complex Litigator (http://www.thecomplexlitigator.com). The Complex Litigator reports and comments on news and topics relevant to class action and complex litigation practice, with a primary emphasis on wage and hour litigation issues. Through my blog, I have also, on occasion, published podcasts of round table discussions with preeminent members of the wage and hour practice bar on both the plaintiff and defense sides. My blog has been cited to the California Supreme Court in at least one Petition for Review. The Complex Litigator has been in existence since 2008, having outlasted many other legal blogs, and it has a unique readership that numbers in the tens of thousands.

(i) I have also lectured on issues related to class actions and complex litigation, including the following educational seminars:

1) *Strategies for Settlement of Individual and Wage & Hour Class Actions*, Bridgeport's Eighth Annual Wage & Hour Litigation Conference (December 16, 2011)

2) *The Year in Review – Staying Abreast of Current Cases*, Consumer Attorneys of San Diego Class Action Symposium (October 14, 2011)

3) *Concepcion v. AT&T and Derivative Wage & Hour Claims*, Bridgeport's Mid Year Wage & Hour Litigation Conference (June 3, 2011)

4) *Advanced Principles: UCL Remedies and Defenses*, 20th Annual Golden State Antitrust and Unfair Competition Law Institute (October 21, 2010)

5) *Refining Your Wage and Hour Practice*, 2010 CELA Annual Conference (October 2, 2010)

6) *Word v. WordPerfect Software, Tips, Tools and Tricks*: Legal Technology for Plaintiffs Employment Lawyers (September 30, 2010)

7) *California's 17200 -- Its Use and Abuse*, Federalist Society (May 19, 2010)

8) *20 Tips for Successful Navigation of e-Discovery Requirements*, Los Angeles County Bar Association's Thirtieth Annual Labor and Employment Law Symposium (March 31, 2010)

9) *Social Networking for Lawyers*: A Roadmap to Success, Los Angeles County Bar Association's 2nd Annual two-day 2009 Small Firm and Solo Practitioners Conference: MISSION POSSIBLE (June 25, 2009)

10) *A Seminar Overview of the Current State of Employment Law*, The Westchester/LAX/Marina Del Rey Chamber of Commerce (February 23, 2006)

(j) I served three consecutive years as an elected member of the Board of Governors of the Consumer Attorneys of California. In that capacity, I worked to preserve the right of California's consumers and employees to bring proposed class actions. For example, I provided assistance to CAOC in its successful effort to defeat AB 298, which would have substantially impaired the ability of plaintiffs to prosecute class actions in California. More recently, on behalf of CAOC, I co-authored several requests for publication of unpublished class action decisions, including one such request in *Jaimez v. Daiohs USA, Inc*., 181 Cal. App. 4th 1286 (2010), and authored amicus briefs for CAOC in the Eighth Circuit matter entitled *Avritt v. Reliastar Life. Ins. Co*., Case No. 09-2843, the California Supreme Court matter entitled *Californians for Disability Rights v. Mervyn's, LLC*, 39 Cal. 4th 223 (2006), and the California Court of Appeal matter entitled *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489

(2011).

27. My current contingent billing rate is consistent with my practice area, 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 have frequently 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.

(b) In 2009 I was retained as appellate counsel in the appeal of a denial of class certification. For the specialized work on that appeal, I charged an hourly rate of $650.00 per hour, a rate the hiring co-counsel accepted.

(c) The 2024-25 Adjusted Laffey Matrix states that an attorney with 20 or more years experience can reasonably charge $1,141 per hour. http://www.laffeymatrix.com/see.html.[5] That rate is derived from the Washington, D.C. area and requires a costs of living evaluation for use in Los Angeles. Using federal statistics for average attorney salaries, attorney pay is 4.9% lower in Los Angeles, compared to Washington, D.C., indicating a 4.9% downward adjustment to the Laffey Matrix may be appropriate. https://www.bls.gov/oes/current/oes231011.htm.[6] However, using federal employee pay tables, federal employee wages are equal when Los Angeles is compared to Washington, D.C., indicating no adjustment to the Laffey Matrix is appropriate. https://www.opm.gov/policy-data-oversight/pay-leave/salaries-

[5]Last viewed October 15, 2024.

[6]Last viewed January 30, 2024.

wages/2017/general-schedule/.[7] And, using Schedule 9 of 5 U.S.C. § 5332, there is a 3% differential favoring Los Angeles. Thus, something in the range of a 4.4% locality reduction to a 3.0% locality increase appears appropriate here. Thus, applying an adjustment factor of 0.0%, the locality corrected Adjusted Laffey Matrix hourly rate for attorneys with 20 or more years of experience is $1,141. The complete Adjusted Laffey Matrix is set forth below.

(d) The full 2024-2025 Adjusted Laffey Matrix provides for the following hourly rates for paralegal/law clerks and attorneys falling into various ranges of years of experience:

Year	Adj. Factor**	Paralegal Clerk	1-3	4-7	8-10	11-19	20+
6/01/24-5/31/25	1.080182	$258	$473	$581	$839	$948	$1141

(e) I have been selected to Super Lawyers from 2012-2025, achieving that professional recognition for more than a decade. I was selected for the Rising Stars edition of Super Lawyers in 2009.

(f) Based upon my practice area, geographic market, experience, including all of the above information, reputation, and generally accepted hourly rates, my current, regular hourly billing rate is now $975.00, which is well below the presumptively appropriate hourly rate of $1,141 for attorneys with 20 or more years of experience.

REASONABLENESS OF THE REQUESTED FEE AWARD

28. When this case was taken on a contingent fee basis, with the firm agreeing to assume responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation, Moon Law Group, PC, paid filing fees, copy charges, Westlaw fees, and mailing, telephone and express mail charges. There was never a guarantee that Moon Law Group, PC, would recoup those expenditures.

[7] Last viewed January 30, 2024.

The firm took on this case, which necessarily required the firm to forego other opportunities, given finite resources to devote to cases.

29. Because of the uncertainty of the outcome in this and other wage and hour litigation undertaken by Moon Law Group, PC, we took this case with the expectation that a risk enhancement, either in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be available if we prevailed. This expectation stems from the fact that many cases we undertake as putative class actions do not resolve successfully.

30. Class Counsel's experience in employment class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow fields of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation.

31. In the past 5 years, Moon Law Group, PC, has settled hundreds of wage & hour class actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it has been the experience at Moon Law Group, PC, that attorney fee awards of one-third of a common settlement fund are the rule, rather than the exception. Here, Class Counsel agrees that they will seek no more than one third of the settlement amount in fees. This is consistent with common practice, consistent with Ninth Circuit practice, consistent with California law approving the percentage of the fund method to award fees from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not inappropriate in light of the many hours expended by attorneys and paralegals performing work for Plaintiff before and after the filing of this matter. That work includes:

(a) Numerous interviews with the client, and review of documents provided by Plaintiff;

(b) Legal research and investigation regarding the Defendant's practices at numerous points in the litigation;

(c) Preparation of multiple drafts of the original class action complaint and finalization and filing of the original class action complaint;

(d) Review of the first amended complaint, and finalization of that complaint;

(e) Extensive "meet and confer" efforts with Defendant's counsel to obtain relevant documents and information through informal discovery;

(f) Contacting witnesses;

(g) Review of data and documents produced by Defendant;

(h) Analysis of the audit results and preparation of a damages model with the aid of a statistics expert;

(i) Research and preparation of Plaintiff's mediation brief;

(j) Attendance at mediation;

(k) Drafting, negotiating, and reviewing multiple drafts of the Settlement and attachments;

(l) Preparation of the initial motion for preliminary approval and multiple revisions thereafter;

(m) Supervising the Notice process; and,

(n) Preparing the initial motion for final approval and multiple revisions thereafter.

32. The recorded lodestar incurred by Moon Law Group, PC, is approximately **$120,757.50** to date, based on the firm's contemporaneous time recording software, and I did not bill for a significant amount of time related to discovery disputes (I estimate that I did not bill for approximately 5 hours of time reviewing correspondence, reviewing mediation data, and numerous other activities, for an unbilled lodestar of approximately $4,875). The breakdown of work by attorney is as follows:

Attorney	**Time**	**Rate**	**Total**
H. Scott Leviant	62.3	$975	$60,742.50
Kane Moon	27.4	$900	$24,660.00
Mariam Ghazaryan	43.6	$700	$30,520.00
Jaeyoung Lee	6.1	$600	$3,660.00
Sophia Tu	4.7	$250	$1,175.00
	144.1	**Total:**	$120,757.50

That lodestar would be approximately $4,875 higher if I included the estimated time that I did not include in by billing entries. I also anticipate that I will spend an additional 5 hours on this matter, appearing at the hearing of this Motion, working with the administrator to process the Settlement, obtaining a supplemental declaration for this Court's review, and preparing final accounting filings after distribution of the Settlement. I will incur most or all of that time myself, including time devoted to preparation of the motion for final approval and working with the administrator to resolve any issues, for an estimated additional lodestar of $9,750.00. Adding my unbilled and anticipated lodestar to the lodestar to date, I anticipate that Class Counsel's lodestar will be no less than **$130,507.50**. Class Counsel requests **<u>$116,666.66</u>** in attorneys' fees, as authorized under the Agreement. Compared to the lodestar of Moon Law Group, PC, this represents a *negative* multiplier of approximately **0.89**, which falls within the range of commonly approved lodestar multipliers, when compared to the recorded, unbilled, and estimated future lodestar of **$130,507.50**. It has long since been established that multipliers between two and four are common and reasonable for a lodestar crosscheck. Given the significant result, a lodestar multiplier of 0.89 is more than reasonable. The Settlement also provides for the award of actual costs. Recoverable costs are capped at $14,000.00 under the Settlement. Actual costs, which are $14,239.99 prior to the filing of this Motion, exceed $14,000.00. Therefore, Moon Law Group, PC seeks costs in the amount of **<u>$14,000.00</u>**. Costs incurred by Moon Law Group, PC, are set forth in **Exhibit 2**.

<u>THE CONTRIBUTION OF PLAINTIFF AND THE REASONABLENESS OF THE REQUESTED INCENTIVE AWARD</u>

33. Here, Plaintiff seeks a Service Payment of up to **$5,000.00**. This amount is very reasonable given the risks undertaken by Plaintiff for involvement in the Action. Taking the risk of filing a lawsuit against an employer deserves recognition, especially in light of the settlement achieved by Plaintiff. Additionally, Plaintiff was actively involved in the litigation and settlement negotiations of this Action, expending considerable effort in advancing the interest of the Class. Plaintiff providing information to counsel before the filing of this matter; assisted with the settlement process (with included conferring with counsel during the preparation of Plaintiff's mediation brief); and, regularly conferred with counsel regarding the case whenever questions arose. Plaintiff's Declaration also confirms that

Plaintiff was an active participant in the settlement of this case.

THE THIRD-PARTY ADMINISTRATOR QUALIFICATIONS AND STATEMENT OF NO CONFLICTS OR AFFILIATION

34. The parties agreed that administration would be handled by a third-party administrator. In counsel's experience as class counsel in similar wage-and-hour actions with a similar number of employees, ILYM Group, Inc., is fully capable of administering the settlement at a competitive and reasonable cost and should be approved by the Court to administer the settlement notice process. ILYM was selected because it submitted a low bid in the amount of **$8,550.00** for administration services, below the estimated amount of $10,000. ILYM has now provided a declaration confirming that the Notice process was conducted in conformity with the Court's Order and the Agreement. ILYM provided a declaration confirming its experience and its implementation of measures designed to protect Class Member data and Class Settlement funds. Finally, this firm has no relationship with Phoenix Class Action Administration Solutions other than as a client retaining a vendor of services via an arms-length transaction. We have no ownership interest in ILYM.

EXHIBITS

35. As noted above, a true and correct copy of the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE is attached hereto as **Exhibit "1."** The Settlement includes Exhibit A (the "Notice").

36. Attached hereto as **Exhibit "2"** is a true and correct copy of a report of costs incurred by Moon Law Group, PC, in this matter.

37. Attached hereto as **Exhibit "3"** is a true and correct copy of confirmation of the submission of the settlement to the Department of Industrial Relations, through its online submission portal.

PAGA SETTLEMENT NOTIFICATION TO DIR

38. Counsel for Plaintiff provided notice of the requested approval of the PAGA settlement

through the online submission portal.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed September 2, 2025, at Los Angeles, California.

H. Scott Leviant, "Declarant"

Exhibit “1”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ERIK CLEMENTE, individually, and on behalf of all others similarly situated, Plaintiff, vs. MIDWAY CONSTRUCTION CORP., a California corporation; and DOES 1 through 10, inclusive, Defendants	Case No.: CIVSB2228816 <u>CLASS ACTION</u> [Assigned for all purposes to the Hon. Jessica Morgan] **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE** Complaint filed: December 27, 2022

This Class Action and PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Erik Clemente ("Plaintiff") and defendant Midway Construction Corporation ("Defendant"). The Agreement refers to Plaintiff and Defendant collectively as "Parties."

1. DEFINITIONS.

1.1. "Action" means the Plaintiff's lawsuit alleging wage and hour violations against Defendant captioned *Erik Clemente v. Midway Construction Corporation* initiated on December 27, 2022, and pending in Superior Court of the State of California, County of San Bernardino.

1.2. "Administrator" means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. "Aggrieved Employee" means all persons who worked for Defendant in California as non-exempt employees during the PAGA Period.

1.5. "Class" means all persons who worked for Defendant in California as non-exempt employees during the Class Period.

1.6. "Class Counsel" means Moon Law Group, PC.

1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.8. "Class Data" means Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address ("NCOA") database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation unless otherwise agreed by the Parties, attached as Exhibit A and incorporated by reference into this Agreement. The Parties, through counsel, may agree to modifications to the Class Notice required to correct errors or effectuate changes required by the Court without the need to amend this Agreement, and the revised Class Notice shall be incorporated herein in place of the original Exhibit A.

1.12. "Class Period" means the period from December 27, 2021, through August 24, 2024.

1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of San Bernardino.

1.16. "Defendant" means named Defendant Midway Construction Corporation.

1.17. "Defense Counsel" means ArentFox Schiff LLP.

1.18. "Effective Date" means the date by when the following have occurred: the date the Court grants the Motion for Final Approval and upon service of the Notice of Entry of Order and/or Judgment, and upon the latter of: (i) if no appeal, or other challenge is filed, the sixty-first (61st) day following Notice of Entry of the Court's Order and/or Judgment; (ii) the date of affirmance of an appeal of the Order Granting Final Approval and/or Judgment becomes final under the California Rules of Court; or (iii) the date of final dismissal of any appeal from the Order Granting Final Approval and/or Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order Granting Final Approval and/or Judgment.

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the motion for final approval of the Settlement.

1.21. "Gross Settlement Amount" means $350,000 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 3.1 and 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment.

1.22. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.23. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.24. "Judgment" means the judgment entered by the Court based upon the Final Approval.

1.25. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

1.26. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).

1.27. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.28. "Non-Participating Class Member" means any Class Member who opts out of the Class portion of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.29. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.30. "PAGA Period" means the period from December 27, 2021, through August 24, 2024.

1.31. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. *et seq*.).

1.32. "PAGA Notice" means Plaintiff's December 24, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

1.33. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

1.34. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement.

1.35. "Plaintiff" means Erik Clemente, the named plaintiff in the Action.

1.36. "Preliminary Approval" means the Court's order granting preliminary approval of the Class portion of the Settlement.

1.37. "Preliminary Approval Order" means the proposed order granting preliminary approval of the Class portion of the Settlement.

1.38. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.39. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.40. "Released Parties" means: Defendant and each of its past, present, and future agents, employees, clients, officers, directors, managing agents, owners (whether direct or indirect), partners, trustees, representatives, shareholders, attorneys, parents, subsidiaries, related companies/corporations and/or partnerships, assigns, predecessors, successors, insurers, joint employers, temporary staffing agencies, common law employers, dual employers, co-employers, contractors, affiliates, any person and/or entity alleged to have joint liability, and all of their respective past, present, and future employees, directors, officers, owners, agents, representatives, payroll agencies, attorneys, fiduciaries, parents, subsidiaries, and assigns.

1.41. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.42. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Class portion of the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. The Response Deadline for Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall be extended by fourteen (14) calendar days beyond the original Response Deadline.

1.43. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.44. "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

2.1. On December 27, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay minimum and regular rate wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, and unfair business practices. On April 21, 2023, Plaintiff filed a First Amended Complaint (the "Operative Complaint") alleging an additional cause of action against Defendant for violation of the Private Attorneys General Act ("PAGA"). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. On June 25, 2024, the Parties participated in an all-day mediation presided over by Hon.

Carl West (Ret.), which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained through informal discovery, electronic time and pay records, policy documents, and data about the class. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay $350,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than $5,000, in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for Class Representative Service Payment that do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be $116,666.66 and a Class Counsel Litigation Expenses Payment of not more than $14,000.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed $10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration expenses are less or the Court approves payment less than $10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Workweeks of Non-Participating Class Members are not included in the calculation of payments to Participating Class Members and therefor have no effect on the calculation of Individual Class Payments paid from the Net Settlement Amount.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $35,000.00 to be paid from the Gross Settlement Amount, with 75% ($26,250.00) allocated to the LWDA PAGA Payment and 25% ($8,750.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099-MISC Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 747 Class Members who collectively worked a total of 33,910 Workweeks, and 747 of Aggrieved Employees who worked a total of 16,955 PAGA Pay Periods.

4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall make the settlement payment to the settlement administrator in two payments. Defendant shall fund half of the Gross Settlement Amount within sixty (60) days of the Effective Date and fund the remaining portion of the Gross Settlement Amount within six (6) months of the first payment, along with Defendant's share of any employer taxes owed on the Wage Portion of the Individual Class Payments.

4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendant fully funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the NCOA database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are retuned undelivered without a United States

Postal Service ("USPS") forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the State Bar's Justice Gap Fund ("Cy Pres Recipient"). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. The Parties authorize their counsel to jointly select a new Cy Pres Recipient without requiring an amendment to this Settlement in the event that the selected Cy Pres Recipient is not approved by the Court.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.**

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiff's Release.

5.1.1. Scope of Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from any and all claims, known and unknown, under federal, state, and/or local law, including but not limited to claims arising from or related to his employment with Defendant and his compensation while an employee of Defendant, including, but not limited to: all causes of actions alleged in the Action, or that could have been raised in the Action, and/or raised in the PAGA letter sent to the LWDA (dated December 24, 2022). Plaintiff's Released Claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime, and interest; the calculation of the regular rate of pay; wages related to alleged illegal time rounding; meal and rest period premiums; failure to provide meal periods; failure to authorize and permit rest periods; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; failure to pay vacation wages; timely payment of wages due; wage statements; unlawful deductions; failure to keep accurate records; unfair business practices; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiff's Released Claims include all claims arising under the California Labor Code; the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act ("PAGA"); California Business and Professions Code sections 17200, et seq.; the California Civil Code, to include but not limited to, sections 3287, 3336 and 3294; 12 CCR § 11040; 8 CCR § 11060; California Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. §§ 201, et seq.; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, et seq. Plaintiff's Released Claims also include all claims for lost benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for discrimination, harassment, and retaliation, such as, by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the

Age Discrimination in Employment Act, and the California Fair Employment and Housing Act; and the law of contract and tort. This release excludes the release of claims not permitted by law. Plaintiff's Released Claims include all claims, whether known or unknown. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits of Section 1542 of the California Civil Code, which reads:

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.

5.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims alleged in the Operative Complaint or that could have been alleged based on the facts and allegations in the Operative Complaint, including all claims for unpaid wages, including, failure to pay minimum wages, overtime compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods; failure to authorize and permit rest periods; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to pay all wages when due; unfair business practices related to the Class Released Claims; penalties, including wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs; as well as all claims related to the Class Released Claims arising under: the Wage Orders of the California Industrial Welfare Commission. This release excludes the release of claims not permitted by law.

5.3. <u>Release by Class Members Who Are Aggrieved Employees:</u> All Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under PAGA asserted in the December 24, 2022, PAGA letter sent to the LWDA or that could have been asserted based upon the facts and allegations stated in the December 24, 2022, PAGA letter sent to the LWDA.

6. <u>MOTION FOR PRELIMINARY APPROVAL.</u>

The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for preliminary approvals, to the extent the Court maintains such a checklist.

6.1. <u>Defendant's Declaration in Support of Preliminary Approval</u>. Within 14 days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed declaration from Defendant and/or Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient, *if any such actual or potential conflicts exist*. Similarly, if any other pending matter or action asserting claims will be extinguished or adversely affected by the Settlement, Defendant shall prepare and deliver to Class Counsel a signed declaration from Defendant and/or Defense Counsel identifying any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement. Alternatively, if such other actions are filed between the execution of this Agreement and the filing of the Motion for Preliminary Approval and become known to Defendant and/or Defense Counsel, Defense Counsel will advise Class Counsel. If there are no actual or potential conflicts of interest with the Administrator and the Cy Pres Recipient to disclose, or any pending matters to disclose, no declaration from Defendant and/or Defense Counsel is required.

6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699(f)(2)); (ii) a draft proposed order granting preliminary approval and approval of PAGA settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and the proposed Cy Pres; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator and the proposed Cy Pres; and, (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents; and, all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator, and the Cy Pres Recipient. Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement or disclose the existence of any such pending matters. Alternatively, if such other actions are filed between the execution of this Agreement and the filing of the Motion for Preliminary Approval and become known to Class Counsel, Class Counsel will advise Defense Counsel.

6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the

Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation § 468B-1.

7.4. Notice to Class Members.

7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice, with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of each Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the NCOA database.

7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections, challenges to Workweeks and/or pay periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notices are re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class

Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class portion of the Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Class portion of the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final as to the Parties, but a Class Member whose Request for Exclusion is rejected by the Administrator may present a challenge to that determination to the Court.

7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have forty-five (45) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final as to the Parties (although Defendant shall retain the right to correct erroneous Class Data if subsequently discovered), but a Class Member whose Workweek and/or Pay Period challenge is rejected by the Administrator may present the same evidence supporting the Workweek and/or Pay Period challenge to the Court for review. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7. Objections to Settlement.

7.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval Order, the Class Notice, the motion for final approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final approval Order and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, and challenges to Workweeks and/or PAGA Pay Periods received and/or resolved ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received. In addition to the Weekly Reports, the Administrator shall report to the Parties when it has completed the initial distribution of the Individual Class Payments and Individual PAGA Payments to all individuals with valid addresses.

7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or PAGA Pay Periods. The Administrator's determination of each Class Member's allocation of Workweeks and/or PAGA Pay Periods shall be final as to the Parties (although Defendant shall retain the right to correct erroneous Class Data if subsequently discovered), but a Class Member whose Workweek and/or Pay Period challenge is rejected by the Administrator may present the same evidence supporting the Workweek and/or Pay Period challenge to the Court for review.

7.8.5. Administrator's Declaration. Not later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 747 Class Members and 33,910 Total Workweeks during the Class period and (2) there were 747 Aggrieved Employees who worked 16,955 Pay Periods during the PAGA Period. If the number of work weeks worked by class members exceeds 35,530 (i.e., 10% more than the number of work weeks estimated by Defendant), then the settlement will increase by 1% for every 1% over the 10% threshold. If this escalator clause is triggered due to a more than 10% increase in the expected workweeks, then Defendant can terminate the settlement agreement at its sole discretion.

9. DEFENDANT'S RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated to, withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement administration expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL.

Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699(l), a Proposed final approval order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later that five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative

Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT.

If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to

Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Kane Moon
kmoon@moonlawgroup.com
H. Scott Leviant
hsleviant@moonlawgroup.com
Mariam Ghazaryan
mghazaryan@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa St., Suite 3100
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

To Defendant:

Daniel J. McQueen
daniel.mcqueen@afslaw.com
ARENTFOX SCHIFF LLP
555 West Fifth Street, 48th Floor
Los Angeles, California 90013
Telephone (213) 629-7400
Facsimile: (213) 629-7401

12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure § 583.330 to extend the date to bring a case to trial under Code of Civil Procedure § 583.310 for the entire period of this settlement process.

Plaintiff & Class Representative:

Dated: September 16, 2024 By: Erik Clemente
Erik Clemente

Plaintiff's Counsel:

Dated: September 16, 2024 **MOON LAW GROUP, PC**

By: Kane Moon
Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

Defendant:

Dated: September 16, 2024

MIDWAY CONSTRUCTION CORPORATION

By: Austin Campbell
Print Name

Signature

President
Title

Defendant's Counsel:

Dated: September 16, 2024

ARENTFOX SCHIFF LLP

By:
Daniel J. McQueen

Attorneys for Defendant

Exhibit "A"

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Clemente v. Midway Construction Corporation, Case No. CIVSB2228816

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit ("Action") against Midway Construction Corporation ("Midway") for alleged wage and hour violations. The Action was filed by a former Midway employee Erik Clemente ("Plaintiff") and seeks payment of: (1) back wages and other relief for hourly/piece rate employees ("Class Members") who worked for Midway during the "Class Period" (December 27, 2021 through August 24, 2024); and, (2) penalties under the Private Attorneys General Act ("PAGA") for hourly/piece rate employees who worked for Midway during the "PAGA Period" (December 27, 2021 to August 24, 2024) ("Aggrieved Employees"). The proposed settlement (the "Settlement") has two main parts: (1) a "Class Settlement" requiring Midway to make individual settlement payments to Class Members ("Individual Class Payments"), and (2) a "PAGA Settlement" requiring Midway to make individual settlement payments to Aggrieved Employees ("Individual PAGA Payments") and pay penalties to the Labor and Workforce Development Agency ("LWDA").

Based on Defendant's records, your Individual Class Payment is estimated to be $______ (less withholdings) and your Individual PAGA Payment is estimated to be $______.

The above estimates are based on Defendant's records showing that you worked ______ workweeks during the Class Period, and ______ pay periods during the PAGA Period. If you believe that you worked more workweeks or pay periods during either of those periods, you can submit a challenge by the deadline date. See **Section 4** of this Notice.

The court has preliminarily approved the proposed Settlement and approved this Notice. The court has not yet decided whether to grant final approval. Your legal rights are affected, depending on whether you take action or do nothing in response to this Notice. Read this Notice carefully. At the final approval hearing, the court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The final approval hearing is scheduled to be held on ______________ at ________ in Department 26 of the San Bernardino Superior Court, located at 247 W 3rd St, San Bernardino, CA 92415.

If you worked for Midway during the Class and PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing**. You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Class Member, though, you will give up your right to assert Class Period wage claims against Midway. You will have the right to object to any part of the proposed Settlement if you do not exclude yourself from the Class Settlement.

(2) **Opt-Out of the Class Settlement**. You can exclude yourself from the Class Settlement (opt-out) by submitting a Request for Exclusion to the Administrator. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Midway, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment in the Action. You cannot opt-out of the PAGA portion of the proposed Settlement.

Midway will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a participant in the Settlement, and remain eligible for an Individual Class Payment and an Individual PAGA Payment. In exchange, you will give up your right to assert the wage claims against Midway that are covered by this Settlement ("Released Claims").
You Can Opt-out of the Class Settlement but not the PAGA Settlement **The Opt-out Deadline is ______________**	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a "Non-Participating Class Member" and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section **6** of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement.

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement **Written Objections Must be Submitted by** ______________	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section **7** of this Notice.
You Can Participate in the ______________ **Final Approval Hearing**	The court's Final Approval Hearing is scheduled to take place on ______________. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone, or by using the court's remote appearance options. Participating Class Members can object to the Settlement at the final approval hearing. See Section **8** of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods **Written Challenges Must be Submitted by** ______________	The amounts of your Individual Class Payment and Individual PAGA Payment depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The numbers of workweeks/pay periods you worked according to Midway's records are stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by ______________. See Section **4** of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Midway employee. The Action accuses Midway of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses, and by failing to provide meal periods, rest breaks, and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for penalties under the PAGA. Plaintiff is represented by Moon Law Group, PC ("Class Counsel").

Midway strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws. The court has made no determination whether Midway or Plaintiff are correct on the merits.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

Plaintiff and Midway hired an experienced mediator, Hon. Carl West (Ret.), in an effort to settle the Action. The negotiations were successful. Plaintiff and Midway have negotiated a proposed Settlement that is subject to the court's final approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Midway does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Midway has agreed to pay a fair, reasonable, and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine final approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Midway will pay $350,000 as the Gross Settlement Amount ("Gross Settlement"). Midway has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsels' attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the LWDA. Midway will make the settlement payment to the Administrator in two payments. Midway will fund one-half of the Gross Settlement 60 days after the judgement entered by the court becomes final. Midway will fund the remaining portion of the Gross Settlement 6 months thereafter. The judgment will be final 61 days after the Court enters judgment and Notice of Entry of Order and/or Judgment is served, or a later date if Participating Class Members object to the proposed Settlement or the judgment is appealed.

2. Court approved deductions from Gross Settlement. At the final approval hearing, Plaintiff and/or Class Counsel will ask the court to approve the following deductions from the Gross Settlement:

A. Up to $116,666.66 (One Third of the Gross Settlement Amount) to Class Counsel for attorneys' fees and up to $14,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to $5,000 for the class representative service award for filing the Action, working with Class Counsel, and representing the Class.

C. Up to $10,000 to the Administrator for services administering the Settlement.

D. $35,000 for PAGA penalties, allocated 75% to the LWDA ($26,250) and 25% in Individual PAGA Payments ($8,750) to the Aggrieved Employees based on their PAGA Period pay periods.

Participating Class Members have the right to object to any of these deductions. The court will consider all objections.

3. Net Settlement distributed to Class Members. After making the above deductions in amounts approved by the court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period workweeks.

4. Taxes owed on payments to Class Members. Plaintiff and Midway are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Midway will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Midway have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to promptly cash payment checks. The front of every check issued for the Settlement will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled and the money will be redirected to California State Bar's Justice Gap Fund, or some other charitable entity approved by the Court.

6. Requests for exclusion from the Class Settlement ("Opt-Outs"). You will be treated as a Settlement Class Member unless you notify the Administrator in writing, not later than ____________, that you wish to Opt-Out. The easiest way to notify the Administrator is to send in a Request for Exclusion by the response deadline. The Request for Exclusion should be signed. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments but will preserve their rights to personally pursue wage and hour claims against Midway.

You cannot Opt-Out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments in the Action but are required to give up their right to assert PAGA claims against Midway based on the PAGA Period facts alleged in the Action.

7. The proposed settlement will be void if the court denies final approval. It is possible the court will decline to grant final approval of the Settlement or decline to enter a judgment. It is also possible the court will enter a judgment that is reversed on appeal. Plaintiff and Midway have agreed that, in either case, the Settlement will be void: Midway will not pay any money and Class Members will not release any claims against Midway.

8. Administrator. The court has appointed a neutral company, ____________ (the "Administrator"), to send this Notice, calculate and make payments, and process Class Members' requests for exclusion. The Administrator will also decide Class Member challenges over workweeks and/or pay periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement.

9. Participating Class Members' release. After the judgment is final and Midway has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out, you cannot sue, continue to sue, or be part of another lawsuit against Midway or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The "Released Parties" are Midway and each of its past, present, and future agents, employees, clients, officers, directors, managing agents, owners (whether direct or indirect), partners, trustees, representatives, shareholders, attorneys, parents, subsidiaries, related companies/corporations and/or partnerships, assigns, predecessors, successors, insurers, joint employers, temporary staffing agencies, common law employers, dual employers, co-employers, contractors, affiliates, any person and/or entity alleged to have joint liability, and all of their respective past, present, and future employees, directors, officers, owners, agents, representatives, payroll agencies, attorneys, fiduciaries, parents, subsidiaries, and assigns.

The Participating Class Members will be bound by the following release:

> All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims alleged in the Operative Complaint or that could have been alleged based on the facts and allegations in the Operative Complaint, including all claims for unpaid wages, including, failure to pay minimum wages, overtime compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods; failure to authorize and permit rest periods; payment for all hours worked, including off-the-clock work; failure to reimburse business expenses; wage statements; failure to pay all wages when due; unfair business practices related to the Class Released Claims; penalties, including wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs; as well as all claims related to the Class Released Claims arising under: the Wage Orders of the California Industrial Welfare Commission. This release excludes the release of claims not permitted by law.

10. The PAGA release. After the court's judgment is final, and Midway has paid the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff and the LWDA will release the PAGA claim for violations identified in Plaintiff's PAGA Notice to the LWDA. The PAGA Release is as follows:

> All Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under PAGA asserted in the December 24, 2022, PAGA letter sent to the LWDA or that could have been asserted based upon the facts and allegations stated in the December 24, 2022, PAGA letter sent to the LWDA.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of workweeks worked by each individual Participating Class Member.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing $8,750 by the total number of PAGA Period pay periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period pay periods worked by each individual Aggrieved Employee.

3. Workweek/pay period challenges. The number of workweeks and pay periods, as recorded in Midway's records, are stated in the first page of this Notice. You have until ______________ to challenge these numbers. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Midway's calculations as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve workweek or pay period challenges based on your submission and on input from Class Counsel and Midway's Counsel.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out), including all Class Members who qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member who is eligible as an Aggrieved Employee).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Send in a Request for Exclusion to the Administrator. A Request for Exclusion is a letter from a Class Member that reasonably communicates the Class Member's election to be excluded from the Class portion of the Settlement and includes the Class Member's name, address and email address or telephone number. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to identify the Action in a way that is clear (include the case name and case number). The Administrator must receive your request to be excluded by _____________, or it will be invalid.

If you wish to opt-out of the Class Settlement, DO NOT send in a written objection.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement, the motion for final approval and for awards of fees, litigation expenses and service award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. The deadline for sending written objections to the Administrator is _____________. Be sure to tell the Administrator in your written objection what you object to, why you object, and any facts that support your objection. If you submit a written objection, make sure you identify the Action (by including the case name and case number) and print your name, address and email address or telephone number and sign the objection.

Alternatively, a Participating Class Member can object (or personally hire a lawyer to object at your own cost) by attending the final approval hearing. You (or your attorney) should be ready to tell the court what you object to, why you object, and any facts that support your objection. See Section **8** of this Notice (below) for specifics regarding the final approval hearing.

If you wish to object in writing or in person, DO NOT send in a Request for Exclusion.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the final approval hearing on _____________ at ________ in Department 26 of the San Bernardino Superior Court, located at 247 W 3rd St, San Bernardino, CA 92415. At the hearing, the court will decide whether to grant final approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The court will invite comment from objectors, Class Counsel, and defense counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or telephonically.

It's possible the court will reschedule the final approval hearing. You should contact Class Counsel to verify the date and time of the final approval hearing if you are planning to attend the hearing or have your own lawyer attend.

9. HOW CAN I GET MORE INFORMATION?

The Agreement summarizes everything Midway and Plaintiff have promised to do under the proposed Settlement. The easiest way to obtain and read the Agreement or any other Settlement document is to go to the Administrator's website at ________________________. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to https://cap.sb-court.org/search, selecting the case number search, and entering the case number for the Action, CIVSB2228816, as instructed on the web form.

At least 16 court days before the final approval hearing, Class Counsel will file in court a motion for final approval that includes, among other things, the reasons why the proposed Settlement is fair, and a request for awards of fees, litigation expenses and a service award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (contact information below), will send you copies of these documents at no cost to you.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

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Settlement Administrator:
Name of Company:
Email Address:
Mailing Address:
Telephone:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

12. WHAT IS A PAGA PENALTY?

The Net Settlement is money paid to settle claims for Participating Class Members. But the PAGA claim is different. PAGA penalties were originally penalties that only the State of California could collect through an enforcement action brought by the State against an employer. In 2004, the State enacted PAGA, a law that allows employees to try to recover those penalties for the State. Under the version of PAGA applicable to this Settlement, the State agrees to share 25% of its penalties with the affected employees (here, the Aggrieved Employees). The PAGA settlement proposed as part of this Settlement is a settlement of the State's PAGA claim.

Exhibit “2”

Date	Description	Expense
12/24/2022	PAGA Notice Letter	$ 75.00
1/11/2023	Complex Case Complaint Filing Fee	$ 1,667.75
5/5/2023	Ace - Attorney Service	$ 351.00
6/21/2023	Court Call	$ 72.00
6/21/2023	Ace - Attorney Service	$ 67.00
7/21/2023	Ace - Attorney Service	$ 81.50
9/11/2023	Ace - Attorney Service	$ 143.75
3/7/2024	Ace - Attorney Service	$ 77.75
4/3/2024	Mediation Fee: Carl West (Plaintiff's Share)	$ 8,500.00
6/7/2024	Ace - Attorney Service	$ 331.50
6/7/2024	Ace - Attorney Service	$ 331.50
6/21/2024	Ace - Attorney Service	$ 199.00
6/21/2024	Ace - Attorney Service	$ 599.50
6/26/2024	Berger Consulting - Mediation Data Review	$ 1,600.00
11/4/2024	One Legal - Attorney Service	$ 15.44
1/6/2025	One Legal - Attorney Service	$ 15.44
1/24/2025	One Legal - Attorney Service	$ 85.85
4/9/2025	One Legal - Attorney Service	$ 3.14
4/11/2025	One Legal - Attorney Service	$ 22.87
		$ 14,239.99

Exhibit “3”