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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ISABEL RODRIGUEZ and DANIEL TOVAR,
on behalf of themselves all employees similarly
situated,

Plaintiffs,

v.

ROY MILLER PAINTING, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2023-01314830-CU-OE-CXC

[Assigned for all purposes to Hon. Melissa R.
McCormick, Dept. CX104]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**DECLARATION OF LILIT TUNYAN IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Reservation N: 74214837

Date: May 16, 2024

Time: 2 p.m.

Courtroom: Dept. CX104

Judge: Hon. Melissa R. McCormick

Action Filed: March 20, 2023

Trial: Not Set

DECLARATION OF LILIT TUNYAN

I, LILIT TUNYAN, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States District Courts for the Central, Eastern and Northern Districts of California. I am the founding partner at the law firm of Tunyan Law, APC. 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. I am one of the attorneys of record for Plaintiffs ISABEL RODRIGUEZ and DANIEL TOVAR ("Plaintiffs").

2. This Declaration is submitted in support of Plaintiffs' Motion for Preliminary Approval of Class and PAGA Representative Action Settlement.

BACKGROUND

3. On March 20, 2023, Plaintiffs filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages (Lab. Code §§ 204, 510, 1194, 1998); (2) failure to provide meal periods (Lab. Code §§ 226.7, 512 and Wage Order); (3) failure to provide rest periods (Lab. Code §§ 226.7 and Wage Order); (3); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) failure to indemnify necessary business expenses (Lab. Code § 2802); (6) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204 and 210); (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On May 25, 2023, Plaintiffs filed their First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] ("PAGA"). (The "Action.") In the Complaint, Plaintiffs sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint.

4. Plaintiffs satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] ("PAGA").

5. The Parties have conducted informal discovery and investigation of the facts and law.

1 Such discovery and investigation have included, inter alia, the exchange of data and discoverable
2 information in preparation for the mediation session. The Parties have analyzed payroll and other data
3 pertaining to Plaintiffs and the Settlement Class during the relevant Settlement Period, including but not
4 limited to the numbers of former and current members of each purported subclass within the Settlement
5 Class, average workweeks, and average rate of hourly pay. In addition, Defendant also provided
6 documents reflecting their wage and hour policies and practices during the Settlement Period as well as
7 confidential financial data for evaluation of Defendant's financial condition and ability to distribute
8 settlement funds in one installment.

9 6. After reviewing documents regarding Defendant's wage and hour policies and practices
10 and other information obtained during the exchange of discovery, Class Counsel were able to evaluate
11 the probability of class certification, success on the merits, and the reasonably obtainable maximum
12 monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis
13 prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses
14 asserted in the litigation as well as confidential financial data for evaluation of Defendant's financial
15 condition.

16 7. On November 18, 2023, the Parties mediated before the mediator Eve H. Wagner, Esq.
17 who is a highly experienced and well-regarded mediator for wage and hour class action litigation. At the
18 mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as well
19 as the merits of the claims and defenses and Defendant's financial condition. The Parties have been able
20 to reach a settlement at the mediation. The Parties have reached an agreement regarding the substantive
21 terms of a class-wide settlement, pending the Parties' agreement on a long-form class settlement
22 agreement. The Parties then signed a long form settlement agreement ("Agreement").

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

27 9. Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement
28 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 by the Court, will result in the termination with prejudice 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 Settlement Class.

SUMMARY OF THE SETTLEMENT TERMS

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

- (a) Defendant agrees not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 17);
- (b) **Settlement Amount:** Defendant will pay a maximum of \$181,000.00, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average gross payment per Class Member of approximately \$1,167.74 (Settlement, ¶ 23(b));
- (c) **Class Size:** Approximately 155 individuals as of the date of mediation. (Tunyan Decl., ¶ 16.)
- (d) **PAGA Group Size:** Approximately 115 individuals as of the date of mediation (Tunyan Decl., ¶ 17);
- (e) **Escalator Clause:** Defendant represents that the number of workweeks worked in the Class Period for those Class Members was estimated to be nine thousand fifty (9,050). The parties stipulate to a 10% escalation of the estimated workweeks without an increase to the Gross Settlement Amount. If the number of actual workweeks during the Class Period exceeds 10% of the estimated workweeks (i.e. exceeds 9,955 workweeks), Defendant can either have the Class Period end on the date that the workweeks exceed 9,955 or increase the Gross Settlement Amount by a pro-rata dollar value equal to the number of workweeks in excess of 9,955 workweeks. For example, if there is a 1% increase over 10%,

then Defendant could choose to increase the Gross Settlement Amount increases by 1% (the “Escalator Clause”). (Settlement, ¶ 23(c).)

- (f) **Kullar/Munoz Analysis:** Plaintiffs addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Tunyan, at Paragraph 18;
- (g) **No Reversion:** The Settlement is a **non-reversionary** settlement (Settlement, ¶ 23(d));
- (h) **Certification:** Plaintiffs addresses certification requisites herein, at Part V.A., and in the Declaration of Tunyan, at Paragraphs 34-40;
- (i) **No Claim Form:** No claim form is required (Settlement., ¶ 23(e));
- (j) **Class Release:** The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) (Settlement, ¶ 34);
- (k) **PAGA Release:** PAGA Employees will release the PAGA Claims set forth in this Action, that were identified in the Complaint and Plaintiffs’ LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶ 35);
- (l) **Release Effective Date:** The Release is not active until Defendant tenders all payments required under the Settlement to the Settlement Administrator (Settlement, ¶¶ 34, 35);
- (m) **Net Settlement Amount Available to the Class:** After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiffs, administration costs, and the payment to the LWDA, the remainder will be used to pay Settlement Class Payments to Class Members who do not opt out and PAGA Settlement Payments to PAGA Employees. For the Settlement Class Payments, each Class Member will receive a share based on the number of workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount which also includes PAGA Settlement Payments to PAGA Employees is estimated to be at least \$70,916.67, resulting in an average net

1 payment per Class Member of at least \$457.53, before any tax withholdings.

2 (Settlement, ¶ 24(f));

3 (n) **Tax Allocation:** The amounts distributed to Class Members will be characterized
4 as 20% alleged unpaid wages, 40% as unpaid penalties and 40% as unpaid
5 interest, and PAGA Settlement Payments will be allocated as 100% penalties.
6 (Settlement, ¶ 24(j));

7 (o) **Employer's Portion of Payroll Taxes Paid Separately:** Defendant's portion of
8 payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class
9 Members that constitute wages will be paid separate and apart from the GSM
10 (Settlement, ¶ 24(g));

11 (p) **Settlement Administrator:** The notice portion of the Settlement and distribution
12 of funds will be administered by a third-party Administrator, ILYM GROUP,
13 Inc., and the Parties estimated that the costs of administration should not
14 reasonably exceed \$15,000.00. ILYM GROUP, Inc.'s low bid for settlement
15 administration services in the amount of \$6,500.00 was selected as the lowest bid
16 from a competitive bidding process. (Settlement, ¶ 24(p));

17 (q) **Class Data for Administration:** The Settlement Administrator will receive the
18 Class List within 20 calendar days of Preliminary Approval, use the NCOA
19 database to update the Class List, and then use skip tracing on returned Notices
20 (Settlement, ¶ 29(a));

21 (r) **Notice:** The Notice will issue within 14 days of receipt of the Class List
22 (Settlement, ¶ 29(b)). The Notice describes how to dispute workweeks, submit
23 and objection, or request exclusion (Settlement, ¶ 24(s)).

24 (s) **Notice Language:** Notice will issue in English and Spanish (Settlement, ¶ 24(t));

25 (t) **Objections:** Objections can be submitted to the Settlement Administrator in
26 writing via the Objection Form, or at the Final Approval Hearing. (Settlement, ¶
27 24(x));

28 (u) **Exclusion Requests:** Requests for exclusion can be submitted to the Settlement

1 Administrator in writing on the Request for Exclusion Form. (Settlement, ¶
2 24(w));

3 (v) **PAGA Allocation:** From the GSA, \$15,000.00 will be allocated to settle claims
4 brought pursuant to the California Private Attorneys General Act, Labor Code §
5 2699 et seq. (“PAGA”), and seventy-five percent (75%), or \$11,250.00 will be
6 paid to the California Labor & Workforce Development Agency. (Settlement, ¶
7 9.)

8 (w) **Notice to LWDA:** Notice was provided prior to the filing of this Motion.
9 Evidence is attached to Tunyan Declaration.

10 (x) **Enhancement/Service Awards to Plaintiffs:** Defendant will not oppose the
11 application for Class Representatives Service Payments of \$5,000.00 to each
12 Plaintiff for service as a Class Representative, total of \$10,000.00 to both
13 Plaintiffs, to be paid from the GSA (Settlement, ¶ 24(m));

14 (y) **Fees and Costs:** Defendant will not oppose Class Counsel’s application for fees
15 not to exceed 33 1/3% of the GSA (\$60,333.33), and actual costs, in an amount
16 not to exceed \$22,000, to be paid out of the GSA (Settlement, ¶ 24(l)).

17 (z) **Check Void Period:** Settlement checks will be valid for 180 days (Settlement, ¶
18 31);

19 (aa) **Uncashed Checks:** Any settlement checks that are mailed to the Class Members
20 and remain uncashed after 180 days of the date of issuance will be cancelled, and
21 the moneys will be directed to the California State Controller’s Office for
22 Unclaimed Property in the name of each Class Member who failed to cash their
23 Settlement Payment (Settlement, ¶¶ 32-33);

24 (bb) **Judgment Notice:** Judgment will be posted on the Settlement Administrator’s
25 website after entry for 180 days (Settlement, ¶ 27);

26 (cc) **Confidentiality Provisions:** Plaintiffs and Class Counsel agree to keep
27 settlement terms confidential prior to preliminary approval of the Settlement
28 (Settlement ¶ 55).

1 11. A true and correct copy of the JOINT STIPULATION OF CLASS AND PAGA
2 REPRESENTATIVE ACTION SETTLEMENT is attached hereto as Exhibit “1.”

3 THE SETTLEMENT IS FAIR, JUST AND REASONABLE

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

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

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

24 15. We believe that the case was viable through to a trial. However, while Plaintiffs assert a
25 belief that this is a viable case for trial, we realize that there are always significant risks associated with
26 certification and trials, and those risks cannot be eliminated in this case. Continued litigation of this
27 lawsuit presented Plaintiffs and Defendant with substantial legal risks and costs that were (and continue
28 to be) difficult to assess. The risks in this matter include:

- the risk that Plaintiffs 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);
- the risk that Defendant's meal and rest period policies might not ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 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 ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory 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 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 class treatment could be deemed improper as to one or more claims, except for settlement purposes;
- the risk that lengthy appellate litigation could ensue;
- the risk that pursuing the matter further in litigation can result in a smaller settlement amount and less benefit to Class Members if Defendant's financial condition worsens.

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.

16. The Settlement is the product of arm's-length negotiations between the Parties occurring

1 throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law
2 regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery for
3 the Class Members. The settlement amount is, of course, a compromise figure. By necessity it took into
4 account risks related to liability, damages, and the defenses asserted by Defendant and Defendant's
5 financial condition. Moreover, each Class Member will be given the opportunity to opt-out of the
6 Settlement, allowing those who feel they have claims that are greater than the benefits they can receive
7 under this Settlement to pursue their own claims. For the approximately 155 members of the Class, the
8 average **gross** recovery is at least **\$1,167.74** per class member, and the estimated average **net** recovery
9 for each Class Member is approximately **\$457.53**. Given that Defendant could challenge certification and
10 liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who
11 worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a
12 Class Member who worked for a shorter amount of time during the class period.

13 17. The Gross Settlement Amount of **\$181,000.00** is about 66.4% of the **\$272,735.01**
14 estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. This assessment is
15 based on a carefully constructed model of the current fair value of the case, using estimated risks,
16 average wage rates, numbers of employees, and the amount of time covered by the class period. While
17 Plaintiffs would certainly have preferred to recover more (and Defendant would have preferred to pay
18 less), this outcome is in line with a carefully constructed estimate of the current fair value of the case. On
19 that basis, it would be unwise to pass up this settlement opportunity. My maximum calculated
20 reasonable exposure, after removing implausible or extreme estimated recoveries, is **\$1,353,008.86**,
21 *including* PAGA penalties.

- 22 • A reasonably estimated exposure for unpaid wages for unlawful rounding was
23 calculated, with the assistance of an expert, to be approximately **\$10,914.00**. However,
24 with the risk factor discounts for certification and liability proof, the value of that claim
25 is estimated by Plaintiffs's counsel to be approximately **\$6,111.84**, assuming
26 certification probability of 80% and merits success at 70%.
- 27 • A reasonably estimated exposure for unpaid wages for the off-the clock work was
28 calculated, with the assistance of an expert, to be approximately **\$168,763.00**. However,

1 with the risk factor discounts for certification and liability proof, the value of that claim
2 is estimated by Plaintiffs's counsel to be approximately **\$33,752.60**, assuming
3 certification probability of 40% and merits success at 30%.

- 4 • A reasonably estimated exposure for rest break violations over the class period was
5 calculated at **\$407,488.67** with chances of certification and proof of liability (50% and
6 40% respectively) for a risk-adjusted exposure of **\$81,497.73**.
- 7 • A reasonably estimated exposure for meal break violations over the class period was
8 calculated at **\$168,763.00**, with chances of certification and liability risks (50% and 40%
9 respectively) resulting in a risk-adjusted exposure of **\$33,752.60**.
- 10 • Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties
11 with chances of certification and liability risks (50% and 20% respectively) were
12 estimated to be approximately **\$7,666.67** and **\$6,783.64**, respectively, on maximum
13 exposures of **\$76,666.67** and **\$67,836.43**, respectively.
- 14 • A reasonably estimated exposure for unreimbursed expenses over the class period was
15 calculated at **\$80,265.00**, with chances of certification and liability risks (80% and 70%
16 respectively) resulting in a risk-adjusted exposure of **\$44,948.40**.
- 17 • Performing risk-adjusted valuations for all claims yields a total value in the range of
18 **\$205,121.32**, excluding PAGA.¹ (*Id.*)
- 19 • PAGA penalties were calculated as having a maximum realistic exposure of
20 **\$338,071.43**, but a risk adjusted value of **\$67,614.29**, after factoring in risks of reduction
21 in penalties pursuant to Court discretion and the high risk of the inability to prove
22 violations for all aggrieved employees.

23 As required under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) and *Munoz v. BCI*
24 *Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010), the maximum plausible and
25

26 ¹ In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a
27 specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable
28 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.

realistic recoveries versus the current risk-adjusted value of the claims are discussed in additional detail below:

(a) Key Class Data Elements at Time of Mediation:

- 1) Class Members: approximately 155
- 2) Work Weeks: approximately 9,050
- 3) PAGA Employees: approximately 115
- 4) Gross Settlement Amount: \$181,000

(b) KULLAR/MUNOZ ANALYSIS: Unpaid Wages Due to Rounding

- 1) Plaintiffs' claims for unpaid wages due to time rounding is based on the argument that Class Members were not paid for the actual time worked for Defendant. The time was rounded and as a result Class Members were harmed by that rounding.
- 2) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$10,914.00
Estimated certification probability	80%
Estimated chance of prevailing on merits	70%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$6,111.84

(c) KULLAR/MUNOZ ANALYSIS: Unpaid Wages Due to Off-the-Clock Work

- 1) Plaintiffs' claims for unpaid wages due to off-the-clock work is based on Defendant's requirement for Class Members to clock out and continue working as well as on failure to compensate for the commute time to the jobsites when Class Members were required to arrive at Defendant's corporate office first.
- 2) Defendant denies these allegations and contends they compensated for all time.
- 3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$168,763.00
Estimated certification probability	40%
Estimated chance of prevailing on merits	30%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$33,752.60

(d) **KULLAR/MUNOZ ANALYSIS: Meal Periods**

- 1) Plaintiffs' claims for meal break violations is based on Defendant's policy to combine Class Members 30-minute first meal periods with their first rest periods and have 45- minute combined meal and rest breaks as well as clock out for meal periods and continue working. Defendant did not have any formal written policies governing meal and rest periods. Employees are entitled to meal periods of at least 30 minutes before exceeding five hours of work and to second meal periods of not less than 30 minutes before exceeding 10 hours of work. For each meal period missed or taken late an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as "premium pay."
- 2) Defendant maintains that meal periods were not combined with rest periods and the obligation is simply to "provide" meal periods, not to "ensure" that they are taken. *Brinker v. Superior Court*, 53 Cal. App. 4th 1004, 1034-41 (2012) (rejecting "ensure" standard). Furthermore, Defendant contends that any failure to take meal periods, or to take late meal periods, was a result of employee choice, not of any policy or practice of Defendant. Finally, Defendant asserts that Plaintiffs' meal period claims would not be amenable to class treatment, since individual inquires would need to be made with respect to each specific shift that each employee missed a meal

or rest period, to determine why that specific employee missed that specific meal or rest period on that specific shift.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$168,763.00
Estimated certification probability	50%
Estimated chance of prevailing on merits	40%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$33,752.60

(e) **KULLAR/MUNOZ ANALYSIS: Rest Breaks**

- 1) Plaintiffs' claims for rest break violations is based on Defendant's policy to combine Class Members 30-minute first meal periods with their first rest periods and have 45- minute combined meal and rest breaks and not to authorize second and third rest periods. Defendant did not have any formal written policies governing meal and rest periods. Employees are entitled to a rest period of at least 10 minutes every four hours worked, or major fraction thereof. For each rest period missed or taken late an employer must pay the employee an additional one hour of compensation. Labor Code § 226.7. This additional hour of compensation is referred to as "premium pay."
- 2) Defendant maintains that the obligation is simply to "authorize and permit" rest periods, not to "ensure" that they are taken. *Brinker v. Superior Court*, 53 Cal. App. 4th 1004, 1034-41 (2012) (rejecting "ensure" standard). Furthermore, Defendant contends that any failure to take rest breaks was a result of employee choice, not of any policy or practice of Defendant. Finally, Defendant asserts that Plaintiffs's rest breaks claims would not be

1 amenable to class treatment, since individual inquires would need to be
2 made with respect to each specific shift that each employee missed a rest
3 period, to determine why that specific employee missed that specific rest
4 break on that specific shift.

5
6 3) **Risk-adjusted Exposure Analysis:**

7 Calculated maximum recovery:	\$407,488.67
8 Estimated certification probability	50%
9 Estimated chance of prevailing on merits	40%
10 Max recovery × certification risk × chance or success 11 on merits = Present Settlement Value	\$81,497.73

12
13 (f) **KULLAR/MUNOZ ANALYSIS: Late Pay Penalties Under Labor Code § 203**

- 14 1) Labor Code § 203 provides that if an employer fails to pay an employee all
15 wages due at termination or within 72 hours of resignation, then that
16 employee's wages shall continue as a penalty until paid for a period of up
17 to thirty (30) days from the date they were due. Because class members
18 stopped working for Defendant but again were not paid their full
19 compensation for the reasons discussed above, class members did not
20 receive all wages due upon termination of employment.
- 21 2) Defendant argues that a good-faith belief in the legality of its employment
22 practices precludes a finding that any withholding of wages was "willful."
23 See Cal. Code Regs. § 13520 [good-faith dispute exists to a claim for
24 waiting time penalties "when an employer presents a defense, based in law
25 or fact which, if successful, would preclude any recovery on the part of the
26 employee. The fact that a defense is ultimately unsuccessful will not
27 preclude a finding that a good faith dispute did exist."].) Defendant further
28

maintains that because of viable defenses in both law and fact that waiting-time penalties could not be awarded and, in any case, such penalties were subject to a three-year limitations period under Labor Code § 203(b) and an arbitration agreement that would bar class treatment.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$67,836.43
Estimated certification probability	50%
Estimated chance of prevailing on merits	20%
Max recovery × certification risk × chance of success on merits = Present Settlement Value	\$6,783.64

(g) **KULLAR/MUNOZ ANALYSIS: Wage Statement Violations**

- 1) Plaintiffs also alleged a cause of action under Labor Code § 226(a) for not including all wages, or meal and rest break premiums in the wage statements and as a result of including all nice digits of Social Security Numbers of employees instead of including only four digits as well as for including sick pay hours in the total number of hours in Class Members wage statements.. That section states that an employer must provide an accurate itemized wage statement twice a month or each time wages are paid, whichever is the more frequent. Failure to do so entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). See Labor Code § 226(e).
- 2) Defendant contends that Labor Code § 226(e) penalties are not automatic. Rather, the employee must show (1) that he or she “suffered injury” from the employer’s failure to provide compliant wage statements, *see Elliot v.*

Spherion Pacific Work, LLC, 572 F.Supp.2d 1169, 1181 (2008) (applying California law) (holding employee was not entitled to penalties because no injury was shown), and (2) Defendant’s noncompliance was “knowing and intentional.” Defendant contends that class members suffered no injury from any failure to issue compliant wage statements and, furthermore, that any noncompliance was not knowing and intentional. Further, because the damages for this cause of action are penalties, the statute of limitations only runs from one year prior to the filing of the original complaint. See Code Civ. Proc. § 340. Moreover, Defendant maintains that Plaintiffs’ derivative claim for wage statement ‘penalties would fail for the same reasons that Plaintiffs’ underlying claims would fail. The parties discussed these issues, and in light of these and other considerations Class Counsel factored in a reduction of liability and damages for this cause of action.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$76,666.67
Estimated certification probability	50%
Estimated chance of prevailing on merits	20%
Max recovery × certification risk × chance or success on merits = Present Settlement Value	\$7,666.67

(h) **KULLAR/MUNOZ ANALYSIS: Unreimbursed Expenses Under Labor Code § 2802**

- 1) Plaintiffs also alleged a cause of action under Labor Code § 2802 for failure to reimburse all necessary expenses. Under Labor Code § 2802, “an employer shall indemnify his or her employee for all necessary expenditures... incurred by the employee in direct consequence of the discharge of his or her duties.” Lab. Code § 2802. Plaintiffs’s claims for unreimbursed expenses are based upon claims that class members were

required to use their personal cellular telephones to download and use an application called “ExacTime” to record their time as well as to communicate with their supervisors for work purposes.

2) Defendant contends that most employees did not incur significant expenses, and that they purchased those tools voluntarily.

3) **Risk-adjusted Exposure Analysis:**

Calculated maximum recovery:	\$80,265.00
Estimated certification probability	80%
Estimated chance of prevailing on merits	70%
Max recovery × certification risk × chance of success on merits = Present Settlement Value	\$44,948.40

(i) **QUASI- KULLAR/MUNOZ ANALYSIS: PAGA**

1) The Labor Code Private Attorneys General Act, Labor Code § 2699 *et seq.*, allows Plaintiffs to obtain civil penalties on behalf of herself and other class members for Defendant’s violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the affected employees. The limitations period is one year prior to the filing of the complaint.

2) The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§ 203, 226(a), 226.7,

1 and 510. Defendant asserted that if PAGA penalties were mandatory, an
2 employer's PAGA liability would be huge because of the possibility of
3 collecting multiple civil penalties for a single violation, and thus such
4 penalties would almost always dwarf the damages available under the
5 causes of action proper. However, PAGA penalties are not mandatory but
6 permissive. Labor Code § 2699(e)(2) states that "a court may award a
7 lesser amount than the maximum civil penalty amount specified by this
8 part if, based on the facts and circumstances of the particular case, to do
9 otherwise would result in an award that is unjust, arbitrary and oppressive,
10 or confiscatory." *See also Thurman v. Bayshore Transit Management, Inc.*,
11 203 Cal. App. 4th 1112, 1135 (2012) [affirming reduction of PAGA
12 penalties].) Defendant here maintains that they have a strong argument that
13 it would be unjust to award maximum PAGA penalties.

14 3) Furthermore, PAGA penalties are also completely derivative of each and
15 every other claim. Finally, under *Amaral v. Cintas Corp.*, 163 Cal. App.
16 4th 1157(2008), it can be argued that penalties under PAGA could, at best,
17 be awarded only at the rates obtainable for initial violations under the
18 applicable statutes, because Defendant had never been notified of the
19 alleged violations. *Id.*, at 1208, 1209.

20 4) **Risk-adjusted Exposure Analysis:**

21 Calculated maximum recovery:	\$338,071.43
22 Discount reduction factor for risk of Court reduction 23 and uncertainty of proof for all aggrieved employees	20%
24 Max recovery × risk reduction = Present Settlement 25 Value	\$67,614.29

26
27 With the assistance of Class Counsel's retained damages expert, Class
28 Counsel estimated Defendant's maximum total exposure on the PAGA

claim at approximately **\$338,071.43** (without stacking). This number presupposes underlying claims are proven at a plausible rate and that the Court awards the full base penalties for each. Class Counsel then applied discounts in light of the countervailing arguments with regard to the other causes of action, and the Court’s power to award “a lesser amount than the maximum civil liability.” Accordingly, due to the speculative nature of a valuation for this claim, a discount of **80%** was applied to account for the difficulty of prevailing on this claim.

(j) **Kullar Summary:** Indulging the most optimistic estimates and improbably favorable outcomes, the maximum reasonable recovery is estimated to be approximately **\$1,353,008.86**, including PAGA. The settlement amount is about **13%** of that amount. The calculated current settlement value is **\$272,735.01** (calculated by adding the risk-adjusted amounts in the charts above together), and the settlement is **66.4%** of the current risk-adjusted settlement value. The bottom line is that the settlement is about 13% of the maximum plausible recovery for the 155 Class Members, and it is a reasonable settlement, given that the full amount is very unlikely to be recovered.

18. This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. Many risks are eliminated through settlement. And, with respect to those risks, certification rates in California are **lower** than conventional wisdom holds. See, e.g., H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; see also, *Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement **or** as

part of a contested certification motion). Here, the estimated certification probabilities are *above* the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. Since the recovery is roughly 13% of the maximum theoretical recovery (estimated to be approximately \$1,353,008.86, *including* PAGA), it meets the expected outcome under that metric. This Settlement achieves the goals of the litigation.

19. 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.

THE EXPERIENCE OF CLASS COUNSEL

20. I am a founding partner of Tunyan Law, APC and has been engaged in the practice of employment and labor law for more than four years and focused exclusively on plaintiffs' employment law and wage-and-hour class actions and more than twenty-four years in practice of law in general. I have handled hundreds of wage-related class actions.

21. Prior to establishing my own practice, I was an associate attorney at Moon & Yang, APC and Mahoney Law Group, APC. Since I was admitted to the California Bar, my practice has focused mainly on labor and employment class action lawsuits involving California and federal labor laws. Along with those firm's other attorneys I have successfully settled more than 50 class action and PAGA matters during that time span and was routinely appointed lead or co-lead class counsel in courts in California including by way of motion for class certification.

22. I received my Juris Doctorate from the State Yerevan University and my LL.M. from University of Minnesota Law School. Prior to moving to California and starting to practice law in California I practiced law in Armenia for about twenty years as a licensed attorney. I have been general counsel and head of legal department for big telecommunication and financial corporations in Armenia for the last 12 years prior to moving to California. I managed corporate legal department and corporate legal and regulatory affairs and handled complex litigation matters as well as complex transactions for many years.

23. I am a current member of the California Employment Lawyers Association (CELA) and the California Consumer Attorneys Association of Los Angeles (CAALA). I have been an active member of the State Bar of California in good standing.

24. I am experienced in prosecuting employment matters, particularly class actions, and I focused a substantial percentage of my practice on wage, hour, and working conditions violations. In addition to the present case, I represented Plaintiffs and the class members and have extensively worked on many wage-and-hour class cases and have been appointed as class or PAGA counsel along with other counsel and co-counsel for wage-and-hour class action lawsuits in various counties throughout California such as: *Evans, et al. v. Downtown Women's Center*, Los Angeles County Superior Court, Case N 22STCV06578 (class certification motion granted in part); *Sanchez v. Anodizing Industries, Inc.*, Los Angeles County Superior Court, Case N 21STCV30722; *Godoy v. Intertrade Industries, LTD*, Orange County Superior Court, Case No. 30-2020-01151921-CU-OE-CXC; *Fuentes v. Actron Manufacturing Inc.*, Los Angeles Superior Court, Case N 20STCV31099; *Gonzalez v. Community Health Systems, Inc.*, San Bernardino County Superior Court, Case N CIVDS2015678; *Rodriguez v. Progress Lighting, Inc. et al.*, San Bernardino County Superior Court, Case N CIVDS2023894; *Castillo v. Gibson Overseas, Inc.*, San Bernardino Superior Court, Case N CIVDS2022537; *Mumphrey v. People's Care Northern California, Inc. et al.*, San Joaquin County Superior Court, Case N STK-CV-UOE-2019-0016397; *Ochoa v. Orlando Spring Corp*, Los Angeles Superior Court, Case N 20STCV343129; *Findley v. USC, et al.*, Los Angeles Superior Court, Case N 20STCV47290; *Maldonado v. Techmer PM, LLC*, Los Angeles Superior Court, Case N 20STCV21918; *Huerta v. IRS*, Los Angeles Superior Court, Case N 20STCV09163; *Mata v. Marukai Corporation*; Los Angeles Superior Court, Case N 20STCV00959; *Tapia v. Home &Body*; Orange County Superior Court, Case N 30-2020-01155185-CU-OE-CXC; *Ruvalcaba v. Quinn Group, Inc.*, Los Angeles Superior Court, Case N 20STCV41323; *Bravo v. FIDM*, Los Angeles Superior Court, Case N 19STCV25338; *Lomeli v. Plaskolite et al.*, Los Angeles Superior Court, Case N 21STCV14611; *Alcantar v. Classic Salads LLC*, Santa Cruz County Superior Court, Case N 21CV002309; *Casas v. Freedom Solar Services, et al.*, Los Angeles Superior Court, Case N 21STCV20233; *Serrano v. Barstow Community Hospital*, San Bernardino Superior Court, Case N CIVDS2006967; *Lopez v. Fairway Staffing Services, et al.*,

Los Angeles Superior Court, Case N 21STCV26640; *Linden v. Marugame Udon USA, LLC*, Los Angeles Superior Court, Case No. 20STCV00728; *Salter v. U.S. Reports, et al.*, Los Angeles Superior Court, Case N 19STCV30384; *Perez v. Torn & Glasser, Inc.*, Los Angeles Superior Court, Case N 21STCV43614; *Gomez v. Arya Ice Cream Distributing Co., Inc.*, Los Angeles Superior Court, Case N 21STCV31170; *Herrera v. Coastal Construction & Lumber*, Santa Cruz County Superior Court, Case N 22CV394683; *Garcia v. San Jose Water Company*, Santa Clara County Superior Court, Case No. 22CV396328; *Ramirez v. Partners Personnel Management Services LLC*, Los Angeles Superior Court, Case N 21STCV31253; *Ramirez v. Merrill Gardens LLC*, Eastern District Court of California, Case N1:22-cv-00542-DAD-SAB; *Garcia v. Tri-Valley Plastering, Inc.*, Fresno County Superior Court, Case N 22CECG00591; *Garcia v. South Valley Companies, Inc.*, Kern County Superior Court, Case N BCV-22-100465; *Morales v. Wiseguys Custom Home Theater, LLC*, San Diego Superior Court, Case N37-2019-00070151-CU-OE-CTL.

25. Artur Tunyan is another partner and attorney at Tunyan Law, APC. He received his Juris Doctorate from the State Yerevan University and his LL.M. from the American University of Armenia and University of Illinois Chicago, School of Law. Prior to moving to California and starting to practice law in California he practiced law in Armenia for about twenty-five years. He oversaw international donor-funded projects for the judiciary and managed public-private partnership initiatives in sectors such as energy, banking, finance, and aviation. He managed complex transactions and litigation matters for many years.

26. My current contingent billing rate is consistent with my practice area, legal market and accepted hourly rates considering also that I practiced law in another country for additional 20 years which brings a total of almost 25 years of experience practicing law. The 2023-2024 Adjusted Laffey Matrix states that an attorney with 4 to 7 years experience can reasonably charge \$538 per hour. See <http://www.laffeymatrix.com/see.html>.

REASONABLENESS OF THE REQUESTED FEE AWARD

27. 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, Tunyan Law, APC, paid filing fees, Westlaw fees, copy charges and mailing, telephone and express mail

charges. Mediation and expert fees. There was never a guarantee that Tunyan Law, APC, would recoup those expenditures. The firm took on this case, which necessarily required the firm to forego other opportunities, given finite resources to devote to cases.

28. Because of the uncertainty of the outcome in this and other wage and hour litigation undertaken by Tunyan Law, APC, 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.

29. 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.

30. In the past four years, I have settled many wage-and-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 my experience, 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 Plaintiffs before and after the filing of this matter. That work includes:

- (a) Numerous interviews with Plaintiffs and review of documents provided by Plaintiffs;
- (b) Investigation of the matter and exploring the corporate structure of Defendant;
- (c) Legal research and investigation regarding the Defendant's practices at numerous points in the litigation;

- (d) Preparation of multiple drafts of the original class action complaint and finalization and filing of the original class action complaint;
- (e) Review of an amended complaint that added Plaintiffs' PAGA claim, and finalization of that complaint;
- (f) Drafting the LWDA Notice letter;
- (g) Drafting joint statements and joint stipulations;
- (h) Review of payroll and time data;
- (i) Review of Defendant's policy documents;
- (j) Review of Defendants' confidential financial data;
- (k) Extensive "meet and confer" efforts with Defendant's counsel regarding the sample size and to obtain relevant documents and information through informal discovery;
- (l) Selecting a mediator and mediation date;
- (m) Conducting informal discovery;
- (n) Review of the records produced by Defendant in response to informal discovery;
- (o) Working with opposing counsel for the receipt of a representative sampling and analyzing the same with the aid of expert consultants and Plaintiffs to perform analyses of liability and exposure prior to attendance of the mediation;
- (p) Preparation of a damages model with the aid of a statistics expert, analysis of the audit/analysis results;
- (q) Communicate with Plaintiffs who requested updates or other information regarding this matter;
- (r) Research and preparation of the mediation brief;
- (s) Attendance at mediation;
- (t) Drafting, negotiating, and reviewing multiple drafts of the Settlement Agreement and attachments; and
- (u) Preparation of the initial motion for preliminary approval and multiple revisions thereafter.

31. I anticipate that Class Counsel will spend an additional 45 hours on this matter, appearing at the hearing of preliminary approval, answering class member calls, working with the administrator to finalize documents in mailing format, conferring with counsel over any notice issues, drafting the final approval motion and motion for fees and costs, appearing at the final approval hearing, and resolving any post-approval issues that may arise, and appearing at a final accounting hearing. Class Counsel has also incurred costs in this matter that will be detailed at the time final approval is sought. Class Counsel has agreed to a cap on recoverable costs of \$22,000, and if total incurred costs exceed the cap, Class Counsel will request no more than the agreed-upon cap.

THE CONTRIBUTION OF PLAINTIFFS AND THE REASONABLENESS OF THE REQUESTED
INCENTIVE AWARDS

32. Here, Plaintiffs seek an Enhancement Payments of **\$5,000.00 for each in the total amount of \$10,000.00**. This amount is very reasonable given the risks undertaken by Plaintiffs 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 Plaintiffs. Additionally, Plaintiffs were actively involved in the litigation and settlement negotiations of this Action, expending considerable effort in advancing the interests of the Class.. Plaintiffs provided information to counsel before the filing of this matter; assisted with the settlement process (which included conferring with counsel during the preparation of Plaintiffs' mediation brief), and regularly conferred with counsel regarding the case whenever questions arose. I estimate that Plaintiffs contributed dozens of hours of time to the prosecution of this matter. Plaintiffs' Declaration also confirms that Plaintiffs were active participants in the filing and settlement of this case.

THE THIRD-PARTY ADMINISTRATOR

33. The parties have agreed that administration will 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. Phoenix was selected because it submitted a low bid in the amount of **\$6,500** for administration services

1 which includes distribution of funds in two installments. ILYM GROUP, Inc.. has also provided a
2 declaration confirming its experience and its implementation of measures designed to protect Class
3 Member data and Class Settlement funds.

4 CLASS CERTIFICATION

5 34. The class is ascertainable by objective criteria. The Class Members are: All individuals
6 employed by Defendant in California and classified as “non-exempt” at any time during the Class
7 Period (the “Class Period” is March 20, 2019 through May 1, 2023). “Settlement Class Members” are
8 those Class Members who do not submit timely exclusion requests to the Settlement Administrator.
9 (Settlement, ¶¶ 3-4.)

10 35. The class is sufficiently numerous. Based upon Defendant’s records, Defendant
11 represented that there are approximately 155 Class Members as of the date of mediation. Plaintiffs’
12 counsel believes that the data is reliable.

13 36. Plaintiffs are typical of the Class. Plaintiffs were employees of Defendant. Plaintiffs
14 worked during the class period. Plaintiffs’ claims are typical of the claims of the Class proposed in this
15 settlement. Like other class members, Plaintiffs experienced work under policies and procedures
16 impacting wage and hour compliance. No unique defenses applicable to Plaintiffs have been identified
17 that do not also exist as to other Class Members.

18 37. Common *issues* exist. Here, Class Members have shared a common interest in
19 determining whether Defendant violated wage and hour requirements under state and related federal
20 law, including the following issues: i. Whether or not Defendant paid proper wages to the Class; ii.
21 Whether or not Defendant provided meal periods to the Class; iii. Whether or not Defendant provided
22 rest periods to the Class; iv. Whether or not Defendant paid compensation timely upon separation of
23 employment to former Class Members; v. Whether or not Defendant paid compensation timely
24 throughout Class Members’ employment; vi. Whether or not Defendant provided accurate itemized
25 wage statements to the Class; vii. Whether or not waiting-time penalties are available to the Class for
26 violation of California Labor Code § 203; viii. Whether or not Defendant reimbursed for necessary
27 business expenses pursuant to California Labor Code § 2802; ix. Whether or not Defendant engaged in
28 unlawful or unfair business practices affecting the Class in violation of California Business and

1 Professions Code §§ 17200-17208; and x. Whether or not Plaintiffs and the Class are entitled to
2 penalties pursuant to PAGA.

3 38. From our review of the documentation provided, we determined that for purposes of
4 these claims, Defendant's policies and practices are either identical, or sufficiently similar, to raise the
5 same questions of liability, and applied to all Class Members. Because Class Members would have to
6 prove the same issues of law and fact to prevail, and because their potential legal remedies are identical,
7 it would be preferable to resolve all Class Members' claims by means of the Settlement than to require
8 each Class Member to litigate his or her individual claims. Therefore, common questions predominate
9 over any questions that may be unique to individual Class Members, and class-wide settlement is
10 superior to any other method of resolution.

11 39. My Declaration, in Paragraphs above, summarizes the firm's experience that establishes
12 its adequacy to represent the Class. Plaintiffs' counsel has no known conflicts of interest with absent
13 Class Members. Plaintiffs have demonstrated, through participation in this action, a willingness to
14 serve as a representative for the Class. Plaintiffs have no known conflicts of interest with absent Class
15 Members and have agreed to place the class interests above Plaintiffs' own. Plaintiffs' actions also
16 demonstrate adequacy.

17 40. By consolidating all of these potential individual actions into one proceeding, this
18 Court's use of the class action device enables it to manage this litigation in a manner that serves the
19 economics of time, effort and expense for the litigants and the judicial system. Absent class treatment,
20 similarly-situated employees with small but potentially meritorious claims for damages would, as a
21 practical matter, have no means of redress because of the time, effort and expense required to prosecute
22 individual actions. Moreover, in the context of settlement, superiority concerns are almost non-
23 existent, since case management is controlled and a methodology for trial need not be identified.

24 DEFENDANT'S FINANCIAL CONDITION AND DISTRIBUTION OF SETTLEMENT
25 FUNDS IN TWO INSTALLMENT PAYMENTS

26 41. Defendant provided Plaintiffs' counsel with confidential financial data showing an
27 insignificant positive ratio of cash receipts over cash disbursements. Given Defendant's cashflow issues a
28 settlement distribution in two installment payments (the first installment to be distributed withing five

1 days after settlement approval is final, and the second installment payment to be distributed within six
2 months from the date of the first installment receipt) results in a substantial benefit to all Class Members
3 and poses far less risk than pursuing the matter further in litigation, which could result in a smaller
4 settlement amount and less benefit to Class Members if Defendant's financial condition worsens. All the
5 factors concerning the strength and weaknesses of the claims provided in this declaration, the risks of
6 class certification being denied, and Defendant's cashflow issues, bore heavily on the negotiations
7 leading to the Settlement. In view of these significant risks, the Settlement reflects a fair, adequate, and
8 reasonable compromise amount for these claims for all Class Members and warrants preliminary
9 approval.

10 EXHIBITS

11 42. As noted above, a true and correct copy of the JOINT STIPULATION OF CLASS AND
12 PAGA REPRESENTATIVE ACTION SETTLEMENT is attached hereto as **Exhibit "1."** The
13 Settlement includes Exhibit A (the "Notice").

14 43. Attached hereto as **Exhibit "2"** is a Proof of Service of the proposed settlement papers to
15 the Department of Industrial Relations, through its online submission portal.

16 PAGA SETTLEMENT NOTIFICATION TO DIR

17 44. Counsel for Plaintiffs provided notice of the requested approval of the PAGA settlement
18 through the online submission portal.

19 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
20 true and correct. Executed this 26th day of January 2024, at Glendale, California.

21 

22 _____
23 LILIT TUNYAN, "Declarant"

Exhibit “1”

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Artur Tunyan (SBN 349174)

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Attorneys for Defendant Roy Miller Painting, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ISABEL RODRIGUEZ, and DANIEL TOVAR,
on behalf of themselves all employees similarly
situated,

Plaintiffs,

v.

ROY MILLER PAINTING, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2023-01314830-CU-OE-CXC

[Assigned for all purposes to Hon. Melissa R.
McCormick, Dept. CX104]

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

Action Filed: March 20, 2023

Trial: Not Set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class and PAGA Representative Action Settlement (“Joint Stipulation of
3 Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiffs ISABEL
4 RODRIGUEZ, and DANIEL TOVAR, individually, and on behalf of all others similarly situated,
5 (“Plaintiffs” or “Class Representatives”), and Defendant ROY MILLER PAINTING, INC. (“Defendant”).
6 Plaintiffs and Defendant are collectively referred to herein as “the Parties.”

7
8 THE PARTIES STIPULATE AND AGREE as follows:

9 **DEFINITIONS**

10 1. For purposes of this Settlement, “Complaint” refers to the operative complaint, which is
11 the First Amended Complaint.

12 2. For purposes of this Settlement, this matter, entitled *Rodriguez, et al. v. Roy Miller*
13 *Painting, Inc.*, Case No. 30-2023-01314830-CU-OE-CXC, is referred to herein as the “Action.”

14 3. For purposes of this Settlement, the “Class Period” is March 20, 2019 through May 1,
15 2023.

16 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All current
17 and former non-exempt employees of Defendant who worked in California at any time during the Class
18 Period. “Settlement Class Members” are those Class Members who do not submit a timely exclusion
19 request to the Settlement Administrator.

20 5. For purposes of this Settlement, “Class Counsel” means TUNYAN LAW, APC.

21 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a
22 Class Member worked for Defendant in California during the Class Period.

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

8. For purposes of the Settlement, “Defendant’s Counsel” means SHEPPARD, MULLIN, RICHTER & HAMPTON LLP.

9. For purposes of this Settlement, “PAGA Allocation” means the amount that the Parties have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that the PAGA Allocation will be \$15,000.00 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent (75%), or \$11,250.00, of the PAGA Allocation will be paid to the LWDA (“PAGA Penalty Payment”), and Twenty Five Percent (25%), or \$3,750.00, of the PAGA Allocation will be included in the Net Settlement Amount for PAGA Employees (“PAGA Settlement Payment”).

10. For purposes of this Settlement, “PAGA Period” means the period between March 20, 2022 through May 1, 2023.

11. For purposes of this Settlement, “PAGA Employee(s)” means all current and former non-exempt employees of Defendant who worked in California at any time during the PAGA Period. PAGA Employees cannot opt out of the settlement of the PAGA claim.

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

13. For purposes of this Settlement, “PAGA Representatives” means Plaintiffs.

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

STIPULATED BACKGROUND

15. On March 20, 2023, Plaintiffs filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages (Lab. Code §§ 204, 510, 1194, 1194.2, 1197, 1998); (2) failure to provide meal periods (Lab. Code §§ 226.7, 512 and 1198 and Wage Order); (3) failure to provide rest periods (Lab. Code §§ 226.7 and 1198 and Wage Order); (3); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204 and 210); (6) failure to indemnify necessary business expenses (Lab. Code § 2802); and (7) Unfair Business Practices in violation of Bus. & Prof. Code

§ 17200 et seq. On May 25, 2023, Plaintiffs filed their First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). In the Complaint, Plaintiffs sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint through the date final judgment is entered.

16. For purposes of this Agreement only, the parties stipulate that Plaintiffs satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”) by submission of the notice to the LWDA and Defendant on March 20, 2023. Defendant expressly reserves the right to assert this as a defense should the Court decide to not approve this Settlement.

17. For purposes of this Agreement only, the Parties and their respective counsel stipulate and agree to certification of the Class. If, for any reason, the Settlement is not approved, the stipulation to certification will have no force or effect. The Parties agree that certification for purposes of the Settlement is in no way an admission that class certification is proper under the standard applied to contested certification motions and that this Agreement will not be submitted in this or any other proceeding as evidence that (i) the Class should be certified, or (ii) Defendant is liable to Plaintiff or any of the Class Members or PAGA Employees. Further, neither this Agreement nor the Court’s actions with regard to this Agreement will be submitted in any court or other tribunal regarding the propriety of class certification or collective treatment for purposes other than the settlement of the Action. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Defendant will not be deemed to have waived, limited, or affected in any way, any of its objections or defenses in the Action, including, but not limited to, its defenses in opposition to class certification.

18. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiffs’ claims, Defendant contends, among other things, that Plaintiffs and the Class Members and PAGA Employees have been paid proper wages, have been provided meal periods, have been provided rest periods, have

1 been paid timely wages upon separation of employment, have been provided with accurate itemized wage
2 statements, have been reimbursed for all necessary business expenses, and treated in all respects in
3 accordance with California law with regard to the claims and facts alleged in the Complaint. Defendant
4 contends, among other things, that it has complied at all times with the California Labor Code and the
5 applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims,
6 Defendant contends that it has complied at all times with the California Business and Professions Code.

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

9 20. Class Counsel has conducted a thorough investigation into the facts of this Action,
10 including an extensive review of relevant documents, and has diligently pursued an investigation of the
11 claims of the Class and PAGA claims against Defendant. Based on its own independent investigation and
12 evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on
13 the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best
14 interest of the Class and PAGA Employees in light of all known facts and circumstances, including the
15 risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by
16 Defendant, and numerous potential appellate issues.

17 21. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
18 preliminary and final approval of this Settlement.

19 22. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
20 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
21 Court.

22 **PRIMARY TERMS OF SETTLEMENT**

23 23. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements
24 set forth herein, the Parties agree, subject to the Court's approval, as follows:

- 25 (a) Effective Date: The "Effective Date" of the Settlement will be the last to occur of
26 the following: (a) the sixty-first (61st) day after service of notice of entry of the
27 court order granting final approval of the settlement; or (b) if an appeal, review or
28 writ is sought from the order, the day after the order is affirmed or the appeal,

1 review or writ is dismissed or denied, and the order is no longer subject to further
2 judicial review. Prior to the Effective Date, Defendant will not be required to fund
3 the settlement, in whole or in part, through the settlement administrator or any third
4 party.

5 (b) Gross Settlement Amount: Defendant's maximum total payment under the
6 Settlement, including all attorney's fees and costs, the Service Payment to the
7 named Plaintiffs, the costs of settlement administration, the PAGA Allocation, and
8 any other payments provided by this Settlement, is One Hundred Eighty-One
9 Thousand Dollars and Zero Cents (\$181,000.00) ("Gross Settlement Amount"),
10 subject to the Escalator Clause.

11 (c) Escalator Clause: Defendant represents that the number of workweeks worked in
12 the Class Period for those Class Members was estimated to be nine thousand fifty
13 (9,050). The parties stipulate to a 10% escalation of the estimated workweeks
14 without an increase to the Gross Settlement Amount. If the number of actual
15 workweeks during the Class Period exceeds 10% of the estimated workweeks (i.e.
16 exceeds 9,955 workweeks), Defendant can either have the Class Period end on the
17 date that the workweeks exceed 9,955 or increase the Gross Settlement Amount by
18 a pro-rata dollar value equal to the number of workweeks in excess of 9,955
19 workweeks. For example, if there is a 1% increase over 10%, then Defendant
20 could choose to increase the Gross Settlement Amount increases by 1% (the
21 "Escalator Clause").

22 (d) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
23 revert to Defendant.

24 (e) No Claims Required: Class Members will not be required to submit a claim to
25 receive their Settlement payment.

26 (f) Net Settlement Amount: The Net Settlement Amount shall be calculated by
27 deducting from the Gross Settlement Amount (\$181,000.00) the following sums,
28 subject to approval by the Court: (1) attorney's fees (not to exceed 33 and 1/3% of

1 the Gross Settlement Amount, or \$60,333.33); (2) reasonable litigation costs (not to
2 exceed \$22,000.00); (3) the Service Payments (not to exceed \$5,000.00 to each
3 named Plaintiff, total \$10,000.00); (4) the PAGA Penalty Payment in the amount
4 of \$11,250.00 (which is 75% of the PAGA Allocation); and (5) costs of settlement
5 administration (estimated not to exceed \$6,500). Settlement Payments to the Class
6 Members and PAGA Employees will be calculated by the Settlement
7 Administrator and paid out of the Net Settlement Amount as set forth below.

8 (g) Payroll Taxes and Required Withholdings: To the extent that any portions of the
9 Settlement Class Members' Settlement Payments constitute wages, Defendant will
10 be responsible for any **employer** payroll taxes required by law separate from the
11 Gross Settlement Amount, including the employer FICA, FUTA, and SDI
12 contributions. Except for any employer payroll taxes, it is understood and agreed
13 that Defendant's maximum total liability under this Settlement shall not exceed the
14 Gross Settlement Amount. The Settlement Administrator will calculate and submit
15 the Defendant's employer share of payroll taxes after advising Defendant of the
16 total amount owed, in aggregate, as employer-side payroll taxes and receiving a
17 lump sum payment from Defendant in that amount when the Gross Settlement
18 Amount is delivered to the Settlement Administrator.

19 (h) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
20 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
21 Member (i.e., those Class Members who do not opt out of the Class Settlement, as
22 defined above) will be paid a pro-rata share of the Net Settlement Amount, less the
23 PAGA Settlement Payments totalling \$3,750.00, as calculated by the Settlement
24 Administrator. The pro-rata share will be determined by comparing the individual
25 Settlement Class Member's Covered Workweeks employed during the Class
26 Period in California to the total Covered Workweeks of all the Settlement Class
27 Members during the Class Period as follows: ([Workweeks worked by a
28 Settlement Class Member] ÷ [Sum of all Covered Workweeks worked by all

Settlement Class Members]) $\times$ [Net Settlement Amount – all PAGA Settlement Payments] = individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Uncashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(i) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. PAGA Employees are not permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $([\text{PAGA Pay Periods worked by a PAGA Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]) \times [\text{PAGA Settlement Payment to Employees, i.e. \$3,750.00}]$ = individual PAGA Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time the Settlement Payments issue.

(j) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 20% to wages, 40% to penalties and 40% to interest. The PAGA Settlement Payment shares to PAGA Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will

1 receive an IRS Form W-2 with respect to this portion of the Settlement Payment.
2 The employer's share of payroll taxes and other required withholdings will be paid
3 as set forth above, including but not limited to the Defendant's FICA and FUTA
4 contributions, based on the payment of claims to the Class Members. Class
5 Members are responsible to pay appropriate taxes due on the Settlement Payments
6 they receive. To the extent required by law, IRS Forms 1099 and W-2 will be
7 issued to each Class Member with respect to such payments. All PAGA
8 Settlement Payments will be allocated as 100% penalties.

9 (k) Settlement Payments Do Not Give Rise to Additional Benefits: The Settlement
10 Payments to be paid to Plaintiffs, Settlement Class Members, and PAGA
11 Employees, and the Service Award to be paid to Plaintiffs, shall be deemed not to
12 be pensionable earnings and shall not have any effect on the eligibility for, or
13 calculation of, any of the employee benefits (e.g., vacations, holiday pay,
14 retirement plans, etc.) of Plaintiffs, any Settlement Class Members, or any PAGA
15 Employees. Such payments do not represent any modification of Plaintiffs',
16 settlement Class Members', or PAGA Employees previously credited hours of
17 service or other eligibility criteria under any employee pension benefit plan or
18 employee welfare benefit plan sponsored by Defendant. Further, any Settlement
19 Payments or Service Awards shall not be considered "compensation" in any year
20 for purposes of determining eligibility for, or benefit accrual within, an employee
21 pension benefit plan or employee welfare benefit plan sponsored by Defendant.

22 (l) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
23 object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3%
24 of the Gross Settlement Amount (\$60,333.33) and reimbursement of litigation
25 costs and expenses not to exceed \$22,000.00. Approved attorney's fees and
26 litigation costs shall be paid at the same time Settlement Payments issue to the
27 Settlement Class Members.

28 (m) Service Payments: Subject to Court approval, and in exchange for a general

1 release, Defendant will not object to Class Counsel's application for an additional
2 payment of up to \$5,000.00 to each Plaintiff for service as a Class Representative,
3 total \$10,000.00 ("Service Payment"). It is understood that the Service Payment is
4 in addition to the individual Settlement Payment to which a Class Representative is
5 entitled to along with the other Class Members.

6 (n) Plaintiffs' General Release. Plaintiffs fully and finally release the Released
7 Parties (as defined herein), and each of them, from any and all claims, whether
8 asserted or unasserted, known and unknown, under federal, state and/or local
9 law, statute, ordinance, regulation, common law, or other source of law,
10 including but not limited to claims arising from or related to their employment
11 with Defendant and their compensation while an employee of Defendant
12 ("Plaintiffs' Released Claims"). Plaintiffs' Released Claims include all claims
13 arising from or related to the Action; all claims for unpaid wages, including, but
14 not limited to, failure to pay minimum wages, straight time compensation,
15 overtime compensation, double-time compensation, and interest; the calculation
16 of the regular rate of pay; wages related to alleged illegal rounding; missed
17 meal periods and rest periods; meal and rest period premiums; reimbursement
18 for all business expenses; payment for all hours worked, including off-the-clock
19 work; inaccurate wage statements; unauthorized or improper deductions; failure
20 to keep accurate records; unfair business practices; penalties, including, but not
21 limited to, meal/rest period penalties, recordkeeping penalties, wage statement
22 penalties, minimum-wage penalties, and waiting-time penalties; attorneys' fees;
23 and costs, as well as all claims arising under the California Labor Code
24 (including but not limited to Sections 200, 201, 201.3, 201.5, 201.6, 201.8,
25 201.9, 202, 203, 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5,
26 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 256, 450, 500,
27 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2,
28 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802, 2698 et seq., and 2699 et seq.);

1 the Wage Orders of the California Industrial Welfare Commission; the
2 California Private Attorneys General Act of 2004 (“PAGA”); California
3 Business and Professions Code Section 17200, et seq.; the California Civil
4 Code, including but not limited to Sections 3287, 3336, and 3294; 8 CCR
5 Sections 11010, 11040, and 11090; California Code of Civil Procedure,
6 including but not limited to Section 1021.5; the California common law of
7 contract; the FLSA, 29 U.S.C. Section 201, et seq.; federal common law; and
8 the Employee Retirement Income Security Act, 29 U.S.C. Section 1001, et seq.
9 (“ERISA”). Plaintiff’s Released Claims also include all claims for lost wages
10 and benefits, emotional distress, retaliation, punitive damages, and attorneys’
11 fees and costs arising under federal, state, or local laws for discrimination,
12 harassment, retaliation, and wrongful termination, such as, by way of example
13 only, (as amended) 42 U.S.C. Section 1981, Title VII of the Civil Rights Act of
14 1964, the Americans With Disabilities Act, the Age Discrimination in
15 Employment Act, and the California Fair Employment and Housing Act; and
16 the law of contract and tort. Plaintiffs who are 40 years of age or older shall
17 release all claims under the ADEA pursuant to the OWBPA Plaintiffs stipulate
18 and agree that each of them have expressly waived and relinquished, to the
19 fullest extent permitted by law, the provisions, rights and benefits of Section
20 1542 of the California Civil Code, or any other provision under federal or state
21 law, which provides:

22 A general release does not extend to claims which the creditor or
23 releasing party does not know or suspect to exist in his or her favor at
24 the time of executing the release, which if known by him or her must
25 have materially affected his or her settlement with the debtor or released
26 party.

27 The Parties understand that the General Release does not release any claims that
28 Plaintiffs cannot lawfully release. It is also understood and agreed by

1 Defendant that this release does not limit Plaintiffs from filing and seeking
2 damages for any Workers' Compensation claims and/or unemployment
3 insurance claims.

4 (o) The Settlement Administrator will issue an IRS Form 1099 for the Service
5 Payment to the Plaintiffs. Plaintiffs shall be solely and legally responsible to pay
6 any and all applicable taxes on the Service Payment and shall hold harmless the
7 Released Parties from any claim or liability for taxes, penalties or interest arising as
8 a result of the payment. Plaintiffs are solely responsible for providing a completed
9 IRS W-9 form to the Settlement Administrator prior to distribution. The
10 Settlement Administrator will issue to Plaintiffs an IRS Form 1099 reflecting the
11 Service Payment. Plaintiffs agree not to opt out or object to the Settlement,
12 including the Service Payment as the Class Representative.

13 (p) Settlement Administrator: The Settlement Administrator will be ILYM GROUP,
14 Inc. Settlement Administration Costs are estimated not to exceed \$6,500.

15 (q) Funding of Settlement Account: Defendant will fund the Gross
16 Settlement Amount in two equal installments. The first installment in the
17 amount of \$90,500 will be funded by Defendant no later than twelve (12)
18 months from November 18, 2023 or five (5) days after the Effective Date,
19 whichever date is later ("First Installment"). The second installment in the
20 amount of \$90,500 will be funded by Defendant no later than six (6) months
21 from the date of the first installment payment receipt ("Second Installment").
22 Defendant shall also fund the amounts necessary to fully pay Defendant's share
23 of payroll taxes by transmitting the funds to the Settlement Administrator with
24 each installment payment.

25 (r) Distribution and Mailing of Settlement Payments: The Administrator shall
26 mail checks for the First Installment no later than fourteen (14) calendar days
27 after Defendant funds the First Installment, in the following order of priority
28 from the First Installment: (i) full payment of the Service Payment to Class

Representatives; (ii) partial payment in the amount of one half (50%) of LWDA
PAGA Payment; (iii) partial payment in the amount of one half (50%) of all
Individual PAGA Payments; (iv) partial payment in the amount of one half
(50%) of Individual Class Payments; (v) partial payment in the amount of one
half (50%) of the Administration Expenses Payment; (vi) partial payment in the
amount of one half (50%) of the Class Counsel costs, and (vii) partial payment
in the amount of the remainder of the First Installment after deduction of the
payments provided in subclauses (i)-(vi) to the Class Counsel Fees Payment.
The Administrator shall mail checks for the Second Installment no later than
fourteen (14) calendar days after Defendant funds the Second Installment, in the
following order of priority from the Second Installment: (i) partial payment in
the amount of the remaining half (50%) of Individual Class Payments, (ii)
partial payment in the amount of the remaining half (50%) of Individual PAGA
Payments, (iii) partial payment in the amount of the remaining half (50%) of
LWDA PAGA Payment; (iii) partial payment in the amount of the remaining
half (50%) of the Administration Expenses Payment, (iv) partial payment in the
amount of the remaining half (50%) of the Class Counsel costs, and (v) partial
payment in the amount of the remainder the Class Counsel Fees Payment after
deduction of the partial payment of Class Counsel Fees received from the First
Installment.

- (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the
material terms of the proposed Settlement, along with instructions about how to
object or request exclusion from the proposed class action Settlement (“Notice”) as
well as an Objection Form and Request for Exclusion Form attached to this
Agreement as Exhibits C and D (together with the “Notice,” the “Notice Packet”).
For each Class Member, there will be pre-printed information on the mailed
Notice, based on Defendant’s records, stating the Class Member’s Covered
Workweeks during the Class Period and the estimated total Settlement Payment

1 under the Settlement, including the Settlement Class Payment and the PAGA
2 Settlement Payment that will be distributed irrespective of any exclusion request.
3 The pre-printed information based on Defendant's records shall be presumed to be
4 correct. A Class Member may dispute the pre-printed information on the Notice as
5 to his or her Covered Workweeks during the Class Period. Class Members must
6 submit any dispute regarding the information on the Notice as to his or her
7 Covered Workweeks within the Response Deadline.

8 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

9 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

10 Class Members submitting a Request for Exclusion will nevertheless receive their
11 pro-rata share of the PAGA Settlement Payment. If the Court approves the
12 compromise of the PAGA Claim, all Class Members are bound by the Court's
13 resolution of the PAGA Claim. Plaintiffs shall serve a notice of settlement on the
14 California Labor and Workforce Development Agency at or before the time
15 Plaintiffs files the motion for preliminary approval.

16 (v) Resolution of Workweek Disputes: Defendant's records will be presumed
17 determinative, absent credible evidence to rebut the accuracy of the Workweeks
18 credited to a Class Member based thereon. If a Class Member disputes the
19 Workweeks credited to him or her, as stated in the Notice, the Class Member must
20 submit written correspondence to the Settlement Administrator that is postmarked
21 no later than the Response Deadline explaining the basis for the dispute and
22 including any supporting documentation showing that the Workweeks credited to
23 him or her is inaccurate. If a Class Member disputes the accuracy of Defendant's
24 records used to calculate Covered Workweeks, the Settlement Administrator will
25 evaluate the evidence submitted by the Class Member and make a recommendation
26 to the Parties as to which figures should be applied. If the Parties disagree with the
27 Settlement Administrator's recommendation, the dispute will be presented to the
28 Court for determination.

(w) Right of Class Member to Request Exclusion from the Settlement: Class Members who wish to exclude themselves from the Settlement must submit a complete, valid, and timely Request for Exclusion Form (“Request for Exclusion Form”) to the Settlement Administrator by mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope will be the exclusive means for determining whether a Request for Exclusion has been timely submitted. The Request for Exclusion Form that will accompany the Notice is attached hereto as **Exhibit “C.”** The Request for Exclusion Form accompanying the Notice will be pre-printed with the Class Member’s name and address to facilitate identification by the Settlement Administrator. To be complete, the Class Member must sign and date the Request for Exclusion Form and include the last four digits of their social security number. The name and last four digits of the Social Security number provided by the Class Member on the Request for Exclusion Form must match Defendant’s records as provided to the Settlement Administrator, or match Defendant’s records for that particular Class Member. The name and Social Security number provided by the Class Member will be deemed to match Defendant’s records only if: (1) both the first name and the last name and the last four digits of the Social Security number provided by the Class Member match Defendant’s records; (2) the first name and the last four digits of the Social Security number provided by the Class Member match Defendant’s records and it appears the last name has been changed as a result of a change in marital status or is a shortened or lengthened version of the name that appears in Defendant’s records; or (3) the last four digits of the Social Security number and last name match Defendant’s records and the first name provided is either a nickname or a shortened or lengthened version of the name that appears in Defendant’s records. Each Class Member who does not submit a Request for Exclusion Form in compliance with this paragraph will be deemed to be a Settlement Class Member. Settlement Class Members will be bound by all terms

of the Settlement Agreement and the Final Approval Order and Final Judgment. Any Class Member who submits a Request for Exclusion Form will not be a Settlement Class Member, will not be entitled to receive any Settlement Class Payment, and will not be bound by this Agreement or have any right to object, appeal, or comment thereon. No later than thirty (30) calendar days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with a complete list of all Class Members who have submitted a complete, valid, and timely Request for Exclusion Form.

- (x) Right of Settlement Class Member to Object to The Settlement: A Settlement Class Member may object to the Settlement. To assert an objection to the Settlement, a Settlement Class Member must submit an Objection Form to the Settlement Administrator by first class U.S. mail at the address specified on the Notice in the form attached hereto as **Exhibit “D”**, not later than the Response Deadline. The date of the postmark will be the exclusive means for determining whether an objection has been timely submitted. If any Class Member chooses to submit a written objection not in the form attached hereto as **Exhibit “D”**, the written objection must include: (1) the objector’s full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number; (3) the factual and legal basis, with supporting documents, if any, on which the objection is based; (4) whether the objector is represented by an attorney and providing the contact information of any such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. The Parties agree that the Settlement Administrator shall not disclose the last four digits of any objecting Class Member’s Social Security number to anyone but the Parties, that such information will be securely held, and that the disclosure of those last four digits to the Parties shall not be used for any purpose except to ascertain the identity of the objector for administration of this Settlement. Any person who fails to timely submit their written objections in the manner specified above may still appear and

1 object at the Final Approval Hearing. If a Settlement Class Member objects to this
2 Settlement, the Settlement Class Member will remain a member of the Class for
3 Settlement purposes, and if the Court grants final approval of the Settlement, he or
4 she will be bound by the terms of the Settlement and any Final Approval Order and
5 Final Judgment. Within three (3) business days of receipt of an objection, the
6 Settlement Administrator shall provide counsel for the Parties with a copy of the
7 objection. No later than thirty (30) calendar days before the Final Approval
8 Hearing, the Settlement Administrator shall provide counsel for the Parties with a
9 complete list of Settlement Class Members who have submitted an objection. Prior
10 to the Final Approval Hearing, the Settlement Administrator shall submit copies of
11 the objections that it has received, to the Court by way of declaration. Regardless
12 of the form, an objection alone will not satisfy the requirement that a Settlement
13 Class Member must either make a timely complaint in intervention before final
14 judgment or by file a motion to set aside and vacate the class judgment under Code
15 of Civil Procedure § 663 to have standing to appeal entry of judgment approving
16 this Settlement, as is required under the California Supreme Court decision of
17 *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class Member who
18 does not object prior to or at the Final Approval Hearing, will be deemed to have
19 waived any objections and will be foreclosed from making any objections (whether
20 at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the
21 objecting Class Member does not formally intervene in the action or move to set
22 aside any judgment and/or the Court rejects the Class Member's objection, the
23 Class Member will still be bound by the terms of this Agreement. Class Counsel
24 and Defendant's Counsel may, at least five (5) calendar days (or some other
25 number of days as the Court shall specify) before the final approval hearing, file
26 responses to any written objections submitted to the Court.

27 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

28 24. Subject to the Court's approval, and subject to reconsideration by the Parties after a

1 competitive bidding process, the Parties have agreed to the appointment of ILYM GROUP, Inc. to
2 perform the customary duties of Settlement Administrator. The Settlement Administrator will mail the
3 Notice, both in English and Spanish, to the Class Members.

4 25. The Settlement Administrator will independently review the Covered Workweeks
5 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
6 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
7 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
8 Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its
9 duties.

10 26. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
11 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
12 checks to the Class Members in two installments. Tax treatment of the Settlement Payments will be as set
13 forth herein, and in accordance with state and federal tax laws. All disputes relating to the Settlement
14 Administrator's performance of its duties shall be referred to the Court, if necessary, which will have
15 continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations
16 contemplated by this Settlement have been fully carried out.

17 27. The Settlement Administrator will post the First Amended Complaint, the notice letter to
18 the LWDA, the Settlement Agreement, the court orders granting preliminary and final approval of the
19 Settlement and final judgment approving the Settlement, and the Notice on the Settlement Administrator's
20 website for a period of not less than 180 calendar days after the final judgment is entered. The address of
21 that website will be included in the Notice.

22 **ATTORNEY'S FEES AND COSTS**

23 28. In consideration for resolving this matter and in exchange for the release of all claims by
24 the Class Members, including Plaintiffs, and subject to approval by the Court, Defendant will not object to
25 Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount
26 (\$60,333.33 of \$181,000.00) and litigation costs not to exceed \$22,000.00. The amounts set forth above
27 will cover all work performed and all fees and costs incurred to date, and all work to be performed and all
28 fees and costs to be incurred in connection with the approval by the Court of this Settlement and

administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement Amount. Class Counsel shall disclose to the Court any fee sharing agreements in existence.

THE NOTICE PROCESS

29. A Notice in approximately the form attached hereto as **Exhibit "B"**, the Request for Exclusion Form in approximately the form attached hereto as **Exhibit "C"** and the Objection Form in approximately the form attached hereto as **Exhibit "D"** and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice Packet shall be translated into Spanish so that Spanish and English language versions of the Notice Packet are included in the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

(a) Within 20 calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) social security number; and (4) dates of employment with Defendant in California. This database shall be based on Defendant's payroll and other business records and shall be provided in a format acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential and secure and use it only for the purposes described herein, and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement.

(b) Within 14 calendar days after the Class database is provided to the Settlement

1 Administrator, the Settlement Administrator will mail the Notices to the Class
2 Members by First Class United States mail.

- 3 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
4 the initial Response Deadline shall be resent to the forwarding address, if any, on
5 the returned envelope. A returned Notice will be forwarded by the Settlement
6 Administrator any time that a forwarding address is provided with the returned
7 mail. If there is no forwarding address, the Settlement Administrator will do a
8 computer search for a new address using the Class Member's social security
9 number or other information. In any instance where a Notice is re-mailed, that
10 Class Member will have until the extended Response Deadline as described above.
11 Upon completion of these steps by the Settlement Administrator, Defendant and
12 the Settlement Administrator shall be deemed to have satisfied their obligations to
13 provide the Notice to the affected Class Member. The affected Class Member shall
14 remain a member of the Settlement Class and shall be bound by all the terms of the
15 Settlement and the Court's Order and Final Judgment.
- 16 (d) Class Counsel shall provide to the Court, at least five calendar days prior to the
17 final approval hearing, or such other date as set by the Court, a declaration by the
18 Settlement Administrator of due diligence and confirming mailing of the Notices.

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

20 30. As set forth above, each Class Member will have until the expiration of the applicable
21 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class
22 Member's Covered Workweek information on the Notice. No disputes will be honored if they are
23 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.
24 Each Class Member is responsible to maintain a copy of any documents sent to the Settlement
25 Administrator and a record of proof of mailing.

26 31. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
27 Settlement Class Members and PAGA Employees in two installments as provided herein. Settlement
28 Class Payments and PAGA Payments may be combined into one check. Settlement Payment checks shall

1 remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment
2 checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class
3 Member within that time, and the Class Member's relevant claims will remain released by the Settlement.
4 Settlement Payment checks which have expired will not be reissued.

5 32. Funds from uncashed or abandoned Settlement Payment checks, based on a 180-day void
6 date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of
7 each Class Member who failed to cash their Settlement Payment check prior to the void date.

8 33. Upon completion of its calculation of Settlement Payments, the Settlement Administrator
9 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to
10 be made to Class Members (to be identified anonymously by a random identifier). A Declaration attesting
11 to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and
12 filed with the Court by Class Counsel.

13 **RELEASE BY THE CLASS**

14 34. Released Class Claims. Settlement Class Members, and their successors, assigns, and/or
15 agents, upon full payment of Gross Settlement Amount, shall fully and finally release and discharge
16 Defendant and each of its past, present and future agents, employees, servants, officers, directors, partners,
17 trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors,
18 related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers,
19 consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of its
20 respective past, present and future employees, directors, officers, agents, attorneys, stockholders,
21 fiduciaries, parents, subsidiaries, and assigns, and each of them ("Released Parties") from the Class
22 Released Claims. The Class Released Claims are defined as any and all claims, debts, liabilities, demands,
23 actions, or causes of action pleaded or asserted in the First Amended Complaint in the Action, or that
24 could have been pleaded or asserted based on the facts alleged in the First Amended Complaint, including
25 but not limited to state and/or federal wage and hour claims (including all claims under the California
26 Labor Code and Industrial Welfare Commission Wage Orders), failure to pay all wages due, including
27 minimum wages, straight time compensation, overtime compensation, double-time compensation,
28 reporting time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal

periods and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay; payment for all hours worked, including off-the-clock work; wages related to alleged illegal rounding; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; failure to maintain accurate records, including payroll records; unfair business practices; declaratory relief; interest; penalties, including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs, withholding from wages. The Class Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Labor Code §§ 200-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2802); penalties under the Private Attorneys General Act sections 2698, *et seq.*; violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); the Wage Orders of the California Industrial Welfare Commission. This release excludes the release of claims not permitted by law.

35. Released PAGA Claims. Upon full payment of Gross Settlement Amount, Plaintiffs, the LWDA, and each and all PAGA Employees, on behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be deemed to have fully and finally released and discharged the Released Parties, and each of them, of any and all causes of action for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004 (California Labor Code § 2698, *et seq.*) that were alleged in the Action based on the facts and allegations pleaded in the Complaint and/or the LWDA notice letter attached hereto as “**Exhibit A,**” including all claims for civil penalties based upon or arising out of any Defendant's alleged failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay; payment for all hours worked, including off-the-clock work; wages related to alleged illegal rounding; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; failure to maintain accurate records, including payroll records; unfair business practices; declaratory relief; interest; penalties,

including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and claims for civil penalties arising under or based upon alleged violations of California Labor Code Sections 200-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, 2699 *et seq.*, and/or those arising under applicable Industrial Welfare Commission Wage Orders. The time frame of the Released PAGA Claims shall be the PAGA Period.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

36. Plaintiffs shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiffs' unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action Settlement, Plaintiffs shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representatives' service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class (for Settlement purposes only);
- (c) Approving as to form and content the proposed Notice Packet;
- (d) Directing the mailing of the Notice Packet;
- (e) Preliminarily approving the Settlement, including Class and PAGA claims, subject only to the objections of Class Members as to the Class Settlement and final review by the Court;
- (f) Conditionally appointing Plaintiffs and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM GROUP, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

37. Defendant and its counsel agree to cooperate to obtain approval of the Settlement, pursuant to the terms set forth herein. Pursuant to the Parties' confidentiality agreement, Defendant will provide to Plaintiff financial information justifying distribution of settlement money in two installment payments in connection with Defendant's financial condition. If ordered by the Court, Defendant will provide

1 necessary financial background to the Court via a declaration in the form satisfactory to the Court
2 requirements to approve the Settlement . Failure by Defendant to provide necessary financial information
3 and declarations requested by court justifying distribution of settlement money in two installment
4 payments will constitute material breach of this Agreement. Should the Court find that information
5 provided by Defendant not satisfactory for approval of the settlement money distribution in two
6 installment payments, Defendant has an obligation to provide additional information to the court as
7 requested until found satisfactory or negotiate with Plaintiff an amendment to the Settlement Agreement to
8 distribute the settlement money in a single installment.

9 **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

10 38. In conjunction with the hearing of a motion for final approval by the Court of the
11 Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's
12 Counsel for review and approval and then submit to the Court a proposed final order and judgment
13 containing provisions sufficient to accomplish the following:

- 14 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
15 adequate, and directing consummation of its terms and provisions;
- 16 (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- 17 (c) Approving the Service Payments to the Class Representatives;
- 18 (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting
19 duties under the Settlement.
- 20 (e) Adjudging Plaintiffs and Class Counsel may adequately represent the Class for the
21 purpose of entering into and implementing the Agreement;
- 22 (f) Entering a final judgment in the action as to all PAGA and Class Claims and
23 related issues;
- 24 (g) Adjudging that notwithstanding the submission of a timely request for exclusion,
25 Class Members are still bound by the settlement and release of the Released PAGA
26 Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46
27 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to
28 the Released PAGA Claims, and further affirms that the State's claims for civil

penalties pursuant to PAGA are also extinguished.

Any revised final judgments will also be provided to Defendant's Counsel for review and approval before they are submitted to the Court.

NULLIFICATION AND TERMINATION

39. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payments or settlement money distribution terms; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

40. If more than 20% of the Class Members opt out of this Settlement, then Defendant in its sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Plaintiffs' Counsel written notice, by facsimile, e-mail, or mail, no later than five (5) days prior to the date of the Final Approval Hearing. If this option is exercised by Defendant, Defendant shall be solely responsible for the costs incurred by the Settlement Administrator to that date.

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

PARTIES' AUTHORITY

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

MUTUAL FULL COOPERATION

43. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement.

NO PRIOR ASSIGNMENTS

44. The Parties and their respective counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

NO ADMISSION OF LIABILITY

45. Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all the claims and contentions alleged by the Plaintiffs in this case. The Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

ENFORCEMENT ACTIONS

46. The Parties agree that following entry of the Final Approval Order and Judgment, this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Action over all parties and the Class Members to interpret and enforce the terms, conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover

1 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
2 incurred in connection with any enforcement actions.

3 **CONSTRUCTION**

4 47. The Parties hereto agree that the terms and conditions of this Settlement are the result of
5 lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed
6 in favor of or against any party by reason of the extent to which any party or his, her or its counsel
7 participated in the drafting of this Settlement.

8 **CAPTIONS AND INTERPRETATIONS**

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

12 **MODIFICATION**

13 49. This Settlement may not be changed, altered, or modified, except in writing and signed by
14 the Parties hereto, and approved by the Court. This Settlement may not be discharged except by
15 performance in accordance with its terms or by a writing signed by the Parties hereto.

16 **INTEGRATION CLAUSE**

17 50. This Settlement contains the entire agreement between the Parties relating to the
18 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
19 understandings, representations, and statements, whether oral or written and whether by a party or such
20 party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

21 **WAIVER OF APPEALS**

22 51. The Parties agree to waive appeals and to stipulate to class certification for purposes of
23 implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the
24 amount awarded as attorney's fees.

25 **BINDING ON ASSIGNS**

26 52. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
27 their respective heirs, trustees, executors, administrators, successors and assigns.
28

CLASS COUNSEL SIGNATORIES

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

COUNTERPARTS

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

CONFIDENTIALITY & PUBLIC COMMENT

55. Plaintiffs and Class Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the amount or terms of the Settlement. Class Counsel may respond to press inquiries by stating the matter has been resolved and refer the press to court filings. In addition, Plaintiffs and Class Counsel agree that they will not engage in any advertising or distribute any marketing materials specifying any material terms relating to the Settlement of the Action, including but not limited to any postings on any websites maintained by Class Counsel and including but not limited to the identity of Defendant and/or any information that identifies Defendant. The Settlement Administrator shall not create nor maintain any separate website regarding this Settlement at any time. Any communication about the Settlement to Class Members prior to the Court-approved mailing of the Class Notice will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice. Plaintiffs are prohibited from discussing the terms or the fact of the settlement with third parties other than (1) their immediate family members, and/or (2) their accountants or lawyers as necessary for tax purposes. Furthermore, Plaintiffs and Class Counsel will undertake any and all disclosures and submissions of papers that are required to be made to the LWDA in conformity with PAGA.

FINAL JUDGMENT

56. The Parties agree that, upon final approval of the Settlement, final judgment of this Action

will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

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

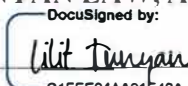
IT IS SO STIPULATED.

Plaintiffs & Class Representatives:

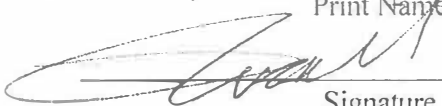
Dated: 1/18/2024 | 8:26 AM PST By: 
ISABEL RODRIGUEZ

Dated: 1/17/2024 | 7:17 PM PST By: 
DANIEL TOVAR

Plaintiffs' Counsel:

Dated: 1/18/2024 | 9:07 AM PST TUNYAN LAW, APC
By: 
Lilit Tunyan
Artur Tunyan
Attorneys for Plaintiffs

Defendant:

Dated: ROY MILLER PAINTING INC.
By: 
Print Name

Signature
 1-25-24
Title

Defendant's Counsel:

Dated: January 25, 2024 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Greg S. Labate
Lauren J. Blaes
Attorneys for Defendant

Exhibit “A”



Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 20, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL
Return Receipt Requested

Roy Miller
Agent for Service of Process for
Roy Miller Painting, Inc.
811 E. Emerson Avenue
Orange, CA 92865

VIA CERTIFIED MAIL
Return Receipt Requested

Roy Miller Painting, Inc.
1036 N. Lemon Street
Orange, CA 92867

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Isabel Rodriguez, et al. v. Roy Miller Painting, Inc.*

To Whom It May Concern:

Please be advised that my office has been retained by Isabel Rodriguez and Daniel Tovar ("Plaintiffs") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Labor Code §§ 2699, *et seq.*) against their former employer Roy Miller Painting, Inc. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiffs allege Defendant engaged in with respect to Plaintiffs and all of Defendant's aggrieved employees.

Plaintiffs wish to pursue a PAGA representative action on behalf of themselves as aggrieved employees, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiffs and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiffs’ Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Orange County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiffs Isabel Rodriguez and Daniel Tovar worked for Defendant as painters from approximately July 2022 to October 2022, primarily in Orange County. Defendant classified Plaintiffs as non-exempt from overtime. During the time period that Plaintiffs were employed by Defendant, Plaintiffs typically worked 5 days per week, and between 8 to 10 hours each workday.

Throughout Plaintiffs' employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiffs' experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiffs and the Aggrieved Employees for all hours worked (including minimum

wages, straight time wages and overtime wages). Throughout the statutory period, Defendant maintained a policy and practice of not paying for all the time Plaintiffs and the Aggrieved Employees worked. Often Plaintiffs and the Aggrieved Employees missed hours or minutes worked on their paychecks. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiffs and the Aggrieved Employees to perform work “off-the-clock”. During the statutory period Defendant required Plaintiffs and the Aggrieved Employees to clock out for meal periods but to continue working. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiffs and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiffs and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Plaintiffs and the Aggrieved Employees would often times miss their meal periods, have interrupted or short meal periods. In those occasions when Plaintiffs and the Aggrieved Employees had an opportunity to take their first meal periods, Defendant wrongfully required Plaintiffs and the Aggrieved employees to combine their 30-minute first meal periods with their first rest periods and have 45-minute combined meal and rest breaks instead of taking separate meal periods and separate rest periods, and wrongfully deducted 45-minutes from Plaintiffs’ and the Aggrieved Employees’

hours. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiffs and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiffs and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not schedule rest periods every 4 hours or a major fraction. Instead, Defendant wrongfully required Plaintiffs and the Aggrieved employees to combine their 30-minute first meal periods with their first rest periods and to take combined 45-minute first meal and rest breaks instead of taking separate meal periods and separate rest periods, and wrongfully deducted 45-minutes from Plaintiffs' and the Aggrieved Employees' hours. Not only Defendant deprived Plaintiffs and the Aggrieved Employees of their right to take first rest periods during the timeframe required under California law but refused to pay for rest periods by deducting 45 minutes of pay for combined meal periods and rest periods. Plaintiffs and the Aggrieved Employees have never been authorized and taken their second and third rest periods. Accordingly, Defendant's policy and practice was for Plaintiffs and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiffs seek penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and the Aggrieved Employees. Additionally, Defendant included hours accrued as sick pay in the total number of hours worked in the wage statements.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiffs and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included usage of personal cell phones to download and use application to record their time as well as to respond to work related calls from their supervisors. Plaintiffs and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiffs and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiffs and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiffs and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Labor Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Labor Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendant included hours accrued as sick pay in the total number of hours worked in the wage statements. Most importantly, Defendant wrongfully stated all 9 digits of social security numbers of employees in their wage statements despite the requirement to include only 4 last digits. This is a blatant violation of the Labor Code requirements as well as California laws protecting privacy rights of employees.

As a result of Defendant violating Labor Code § 226, Plaintiffs and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiffs and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Labor Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Labor Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiffs and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiffs allege that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;

4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiffs seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiffs have placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiffs becomes aware of additional compensation owed or losses incurred by Plaintiffs or by any other aggrieved employee of Defendant or any additional facts, Plaintiffs expressly reserve the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Monday, March 20, 2023 12:41:03 PM

3/20/2023

LWDA Case No. LWDA-CM-943148-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Isabel Rodriguez, Daniel Tovar
Employer: Roy Miller Painting, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit “B”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Rodriguez, et al. v. Roy Miller Painting, Inc.
Orange County Superior Court Case No. 30-2023-01314830-CU-OE-CXC

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF ROY MILLER PAINTING, INC. (“DEFENDANT” or “RMP”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN MARCH 20, 2019 AND MAY 1, 2023 (THE “CLASS PERIOD”), THIS PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Purpose of this Notice

A proposed settlement (the “Settlement”) has been reached in a proposed class and PAGA action lawsuit brought by Plaintiffs Isabel Rodriguez and Daniel Tovar (“Plaintiffs”) against Defendant Roy Miller Painting, Inc. entitled *Rodriguez, et al. v. Roy Miller Painting, Inc.*, Orange Superior Court Case No. 30-2023-01314830-CU-OE-CXC (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement.

You are receiving this notice because RMP’s records indicate that you worked for RMP as a non-exempt employee in California for some time between March 20, 2019 and May 1, 2023 (“Class Period”). This means you are a potential Class Member, and you have a right to know about the proposed Settlement.

In addition, you are also a PAGA Employee if you are currently or were formerly employed as a non-exempt employee of RMP who worked for RMP within California at any time during the period from March 20, 2022 to May 1, 2023 (“PAGA Period”).

This Notice advises you of your options under this settlement, which include how you can participate in this settlement and receive your share of the settlement proceeds, how you can exclude yourself from the settlement, or how you can object to the settlement.

What is the case about?

On March 20, 2023, Plaintiffs Isabel Rodriguez and Daniel Tovar (“Plaintiffs”) filed a putative Class Action. On May 25, 2023, Plaintiffs filed a First Amended Complaint alleging the following claims against Defendant: (1) failed to pay all wages; (2) failed to provide meal periods; (3) failed to authorize and permit rest periods; (4) failed to timely pay all wages at termination; (5) failed to furnish accurate itemized wage statements; (6) failure to indemnify necessary business expenses; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”).

The Action seeks unpaid wages for a class of all current and former non-exempt employees of RMP who worked in California at any time during the Class Period (the “Class” or “Class Members”). The Action also seeks penalties under PAGA for all current and former non-exempt employees of RMP who worked in California at any time during the PAGA Period (“PAGA Employees”).

Defendant denies each and every allegation in the Lawsuit, denies any liability or wrongdoing of any kind, and believes that it treated, and continues to treat, its employees fairly and in full compliance with the law.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive your individual settlement share under the Settlement if the Court finally approves the Settlement. You will also
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	give up rights to assert the Released Claims against Defendant as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to exclude yourself from the Class Settlement. If you choose to do so, you must mail to the Administrator, in writing, a completed Request for Exclusion Form. If you exclude yourself, you will NOT receive any payment under the Settlement (other than based on the PAGA Claim, if applicable). Request for Exclusion Forms must be submitted by << RESPONSE DEADLINE >>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you must either mail a written explanation of why you do not agree with the Settlement to the Settlement Administrator by completing and submitting the Objection Form, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request for Exclusion Form if you wish to object. <i>Written</i> objections must be submitted by << RESPONSE DEADLINE >>.

What are the Settlement terms?

Subject to final Court approval, Defendant will pay a maximum total payment under the Settlement of \$181,000.00 (the “Gross Settlement Amount”) for: (a) individual Settlement Class Payments to Settlement Class Members; (b) the Service Payments to Plaintiffs (\$5,000.00 to be requested for each Plaintiff, totaling \$10,000.00); (c) attorneys’ fees (not to exceed 33 and 1/3% of the Gross Settlement Amount, \$60,333.33) and litigation costs to Class Counsel (not to exceed \$22,000) (“Class Counsel’s Fees and Costs”); (d) the amount of \$15,000.00 allocated toward civil penalties under the PAGA (the “PAGA Allocation”), of which the LWDA will be paid 75% (i.e. \$11,250.00 (“PAGA Penalty Payment”) and the remaining 25% (i.e. \$3,750.00) will be distributed to PAGA Employees (the “PAGA Settlement Payments”); and (e) payment to the Settlement Administrator for settlement administration services (estimated to be no more than \$6,500) (“Administrative Expenses”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Costs, the Service Payments to Plaintiffs, the PAGA Penalty Payment, and the Administrative Expenses. Settlement Class Payments and PAGA Settlement Payments (defined below) will be paid from the Net Settlement Amount.

Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totaling \$3,750.00, based upon the total number of workweeks employed by the Settlement Class Member during the Class Period (the “Settlement Class Payment”). The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$3,750.00 set aside for all PAGA Settlement Payment) × (the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members).

PAGA Employees will receive a pro-rata share of the \$3,750.00 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”) based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period, regardless of whether they request exclusion from the Settlement. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$3,750.00 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

The total payment to an individual, including their Settlement Class Payment and PAGA Settlement Payment, is their “Individual Settlement Payment”. Your estimated Individual Settlement Payment is <<**Estimated Payment**>>, which includes your payment from the Class settlement in the estimated amount of <<**Estimated Individual Settlement Class Payment**>> and your payment from the PAGA settlement in the estimated amount of <<**Estimated Individual PAGA Settlement Payment**>>. This is just an estimate. Your final share will be determined by the Settlement Administrator.

The above estimates are based on Defendant's records showing you worked _____ Workweeks during the Class Period and worked ____ Pay Periods during the PAGA Period. If you believe the number of Workweeks during the You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<RESPONSE DEADLINE>> (the "Response Deadline") at:

You must produce documentary evidence supporting your contention. Defendant's records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will evaluate the evidence submitted and make a recommendation to the Parties. If the Parties disagree with the recommendation, the dispute will be submitted by the Parties to the Court for final resolution.

For tax reporting purposes, the payments to Class Members will be allocated 20% as wages, 40% as penalties and 40% as interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller's Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

The "Effective Date" of the Settlement will be the last to occur of the following: (a) the sixty-first (61st) day after service of notice of entry of the court order granting final approval of the settlement; or (b) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review. Upon final approval, Defendant will fund the settlement account in two equal installments. The first installment in the amount of \$90,500 will be distributed by Defendant no later than twelve (12) months from November 18, 2023 or five (5) days after the Effective Date, whichever date is later ("First Installment"). The second installment in the amount of \$90,500 will be distributed by Defendant no later than six (6) months from the date of the first installment payment receipt ("Second Installment"). The Administrator shall mail checks in the amount of one half (50%) of Individual Class Payments and one half (50%) of Individual PAGA Settlement Payments from the First Installment no later than fourteen (14) calendar days after Defendant funds the First Installment. The Administrator shall mail checks in the amount of the remaining other half (50%) of Individual Class Payments and one half (50%) of PAGA Payments from the Second Installment no later than fourteen (14) calendar days after Defendant funds the Second Installment.

PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

What claims are being released by the proposed Settlement?

Released Class Claims. Those Class Members who do not submit a timely and valid Request for Exclusion Form to the Settlement Administrator (i.e. Settlement Class Members), and their successors, assigns, and/or agents, upon full payment of Gross Settlement Amount, shall fully and finally release and discharge Defendant and each

of its past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of its respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, and each of them (“Released Parties”) from the Class Released Claims.

The Class Released Claims are defined as any and all claims, debts, liabilities, demands, actions, or causes of action pleaded or asserted in the First Amended Complaint in the Action, or that could have been pleaded or asserted based on the facts alleged in the First Amended Complaint, including but not limited to state and/or federal wage and hour claims (including all claims under the California Labor Code and Industrial Welfare Commission Wage Orders), failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay; payment for all hours worked, including off-the-clock work; wages related to alleged illegal rounding; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; failure to maintain accurate records, including payroll records; unfair business practices; declaratory relief; interest; penalties, including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys’ fees and costs, withholding from wages. The Class Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Labor Code §§ 200-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2802); penalties under the Private Attorneys General Act sections 2698, *et seq.*; violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); the Wage Orders of the California Industrial Welfare Commission. This release excludes the release of claims not permitted by law.

Release PAGA Claims. In addition, upon full payment of Gross Settlement Amount, Plaintiffs, the LWDA, and each and all PAGA Employees, on behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be deemed to have fully and finally released and discharged the Released Parties, and each of them, of any and all causes of action for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004 (California Labor Code § 2698, *et seq.*) that were alleged in the Action based on the facts and allegations pleaded in the Complaint and/or the LWDA notice letter attached hereto as “**Exhibit A,**” including all claims for civil penalties based upon or arising out of any Defendant’s alleged failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay; payment for all hours worked, including off-the-clock work; wages related to alleged illegal rounding; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; failure to maintain accurate records, including payroll records; unfair business practices; declaratory relief; interest; penalties, including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and claims for civil penalties arising under or based upon alleged violations of California Labor Code Sections 200-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, 2699 *et seq.*, and/or those arising under applicable Industrial Welfare Commission Wage Orders. The time frame of the Released PAGA Claims shall be the PAGA Period.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Class Released Claims as described above. If you are a PAGA Employee, you will automatically be included and issued your PAGA Settlement Payment. This means you will release the PAGA Released Claims.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified

deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you are a Class Member, and you do not request exclusion from the settlement, you may object to the settlement before final approval of the settlement by the Court by submitting a written objection or presenting your objection at the Final Approval Hearing.

To assert an objection to the Settlement, a Settlement Class Member must submit an Objection Form to the Settlement Administrator by first class U.S. mail at the address specified on the Notice in the Objection Form not later than _____. If you choose not to submit a written objection using the Objection Form, the written objection must include: (1) your full name, address, and last four digits of your Social Security number; (2) the factual and legal basis, with supporting documents, if any, on which the objection is based; (3) your signature; (4) the case and number (*Rodriguez, et al. v. Roy Miller Painting, Inc.*, Orange County Superior Court Case No. 30-2023-01314830-CU-OE- CXC); (5) whether the objector is represented by an attorney and providing the contact information of any such attorney; (6) whether the objector plans to appear at the Final Approval Hearing; and (7) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. Any Class Member who fails to timely submit their written objections in the manner specified above may still appear and object at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must complete and return the included Request for Exclusion Form to the Settlement Administrator. In order to be valid, your Request for Exclusion form must be signed, dated, and include the last four digits of your social security number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement).

The Request for Exclusion Form (to remove you from the Class Settlement) must be postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion Form by the deadline to request exclusion, you will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims), and will not have any right to object to, appeal, or comment on the Class Settlement. PAGA Employees will still be issued a PAGA Settlement Payment and be bound by the Released PAGA Claims, irrespective of whether they submit a Request for Exclusion Form.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing on <<FINAL APPROVAL HEARING DATE & TIME>>, in Department CX104 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. As described above, If you wish to attend the Final Approval Hearing remotely, you can do it through the court's online check-in process available through the court's website at <https://www.occourts.org/media-relations/civil.html>. If you wish to attend the Final Approval Hearing in person, you can attend it at Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment, the First Amended Complaint, the notice letter to the LWDA, the Settlement Agreement, and this Notice will be

posted on a website by the Settlement Administrator for a period of at least 180 days following the entry of that Order in the Court record. That website is: <<**website**>>.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Lilit Tunyan

ltunyan@tunyanlaw.com

Artur Tunyan

atunyan@tunyanlaw.com

TUNYAN LAW, APC

535 N. Brand Blvd., Suite 285

Glendale, California 91203

Telephone: (323) 410-5050

Defendant's Counsel

Greg S. Labate

glabate@sheppardmullin.com

Lauren J. Blaes

lblaes@sheppardmullin.com

**SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP**

650 Town Center Drive, 10th Floor

Costa Mesa, California 92626-1993

Telephone: 714-513-5100

Facsimile: 714-513-5130

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class and PAGA Representative Action Settlement attached to the Declaration of Lilit Tunyan in Support of Plaintiffs' Motion for Preliminary Approval. The Joint Stipulation of Class and PAGA Representative Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Orange County Superior Court. You may also view documents filed in this case on the Court's website at: <https://ocjustice.occourts.org/civilwebShoppingNS/Search.do#searchAnchor>. You may need the case number to access and view case documents (30-2023-01314830-CU-OE- CXC). NOTE: If you choose to access documents online, the Court will charge you a fee for access.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “C”

REQUEST FOR EXCLUSION FORM

**Superior Court of California for the County of Orange
*Rodriguez, et al. v. Roy Miller Painting, Inc., Case No. 30-2023-01314830-CU-OE-CXC***

If you want to receive a Class Settlement Payment, you should not fill out this form. You are not required to do anything at this time. This form is to be used only if you want to exclude yourself from the Settlement.

If you decide to exclude yourself from the Settlement: (1) you will not receive any payment under the Settlement (except as to the PAGA Claim, if applicable); (2) you will not be able to object to the Settlement; and (3) you will not be bound by the class settlement or the class release if it is ultimately approved by the Court.

To be excluded from the Settlement, you must complete this Request for Exclusion Form and mail it to the Settlement Administrator at the address listed below, postmarked no later than **[Response Deadline--60 days following the date of mailing].**

**[INSERT NAME OF SETTLEMENT
ADMINISTRATOR]
[INSERT INFO]**

Request for Exclusion

I hereby certify that I am or was employed by Defendant as a non-exempt, hourly employee in California for some period of time between March 20, 2019 and May 1, 2023.

I have received the Notice of Class Action Settlement ("Notice") in the Action, and I request to be excluded from the Settlement. I understand that by submitting this Request for Exclusion Form, I will not be bound by the class settlement, including the Released Class Claims, as described in the Notice and in the Settlement Agreement on file with the Court, and I will not receive a payment from the class settlement. I understand that I cannot exclude myself from the PAGA Settlement Payment and that I will still receive a pro-rata share of the PAGA Settlement Amount and will be bound by the Released PAGA Claims regardless of whether I exclude myself from the Class Settlement Payment.

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: (____) _____

Last four digits of your SSN: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

Exhibit “D”

OBJECTION FORM

Superior Court of California for the County of Orange
Rodriguez, et al. v. Roy Miller Painting, Inc., Case No. 30-2023-01314830-CU-OE-CXC

USE AND RETURN THIS FORM ONLY IF YOU WISH TO OBJECT TO THE CLASS SETTLEMENT.

If you do not wish to object to the Class Settlement, you should NOT fill out this form. You do not need to take any action.

If you wish to object to the Class Settlement, you must state all factual and legal bases for your objection (space is provided below for doing so), attach any documents you are relying on for your objection, indicate whether you are represented by counsel and, if so, provide their contact information, indicate whether you plan to appear at the Final Approval Hearing, write your name, address, and last four digits of your Social Security number, sign on the following page, and return this form by mail or delivery to the Settlement Administrator, at the following mailing address, postmarked or delivered on or before

[RESPONSE DEADLINE--60 days following the date of mailing].

TBD

[INSERT MAILING ADDRESS]

I wish to object to the Class Settlement on the following grounds:

[illegible]

If yes, please provide your attorney's name and contact information:

Date: _____

Exhibit “2”

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 535 N Brand Blvd. Suite 285 Glendale, CA 91203.

On the date indicated below, I served the documents described as: **1. PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; 2. [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; 3. DECLARATION OF LILIT TUNYAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; 4. DECLARATIONS OF PLAINTIFFS DANIEL TOVAR AND ISABEL RODRIGUEZ IN SUPPORT OF PLAINTIFFS' MOTION FOR APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; 5. DECLARATION OF LISA MULLINS ON BEHALF OF ILYM GROUP, INC. SIMPLURIS, INC. (PROPOSED SETTLEMENT ADMINISTRATOR); 6. JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

☒ **BY ONLINE SUBMISSION:** I hereby certify that these documents were served from Glendale, California, by online submission to Labor & Workforce Development Agency portal using the link <https://dir.tfaforms.net/315>.

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

Executed on January 26, 2024 at Glendale, California.

Lilit Tunyan
Name


Signature

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On the date indicated below, I served the document described as: **DECLARATION OF LILIT TUNYAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Sheppard, Mullin, Richter & Hampton, LLP
650 Town Center Drive, 10th Floor
Costa Mesa, California 92626-1993
Telephone: 714-513-5100
Facsimile: 714-513-5130

DECLARATION OF LILIT TUNYAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT