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all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

WILLIAM GIRON on behalf of himself,
all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

ACCENT BUILDING RESTORATION,
INC.; and DOES 1-100,

Defendants.

Case No. 23STCV08941

*[Assigned for All Purposes to the
Hon. Elihu M. Berle; Dept. 6]*

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFF WILLIAM
GIRON'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: April 16, 2024

Time: 10:00 a.m.

Complaint Filed: April 21, 2023

Trial Date: None Set

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for Plaintiff William Giron and
3 the putative class in this matter. I am duly admitted to practice before all the courts of the state
4 of California. The following facts are within my personal knowledge and, if called to testify, I
5 could and would competently testify thereto.
- 6 2. I graduated from California Western School of Law and was admitted to practice law in
7 California in May 2004.
- 8 3. I extensively handle employment cases which involve violations of the California Labor
9 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class actions
10 and cases alleging violations of the Private Attorneys General Act of 2004 (“PAGA”).
- 11 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County Superior
12 Court, Case No. GIC834348) which was the underlying case in the California Supreme Court’s
13 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in
14 which the California Supreme Court delineated the scope of employer obligations to provide,
15 and employee rights to receive, meal and rest periods under California law.
- 16 5. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer Attorneys
17 of California (“CAOC”). For example, I authored the Amicus Curiae briefs on behalf of CAOC
18 in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The California Supreme Court
19 ruling that, like meal periods, employers must relieve employees of all duty and relinquish all
20 control to satisfactorily discharge its obligation to authorize and permit rest periods.); *Frlekin v.*
21 *Apple, Inc.* (2020) 8 Cal.5th 1038 (The California Supreme Court ruling that the time spent on
22 the employer’s premises waiting for, and undergoing, required exit searches of packages, bags,
23 or personal technology devices voluntarily brought to work is compensable hours worked
24 within the meaning of the Wage Orders.); *Oliver v. Superior Court* (2021) California Court of
25 Appeal Case No. H049185 (A brief asking the California Court of Appeal for the Sixth
26 Appellate District to determine whether mandatory drive time of personal vehicles should be
27 considered hours worked within the meaning of the Wage Orders’ suffered or permitted test.).
28 *Davidson v. O’Reilly Auto Enterprises, LLC* (9th Cir., 2020; Docket No. 18-56188) (a brief

- 1 seeking Review *En Banc* of an order denying class certification in a wage and hour matter).
- 2 6. I am also a member of CAOC's Amicus Committee that determines the cases in which the
- 3 organization will agree to provide amicus support.
- 4 7. I have also lectured as a panelist for California Employment Lawyers Association regarding
- 5 a host of wage and hour issues.
- 6 8. My firm has been granted class certification in both state and federal courts.
- 7 9. I have been named as class counsel in a number of wage and hour class actions in which the
- 8 Court granted the plaintiff's motion for class certification. For example, my firm has been
- 9 named class counsel: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County
- 10 Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.; et*
- 11 *al.* (Central District of California, Case No. 12-cv-01374-TJH); *John Martin v. Sysco*
- 12 *Corporation, et al.* (Eastern District of California, Case No. 1:16-cv-00990-DAD-SAB);
- 13 *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.* (District of Nebraska, Case
- 14 No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San Diego County Superior Court, Case
- 15 No. 37-2014-00016621-CU-OE-CTL); *Eric Mendez v. M&N Consulting, Inc. dba A-Line*
- 16 *Messenger Service* (San Bernardino County Superior Court, Case No. CIVDS1923624);
- 17 *Denson Sales v. Professional Auto Transport, Inc. et al.* (San Bernardino County Superior
- 18 Court, Case No. CIVDS2010153); *Sonny Williams v. Hansen and Adkins Auto Transport, Inc.;*
- 19 *et al.* (San Bernardino County Superior Court, Case No. CIVDS2020832); *Bobby Williams v.*
- 20 *Mohsen Transport, Inc.* (San Diego County Superior Court, Case No. 37-2019-00063361-CU-
- 21 OE-CTL); and *Ashton Harden vs. Mushiana Transport Inc.* (Sacramento County Superior
- 22 Court, Case No. 34-2021-00301950-CU-OE-GDS).
- 23 10. I am also plaintiff's counsel in a host of other class actions involving violations of California's
- 24 wage and hour laws. For example, I have been and am involved as counsel for plaintiff in the
- 25 following sampling of class action cases involving wage and hour violations under California
- 26 law: *Alton Davis v. Apria Healthcare Group, Inc.* (San Diego County Superior Court, Case No.
- 27 37-2014-00004724-CU-OE-CTL); *Terrance Bailey v. Blue Apron, LLC; et al.* (Northern
- 28 District of California, Case No. 18-cv-07000-VC); *Moises Hernandez v. Pasha Distribution*

1 *Services LLC et al.* (Alameda County Superior Court, Case No. RG21113722); *Keith Davis v.*
2 *Walnut LLC* (Los Angeles County Superior Court, Case No. 20STCV34519); *Simon Munoz v.*
3 *RDO Equipment Co.* (Eastern District of California, Case No. 23-cv-00979); *Paul Garcia et al.*
4 *v. Haralambos Beverage Co.* (Los Angeles County Superior Court, Case No. BC660723); *Brett*
5 *Kelly v. Conrad Wood Preserving Co.* (Stanislaus County Superior Court, Case No. CV-23-
6 003516); *Robert Mark-Waterhouse v. DOT Transportation, Inc. et al.* (Stanislaus County
7 Superior Court, Case No. CV-22-004102); *James Queen v. Sorenson Communications, LLC*
8 (San Diego County Superior Court, Case No. 37-2023-00016623-CU-OE-CTL); *Marichu*
9 *Jeffries v. The Meadows at Country Place, LLC* (Sacramento County Superior Court, Case No.
10 23CV003530); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino
11 County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v. Hunter*
12 *Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVDS1928062);
13 *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-
14 2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino
15 County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries, Inc.; et*
16 *al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); and *Aaron Romero v.*
17 *Vitro Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

18 11. Jill Vecchi is a partner at Mara Law Firm, PC. She solely handles wage and hour class actions
19 and PAGA actions. Ms. Vecchi graduated from Santa Clara University School of Law and was
20 admitted to practice law in California in December 2014 and received her undergraduate degree
21 from University of California, Riverside in 2010. Ms. Vecchi has been litigating wage and hour
22 class actions for almost nine (9) years and has handled over one hundred (100) class action and
23 PAGA lawsuits.

24 12. Ms. Vecchi has been named as class counsel in the following certified cases as a result of the
25 court granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.*
26 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*
27 *Schroeder v. YRC, Inc.; YRC Worldwide, Inc.* (Central District of California, Case No. 12-cv-
28 01374-TJH); *John Martin v. Sysco Corporation; Sysco Central California, Inc.* (Eastern District

of California, Case No. 1:16-cv-00990-DAD-SAB); *Denson Sales, et al. v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-08404-JST); *Sonny Williams v. Hansen and Adkins Auto Transport, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVDS2020832); *Bobby Williams v. Mohsen Transport, Inc.* (San Diego County Superior Court, Case No. 37-2019-00063361-CU-OE-CTL); and *Ashton Harden v. Mushiana Transport Inc.* (Sacramento County Superior Court, Case No. 34-2021-00301950-CU-OE-GDS).

13. Mr. Vecchi has also been substantially involved in all phases of this litigation and in the following sampling of wage and hour class action and PAGA cases, of which our firm is the attorney of record: *Alton Davis v. Apria Healthcare Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-CTL); *Terrance Bailey v. Blue Apron, LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Moises Hernandez v. Pasha Distribution Services LLC et al.* (Alameda County Superior Court, Case No. RG21113722); *Keith Davis v. Walnut LLC* (Los Angeles County Superior Court, Case No. 20STCV34519); *Simon Munoz v. RDO Equipment Co.* (Eastern District of California, Case No. 23-cv-00979); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVDS1928062); *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

14. On April 21, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination

1 of employment, failure to reimburse/illegal deductions, and violation of the Unfair
2 Competition Law.

3 15. On April 19, 2023, Plaintiff provided notice to the Labor and Workforce Development
4 Agency (“LWDA”) and Defendant in accordance with the Private Attorneys General Act of
5 2004 (“PAGA”). A copy of Plaintiff’s PAGA Notice is attached hereto as **Exhibit 3**. On
6 August 14, 2023, Plaintiff filed a First Amended Complaint adding a cause of action against
7 ABR for violation of the PAGA. The First Amended Complaint is the operative complaint
8 in the Action.

9 16. After filing, the Parties engaged in informal discovery. These discovery efforts led to
10 Defendant producing policy documents that covered employees’ employment with
11 Defendant, and time and wage records. Included within these documents were Defendant’s
12 wage and hour policies, including its meal and rest period policies. Defendant also produced
13 time and wage records for a 20% random sampling of the Class Members which Plaintiff’s
14 Counsel analyzed. The sampling should be reflective of the entire Class as the employees
15 included in it were selected at random. Defendant further produced Plaintiff’s personnel file
16 and time and pay records. Plaintiff also requested, and Defendant produced, data surrounding
17 the number of current and former employees, as well as the number of workweeks worked
18 by Class Members during the relevant time period, to establish a potential exposure model
19 in preparation for mediation. From this discovery, Plaintiff and his Counsel were able to
20 analyze Defendant’s liability in this action and prepare a realistic damage model.

21 17. The Parties attended an all-day mediation presided over by respected wage and hour mediator
22 Jeffrey Ross on November 14, 2023. This mediation was ultimately successful. The Parties
23 then met and conferred over all the terms of the settlement and finalized their settlement in
24 the Parties’ Agreement. The Parties’ Agreement is attached hereto as **Exhibit 1**. Attached
25 hereto as **Exhibit 2** is a redlined version of the Agreement showing what changes were made
26 to the Model Class Action and PAGA Settlement Agreement and Class Notice.

27 18. Plaintiff alleges that employees are not provided with lawful rest periods. Employers have
28 an obligation to provide employees with ten (10) minute rest periods. An employer’s

1 obligation to provide its employees with rest periods arises under the Industrial Welfare
2 Commission Wage Orders. Wage Order 7-2001, Section 12(A) states, “[e]very employer
3 shall authorize and permit all employees to take rest periods, which insofar as practicable
4 shall be in the middle of each work period. The authorized rest period time shall be based on
5 the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
6 major fraction thereof.” Here, Plaintiff alleges that Defendant only provides two rest periods
7 per shift, regardless of shift length. In addition, Plaintiff alleges that Defendant does not
8 provide employees with a “net” ten-minute rest period meaning that employees must use
9 their rest period time to transit to and from a suitable rest area.

10 19. Defendant asserts that its rest period policy is lawful and that it provides employees with rest
11 periods in compliance with California law. Defendant contends that if litigation were to
12 continue, it would provide declarations from employees stating that they knew they were
13 entitled to rest periods in accordance with California law and that they were able to take full
14 ten-minute rest periods at a suitable rest area.

15 20. If Plaintiff were to prevail on his rest period claim for the entire class period, Plaintiff and
16 the Class Members would be entitled to the following *maximum* potential damages:
17 \$523,008 (29,056 shifts x \$18.00 average hourly rate = \$523,008).

18 21. Plaintiff contends that Defendant does not provide employees with meal periods that conform
19 with California law. Employers have an obligation under California law to provide
20 employees with thirty (30) minute meal periods. Under California Labor Code § 512(a), “[a]n
21 employer may not employ an employee for a work period of more than five hours per day
22 without providing the employee with a meal period of not less than 30 minutes” Cal.
23 Lab. Code § 512(a). An employer “satisfies this obligation [to provide meal periods] if it
24 relieves its employees of all duty, relinquishes control over their activities and permits them
25 a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or
26 discourage them from doing so.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53
27 Cal.4th 1004, 1040. Here, Plaintiff contends that Defendant only provides employees with
28 one meal period per shift regardless of shift length and does not provide first meal periods

1 before the end of the fifth hour of work.

2 22. Defendant asserts that its meal period policy is lawful and that it provides employees with
3 meal periods in compliance with California law. Further, Defendant alleges that if litigation
4 continues it would be able to show that it advised employees of the right to take a meal period
5 in compliance with California law. Defendant contends that employees either took a lawful
6 meal period or knowingly and voluntarily decided to skip the meal period or take a late or
7 short meal period. Defendant also asserts that the evidence in this case shows that it paid
8 meal period premiums in shifts in which employees were not provided with compliant meal
9 periods. Thus, Defendant contends that to the extent an employee was not provided the
10 opportunity to take a legally compliant meal period, they were provided a meal premium.

11 23. If Plaintiff were to prevail on his meal period claim for the entire class period, Plaintiff and
12 the Class Members would be entitled to the following *maximum* potential damages:
13 \$523,008 (29,056 shifts x \$18.00 average hourly rate = \$523,008).

14 24. Plaintiff contends that Defendant does not pay employees for all time worked. Employees
15 must be paid for all “hours worked,” as that phrase is defined in the Wage Order and
16 interpreted by California courts. Hours worked is defined in the Wage Order as “the time
17 during which an employee is subject to the control of an employer and includes all the time
18 the employee is suffered or permitted to work, whether or not required to do so.” Wage Order
19 7-2001, Subd. 2(G); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833.
20 Under the control standard, “it is only necessary that the worker be subject to the control of
21 the employer in order to be entitled to compensation.” *Morillion v. Royal Packing Co.*
22 (2000) 22 Cal. 4th 575, 584. The *Morillion* Court reasoned that an employee is under the
23 employer’s control and entitled to compensation when the employer “directs, commands or
24 restrains’ an employee.” *Morillion*, 22 Cal. 4th at 583 (*quoting Bono Enterprises, Inc. v.*
25 *Bradshaw* (1995) 32 Cal. App. 4th 968, 975). Here, Plaintiff contends that Defendant does
26 not pay employees for time employees must commute to and from their job site.

27 25. Plaintiff argues that the case *Oliver v. Konica Minolta Business Solutions U.S.A.* (“*Oliver*”)
28 (2020) 51 Cal.App.5th 1, supports his position. In *Oliver*, employees were required to drive

1 their personal vehicles for work and the employer did not have an express policy restricting
2 service technicians from using their vehicles for personal use during their commutes. There,
3 the Court of Appeal outlined three factors that must be shown in order for commute time to
4 be compensable: (1) Were employees required to drive their own vehicles; (2) Were
5 employees required to bring tools with them on the commute; and (3) If employees had to
6 bring tools with them on their commute, was there so many tools that the employee was
7 effectively prevented from using the commute time for his or her own purposes. Here, the
8 Parties have a dispute about whether the third factor is met. Plaintiff argues that technicians
9 have to bring so many tools that they are prevented from using their commute time for their
10 own purposes.

11 26. Defendant contends that commute time is not compensable. Defendant argues that employees
12 do not have to transport a large amount of tools. Defendant asserts that the tools fit into a
13 small box that can be kept in an employee's trunk. Defendant asserts that, should litigation
14 continue, it will provide the Court with declarations from employees stating that the amount
15 of tools they transport easily fit in their trunk and, thus, commute time is not compensable.

16 27. If Plaintiff were to prevail on his unpaid wages claim for the entire class period, Plaintiff and
17 the Class Members would be entitled to the following *maximum* potential damages:
18 \$261,504 (29,056 shifts x \$18.00 average hourly rate x 0.5 hours = \$261,504).

19 28. Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
20 waiting time penalty claims. These claims are derivative of Plaintiff's unpaid wage, meal
21 period, and rest period claims. Should Plaintiff's unpaid wage, meal period, and rest period
22 claims fail, these claims would also fail.

23 29. In addition, Defendant contends that even if Plaintiff were successful in his unpaid wage,
24 meal period, and rest period claims, he would have to prove Defendant "willfully" failed to
25 pay employees the appropriate wages due upon separation of employment. "A willful failure
26 to pay wages within the meaning of Labor Code Section 203 occurs when an employer
27 intentionally fails to pay wages to an employee when those wages are due. However, a good
28 faith dispute that any wages are due will preclude imposition of waiting time penalties under

Section 203.” Cal. Code Regs. Tit. 8 § 13520. “A ‘good faith dispute’ that any wages are due occurs when an employer presents a defense, based in law or fact, which would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.* Defendant contends that any failure to pay wages due at the separation of employment was not willful. Defendant argues that it would not be liable for waiting time penalties because a “good faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Defendant also argues that Plaintiff’s unpaid wage claims cannot form the basis of his wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received even if the pay is later determined to be inaccurate.

30. The statute of limitations for Plaintiff’s wage statement claim is one year. Under California Labor Code § 226(e)(1), the damages for breach of this section are 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). If Plaintiff were to prevail on this claim, the **maximum** damages would be \$166,250 (\$50 for an initial violation x 75 pay periods = \$3,750 plus \$100 for a subsequent violation x 1,625 pay periods = \$162,500).

31. Plaintiff calculates the potential **maximum** exposure under his waiting time penalties cause of action as \$151,200 (35 former employees within the three-year statute of limitations x 30 days x 8 hour shift x \$18.00 average hourly rate = \$151,200).

32. Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain California Labor Code sections relating to wage and hour violations. The statute of limitations for PAGA violations go back one year. The maximum potential damages under Plaintiff’s PAGA claim is: \$687,500 (\$100 x 4 PAGA violations (meal periods, rest periods, unpaid wages, and wage statements) x 1,700 pay periods = \$680,000 plus \$100 x 1 PAGA

1 violation (waiting time penalties x 75 pay periods = \$7,500).

2 33. As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as his class

3 claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's class

4 claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,

5 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to

6 Plaintiff and the Aggrieved Employees – assuming liability is proven as to each of Plaintiff's

7 claims – is higher in this case where these same individuals may also be receiving money for

8 the same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D.

9 Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17

10 (“Because the PAGA penalties sought are at least partially duplicative of penalties granted

11 by the underlying Labor Code violations, *see, e.g.,* Cal. Lab. Code §§

12 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount

13 to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the

14 potential PAGA penalties are highly uncertain.”). As such, the Court may reduce any PAGA

15 penalty amount awarded to Plaintiff and the Aggrieved Employees.

16 34. Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if he

17 were successful in his core claims, Defendant's total exposure would be approximately

18 \$1,307,520 [\$523,008 (rest period exposure) + \$523,008 (meal period exposure) + \$261,504

19 (unpaid wage exposure) = \$1,307,520]. If Plaintiff is successful in his unpaid wage, meal

20 period, and rest period claims, he may also be entitled to damages for wage statements and

21 waiting time penalties in the amount of \$317,450 [\$166,250 (wage statements) and \$151,200

22 (waiting time penalties) = \$317,450]. If Plaintiff's claims are successful, he may also be

23 entitled to PAGA penalties in the amount of \$687,500.

24 35. In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the

25 settlement amount of \$800,000 – with an average settlement share amount estimated at

26 \$4,473.06 – is a reasonable and fair settlement amount.

27 36. My firm requested administration quotes from four administration companies. ILYM Group,

28 Inc.'s bid was the lowest one at \$6,950. In addition, my firm received the following quotes:

1 Phoenix's quote was \$7,250, APEX's quote was \$6,990, and Simpluris' quote was \$8,000.
2 37. My firm and I do not have any interest or involvement in ILYM Group, Inc.
3 38. I am not aware of any related cases that involve the claims being released here.
4 39. Any attorneys' fees awarded in this case will be split equally between my firm and Lawyers
5 for Employee and Consumer Rights. Plaintiff gave written approval for this agreement on
6 April 1, 2023.

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

9 Dated: March 11, 2024

MARA LAW FIRM, PC

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11 _____

David Mara, Esq.

12 Attorneys for Plaintiff William Giron on behalf of
13 himself, all others similarly situated, and on behalf of
14 the general public
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Exhibit 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff William Giron (“Plaintiff”) and defendant Accent Building Restoration, Inc. (“ABR”). The Agreement refers to Plaintiff and ABR collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against ABR captioned *William Giron v. Accent Building Restoration, Inc.* initiated on April 21, 2023 and pending in Superior Court of the State of California, County of Los Angeles, Case No. 23STCV08941.
- 1.2 “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all Class Members who worked for ABR from April 19, 2022, through November 16, 2023.
- 1.5 “Class” means all current and former non-exempt hourly, employees who were employed by ABR in California at any time from April 21, 2019, through November 16, 2023.
- 1.6 “Class Counsel” means David Mara, Esq., and Jill Vecchi, Esq., of Mara Law Firm, PC, and Peter Horton, Esq., of Lawyers for Consumer and Employee Rights.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in ABR’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member

(including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12 “Class Period” means the period from April 21, 2019 through November 16, 2023.
- 1.13 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15 “Court” means the Superior Court of California, County of Los Angeles.
- 1.16 “ABR” means named Defendant Accent Building Restoration, Inc.
- 1.17 “Defense Counsel” means Tyler Paetkau of Husch Blackwell LLP.
- 1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

- 1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means \$800,000 which is the total amount ABR agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for ABR for at least one day during the PAGA Period.
- 1.31 “PAGA Period” means the period from April 19, 2022 to November 16, 2023.
- 1.32 “PAGA” means the Private Attorneys General Act (Lab. Code, §§ 2698 *et seq.*).

- 1.33 “PAGA Notice” means Plaintiff’s April 19, 2023, letter to ABR and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$50,000), allocated 25% to the Aggrieved Employees (\$12,500) and the 75% to LWDA (\$37,500) in settlement of the PAGA claims.
- 1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36 “Plaintiff” means William Giron, the named plaintiff in the Action.
- 1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41 “Released Parties” means ABR and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.
- 1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43 “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

- 1.45 “Workweek” means any week during which a Class Member worked for ABR for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On April 21, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against ABR for failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination of employment, failure to reimburse/illegal deductions, and violation of the Unfair Competition Law. On August 14, 2023, Plaintiff filed a First Amended Complaint adding a cause of action against ABR for violation of the PAGA. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). ABR denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to ABR and the LWDA by sending the PAGA Notice.
- 2.3 On November 14, 2023, the Parties participated in an all-day mediation with Jeffrey Ross, which led to this Agreement to settle the Action.
- 2.4 Prior to mediation, Plaintiff obtained, through informal discovery, Plaintiff’s personnel file, Plaintiff’s time and wage statements, ABR’s employee handbook, and a sampling of time and pay records for Class Members. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.5 The Court has not granted class certification.
- 2.6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, ABR promises to pay \$800,000 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. ABR has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to

submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to ABR.

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

3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$15,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). ABR will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$266,640, and a Class Counsel Litigation Expenses Payment of not more than \$30,000. ABR will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds ABR harmless, and indemnifies ABR, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$15,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$15,000, the Administrator will retain the remainder in the Net Settlement Amount.

- 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1 Tax Allocation of Individual Class Payments. 40% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 60% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- 3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. Any amounts allocated to Non-Participating Class Members' Individual Class Payments will be added to the Net Settlement Amount for distribution to Participating Class Members.
- 3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$50,000 to be paid from the Gross Settlement Amount, with 75% (\$37,500) allocated to the LWDA PAGA Payment and 25% (\$12,500) allocated to the Individual PAGA Payments.
- 3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$12,500) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
- 3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, ABR estimates there are 98 Class Members who collectively worked a total of 7,264 Workweeks, and 77 Aggrieved Employees who worked an estimated total of 3,539 workweeks.
- 4.2 Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, ABR will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. ABR has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which ABR must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 Funding of Gross Settlement Amount. ABR shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay ABR's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within 14 days after ABR funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who

qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate ABR to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

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

- 5.1 Plaintiff's Release. Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may

discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.1.1 Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

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

- 5.2 Release by Participating Class Members Who Are Not Aggrieved Employees:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, e.g., failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination, failure to reimburse/illegal deductions, and violation of the Unfair Competition Law. This release will be for the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period.

- 5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the Action including, e.g., failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination, and failure to reimburse/illegal deductions. This release will be for the PAGA Period.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1 ABR’s Declaration in Support of Preliminary Approval. Within 7 days of the full execution of this Agreement, but no later than March 8, 2024, ABR will prepare and deliver to Class Counsel a signed Declaration from ABR and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and ABR shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3, subd. (a))), Operative Complaint (Lab. Code, § 2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699, subd. (l)(2)); (vii) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than March 11, 2024, with a hearing date of April 16, 2024; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

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

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 7.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, ABR or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity.

The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

- 7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- 7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days

after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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

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

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

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

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

7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay

Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

- 7.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, ABR estimates that, as of the date of this Settlement Agreement, (1) there are 98 Class Members and 7,264 Total Workweeks during the Class period and (2) there were 77 Aggrieved Employees who worked and estimated total of 3,539 workweeks during the PAGA Period. To the extent that the total number of Class Members or workweeks increases by more than five (5) percent of these estimates, the Gross Settlement Amount shall increase proportionately.
9. **ABR'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, ABR may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if ABR withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, ABR will remain responsible for paying all Settlement Administration Expenses incurred to that point. ABR must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the

Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the reviewing Court vacates, reverses or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The

Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. ADDITIONAL PROVISIONS.

- 12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ABR that any of the allegations in the Operative Complaint have merit or that ABR has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that ABR's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, ABR reserves the right to contest certification of any class for any reasons, and ABR reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest ABR's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, ABR and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency or other entity except: (1) to the Parties' attorneys, accountants or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, ABR and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This

paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and ABR, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, ABR nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.

- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by ABR in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Class Data received from ABR unless, prior to the Court's discharge of the Administrator's obligation, ABR makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

David Mara, Esq.
dmara@maralawfirm.com
Jill Vecchi, Esq.
jvecchi@maralawfirm.com
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, CA 92109

Peter Horton, Esq.
Phorton@lfecr.com
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
Telephone: (323) 486-5101

To ABR:

Tyler Paetkau, Esq.
Tyler.Paetkau@huschblackwell.com
HUSCH BLACKWELL LLP
355 South Grand Avenue, Suite 2850
Los Angeles, CA 90071

- 12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

WILLIAM GIRON

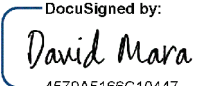
By: *William Giron*
Plaintiff

03/08/2024 16:11 UTC
Date: _____

ACCENT BUILDING RESTORATION, INC.

By: _____ Date: _____
By: _____

MARA LAW FIRM, PC

By:  David Mara _____ Date: 3/8/2024
DocuSigned by:
4579A5166C10447...
Jill Vecchi
Attorneys for Plaintiff and the Proposed Class/Aggrieved Employees

LAWYERS FOR CONSUMER AND EMPLOYEE RIGHTS

By:  Peter J Horton _____ Date: 3/8/2024
Digitally signed by Peter J Horton
DN: cn=Peter J Horton, o=Lawyers for
Employee and Consumer Rights, ou,
email=phorton@lfeecr.com, c=US
Date: 2024.03.08 13:31:04 -08'00'
Peter Horton
Attorneys for Plaintiff and the Proposed Class/Aggrieved Employees

HUSCH BLACKWELL LLP

By:  _____ Date: 3/11/2024
Tyler Paetkau
Attorneys for Defendant Accent Building Restoration, Inc.

EXHIBIT A

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

William Giron v. Accent Building Restoration, Inc.
Los Angeles County Superior Court Case No. 23STCV08941

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

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Accent Building Restoration, Inc. (abbreviate name; “ABR” is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by a former ABR employee William Giron (“Plaintiff”) and seeks payment of (1) back wages and penalties for a class of non-exempt hourly employees (“Class Members”) who worked for ABR during the Class Period of April 21, 2019 to November 16, 2023; and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt hourly employees who worked for ABR during the PAGA Period (April 19, 2022 to November 16, 2023) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring ABR to fund Individual Class Payments, and (2) a PAGA Settlement requiring ABR to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on ABR’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to ABR’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on ABR’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires ABR to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against ABR.

If you worked for ABR during the Class Period and/or the PAGA Period, you have two basic options under the Settlement.

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against ABR.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against ABR, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against ABR that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [INSERT]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. ABR must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

Must be Submitted by [INSERT]	
You Can Participate in the [INSERT] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [INSERT]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [INSERT]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to ABR's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [INSERT]. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former ABR employee. The Action accuses ABR of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses; failing to provide meal periods, rest breaks and accurate itemized wage statements; and failing to implement a lawful sick pay/paid time off policy. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Lab. Code, § 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action:

David Mara, Esq.
dmara@maralawfirm.com
 Jill Vecchi, Esq.
jvecchi@maralawfirm.com
MARA LAW FIRM, PC
 2650 Camino Del Rio North, Suite 302
 San Diego, CA 92109
 Telephone: (619) 234-2833

Peter Horton, Esq.
Phorton@lfecr.com
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
 4100 West Alameda Avenue, Third Floor
 Burbank, California 91505
 Telephone: (323) 486-5101

(Plaintiff's attorneys are referred to as "Class Counsel.")

ABR strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether ABR or Plaintiff is correct on the merits. In the meantime, Plaintiff and ABR hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and ABR have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, ABR does not admit any violations or concede the merit of any claims.

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

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

1. ABR Will Pay \$800,000 as the Gross Settlement Amount (Gross Settlement). ABR has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, ABR will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$266,640 (33.33 % of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$30,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$15,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$15,000 to the Administrator for services administering the Settlement.
- D. Up to \$50,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
- 4. Taxes Owed on Payments to Class Members. Plaintiff and ABR are asking the Court to approve an allocation of 40% of each Individual Class Payment to taxable wages ("Wage Portion") and 60% to penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (ABR will separately pay employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
- 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [INSERT], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for

Exclusion by the [INSERT] Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her/their representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against ABR.

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

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and ABR have agreed that, in either case, the Settlement will be void: ABR will not pay any money and Class Members will not release any claims against ABR.
8. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and ABR has fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue or be part of any other lawsuit against ABR or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, e.g., failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination, failure to reimburse/illegal deductions, and violation of the Unfair Competition Law. This release will be for the Class Period.

Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and ABR has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against ABR, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue or participate in any other PAGA claim against ABR or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action including, e.g., failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination, and failure to reimburse/illegal deductions. This release will be for the PAGA Period..

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in ABR's records, are stated in the first page of this Notice. You have until [INSERT] to challenge the number of Workweeks and/or Pay Periods credited

to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept ABR's calculation of Workweeks and/or Pay Periods based on ABR's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and ABR's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

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

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

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

Submit a written and signed letter with your name, present address, telephone number and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Giron v. Accent Building Restoration, Inc.*, and include your identifying information (full name, address, telephone number, approximate dates of employment and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [INSERT], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and ABR are asking the

Court to approve. At least [INSERT] days before the [INSERT] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website at [INSERT] or the Court's by searching for Case Number "23STCV08941" at:

https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil_

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [INSERT].** Be sure to tell the Administrator what you object to, why you object and any facts that support your objection. Make sure you identify the Action *Giron v. Accent Building Restoration, Inc.* and include your name, current address, telephone number and approximate dates of employment for ABR and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [INSERT] at [INSERT] in Department 6 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website at [INSERT] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything ABR and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the settlement website at [\[INSERT\]](#).

You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. [23STCV08941](#). You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

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

Class Counsel:

Name of Attorney: David Mara and Jill Vecchi

Email Address: dmara@maralawfirm.com; jvecchi@maralawfirm.com

Name of Firm: MARA LAW FIRM, PC

Mailing Address: 2650 Camino Del Rio North, Suite 302, San Diego, CA 92108

Telephone: (619) 234-2833

Name of Attorney: Peter Horton

Email Address: phorton@lfecr.com

Name of Firm: LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS

Mailing Address: 4100 West Alameda Avenue, Third Floor, Burbank, CA 91505

Telephone: (323) 486-5101

Settlement Administrator:

Name of Company: ILYM Group, Inc.

Email Address: [\[INSERT\]](#)

Mailing Address: [\[INSERT\]](#)

Telephone: [\[INSERT\]](#)

Fax Number: [\[INSERT\]](#)

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund at http://www.sco.ca.gov/search_upd.html for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

Exhibit 2

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff William Giron (“Plaintiff”) and defendant Accent Building Restoration, Inc. (“ABR”). The Agreement refers to Plaintiff and ABR collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against ABR captioned William Giron v. Accent Building Restoration, Inc., initiated on April 21, 2023, and pending in Superior Court of the State of California, County of Los Angeles, Case No. 23STCV08941.
- 1.2 “Administrator” means JLYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all Class Members who worked for ABR from April 19, 2022, through November 16, 2023.
- 1.5 “Class” means all current and former non-exempt hourly employees who were employed by ABR in California at any time from April 21, 2019, through November 16, 2023.
- 1.6 “Class Counsel” means David Mara, Esq., and Jill Vecchi, Esq., of Mara Law Firm, PC, and Peter Horton, Esq., of Lawyers for Consumer and Employee Rights.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in ABR’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member

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(including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

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

1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12 “Class Period” means the period from April 21, 2019, through November 16, 2023.

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

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

1.15 “Court” means the Superior Court of California, County of Los Angeles.

1.16 “ABR” means named Defendant Accent Building Restoration, Inc.

1.17 “Defense Counsel” means Tyler Paetkau of Husch Blackwell LLP.

1.18 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19 “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

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1.21 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22 “Gross Settlement Amount” means \$800,000 which is the total amount ABR agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

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1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).

1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).

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

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

1.30 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for ABR for at least one day during the PAGA Period.

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1.31 “PAGA Period” means the period from April 19, 2022 to November 16, 2023.

1.32 “PAGA” means the Private Attorneys General Act (Lab. Code, §§ 2698 et seq.).

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1.33 “PAGA Notice” means Plaintiff’s April 19, 2023, letter to ABR and the LWDA, providing notice pursuant to Labor Code section 2699.3, subdivision (a).

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1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$50,000), allocated 25% to the Aggrieved Employees (\$12,500) and the 75% to LWDA (\$37,500) in settlement of the PAGA claims.

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1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36 “Plaintiff” means William Giron, the named plaintiff in the Action.

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1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.38 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.41 “Released Parties” means ABR and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.

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1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43 “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

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1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45 “Workweek” means any week during which a Class Member worked for ABR for at least one day, during the Class Period.

2. RECITALS.

2.1 On April 21, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against ABR for failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination of employment, failure to reimburse/illegal deductions, and violation of the Unfair Competition Law. On August 14, 2023, Plaintiff filed a First Amended Complaint adding a cause of action against ABR for violation of the PAGA. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”). ABR denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

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

2.3 On November 14, 2023, the Parties participated in an all-day mediation with Jeffrey Ross, which led to this Agreement to settle the Action.

2.4 Prior to mediation, Plaintiff obtained, through informal discovery, Plaintiff’s personnel file, Plaintiff’s time and wage statements, ABR’s employee handbook, and a sampling of time and pay records for Class Members. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5 The Court has not granted class certification.

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

3. MONETARY TERMS.

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, ABR promises to pay \$800,000, and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. ABR has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to

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submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to ABR.

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

3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$15,000, (in addition to any Individual Class Payment and any Individual PAGA Payment, the Class Representative is entitled to receive as a Participating Class Member). ABR will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

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3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$266,640, and a Class Counsel Litigation Expenses Payment of not more than \$30,000. ABR will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds ABR harmless, and indemnifies ABR, from any dispute or controversy regarding any division or sharing of any of these Payments.

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3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$15,000, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$15,000, the Administrator will retain the remainder in the Net Settlement Amount.

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

3.2.4.1 Tax Allocation of Individual Class Payments. ~~40%~~ of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The ~~60%~~ of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. Any amounts allocated to Non-Participating Class Members' Individual Class Payments will be added to the Net Settlement Amount for distribution to Participating Class Members.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of ~~\$50,000~~ to be paid from the Gross Settlement Amount, with 75% ~~(\$37,500)~~ allocated to the LWDA PAGA Payment and 25% ~~(\$12,500)~~ allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ~~(\$12,500)~~ by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

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

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4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, ABR estimates there are 98 Class Members who collectively worked a total of 7,264 Workweeks, and 77 Aggrieved Employees who worked an estimated total of 3,539 workweeks.
- 4.2 Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, ABR will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. ABR has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which ABR must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 Funding of Gross Settlement Amount. ABR shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay ABR's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within 14 days after ABR funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who

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qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

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4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b).

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

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

5.1 Plaintiff's Release. Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice, ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may

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discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.1.1 Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

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

- 5.2 Release by Participating Class Members Who Are Not Aggrieved Employees:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, e.g., failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination, failure to reimburse/illegal deductions, and violation of the Unfair Competition Law. This release will be for the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period.

- 5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the Action including, e.g., failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination, and failure to reimburse/illegal deductions. This release will be for the PAGA Period.

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6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1 ABR’s Declaration in Support of Preliminary Approval. Within 7 days of the full execution of this Agreement, but no later than March 8, 2024, ABR will prepare and deliver to Class Counsel a signed Declaration from ABR and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and ABR shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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6.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3, subd. (a))), Operative Complaint (Lab. Code, § 2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699, subd. (l)(2)); (vii) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than March 11, 2024, with a hearing date of April 16, 2024; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

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

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7. SETTLEMENT ADMINISTRATION.

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

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

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

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7.4 Notice to Class Members.

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

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

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

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7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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

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7.5 Requests for Exclusion (Opt-Outs).

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

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

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The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

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

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

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7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

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7.7 Objections to Settlement.

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

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7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days

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after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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

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

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

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

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

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7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay

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Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

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

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

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE**. Based on its records, ABR estimates that, as of the date of this Settlement Agreement, (1) there are 98 Class Members and 7,264 Total Workweeks during the Class period and (2) there were 77 Aggrieved Employees who worked and estimated total of 3,539 workweeks during the PAGA Period. To the extent that the total number of Class Members or workweeks increases by more than five (5) percent of these estimates, the Gross Settlement Amount shall increase proportionately.

9. **ABR'S RIGHT TO WITHDRAW**. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, ABR may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if ABR withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, ABR will remain responsible for paying all Settlement Administration Expenses incurred to that point. ABR must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL**. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the

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Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

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

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

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

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- 10.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the reviewing Court vacates, reverses or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The

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Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. ADDITIONAL PROVISIONS.

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

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

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paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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To Plaintiff:

David Mara, Esq.
dmara@maralawfirm.com
Jill Vecchi, Esq.
jvecchi@maralawfirm.com
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, CA 92109

Peter Horton, Esq.
Phorton@lfecr.com
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
Telephone: (323) 486-5101

To ABR:

Tyler Paetkau, Esq.
Tyler.Paetkau@huschblackwell.com
HUSCH BLACKWELL LLP
355 South Grand Avenue, Suite 2850
Los Angeles, CA 90071

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

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

WILLIAM GIRON

By:

Plaintiff

Date:

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ACCENT BUILDING RESTORATION, INC.

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By: _____ Date: _____

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By:

MARA LAW FIRM, PC

By: _____ Date: _____

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David Mara
Jill Vecchi
Attorneys for Plaintiff and the Proposed Class/Aggrieved Employees

LAWYERS FOR CONSUMER AND EMPLOYEE RIGHTS

By: _____ Date: _____

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Peter Horton
Attorneys for Plaintiff and the Proposed Class/Aggrieved Employees

HUSCH BLACKWELL LLP

By: _____ Date: _____

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Tyler Paetkau
Attorneys for Defendant Accent Building Restoration, Inc.

EXHIBIT A

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

William Giron v. Accent Building Restoration, Inc.
Los Angeles County Superior Court Case No. 23STCV08941

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

You may be eligible to receive money from an employee class action lawsuit ("Action") against Accent Building Restoration, Inc. (abbreviate name: "ABR") is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by a former ABR employee William Giron ("Plaintiff") and seeks payment of (1) back wages **and penalties** for a class of non-exempt hourly employees ("Class Members") who worked for ABR during the Class Period of April 21, 2019, to November 16, 2023; and (2) penalties under the California Private Attorney General Act ("PAGA") for all non-exempt hourly employees who worked for ABR during the PAGA Period (April 19, 2022, to November 16, 2023) ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring ABR to fund Individual Class Payments, and (2) a PAGA Settlement requiring ABR to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on ABR's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$ _____ (less withholding) and your Individual PAGA Payment is estimated to be \$ _____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to ABR's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

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

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires ABR to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against ABR.

If you worked for ABR during the Class Period and/or the PAGA Period, you have two basic options under the Settlement.

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Deleted: _____ (abbreviate name; "XYZ...BR" is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by a [n] [_____]...XYZ

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(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against ABR.

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

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

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SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

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You Don't Have to Do Anything to Participate in the Settlement

If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against ABR that are covered by this Settlement (Released Claims).

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You Can Opt-out of the Class Settlement but not the PAGA Settlement

If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

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The Opt-out Deadline is INSERT.

You cannot opt-out of the PAGA portion of the proposed Settlement. ABR must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

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Participating Class

All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

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Members Can Object to the Class Settlement but not the PAGA Settlement

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Written Objections

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Must be Submitted by [INSERT]	
You Can Participate in the [INSERT] Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on [INSERT] . You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to ABR 's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by [INSERT] . See Section 4 of this Notice.
Written Challenges Must be Submitted by [INSERT]	

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1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former **ABR** employee. The Action accuses **ABR** of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination and reimbursable expenses; failing to provide meal periods, rest breaks and accurate itemized wage statements; and failing to implement a lawful sick pay/paid time off policy. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Lab. Code, § 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action:

David Mara, Esq.
dmara@maralawfirm.com
Jill Vecchi, Esq.
jvecchi@maralawfirm.com
MARA LAW FIRM, PC
 2650 Camino Del Rio North, Suite 302
 San Diego, CA 92109
 Telephone: (619) 234-2833

Peter Horton, Esq.
Phorton@lfecr.com
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
 4100 West Alameda Avenue, Third Floor
 Burbank, California 91505
 Telephone: (323) 486-5101

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(Plaintiff's attorneys are referred to as "Class Counsel.")

ABR strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

So far, the Court has made no determination whether ABR or Plaintiff is correct on the merits. In the meantime, Plaintiff and ABR hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and ABR have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, ABR does not admit any violations or concede the merit of any claims.

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

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

1. ABR Will Pay \$800,000 as the Gross Settlement Amount (Gross Settlement). ABR has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, ABR will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$266,640 (33.33% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$30,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

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B. Up to \$15,000, as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

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C. Up to \$15,000, to the Administrator for services administering the Settlement.

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D. Up to \$50,000, for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

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

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4. Taxes Owed on Payments to Class Members. Plaintiff and ABR are asking the Court to approve an allocation of 40% of each Individual Class Payment to taxable wages ("Wage Portion") and 60% to penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. ABR will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

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6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [INSERT], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for

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□ will irrevocably lost to you because they will be paid to a non-profit organization or foundation ("Cy Pres").
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Exclusion by the **INSERT** Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her/their representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against **ABR**.

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

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7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and **ABR** have agreed that, in either case, the Settlement will be void: **ABR** will not pay any money and Class Members will not release any claims against **ABR**.

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8. Administrator. The Court has appointed a neutral company, **JLYM Group, Inc.** (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

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

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including, e.g., failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination, failure to reimburse/illegal deductions, and violation of the Unfair Competition Law. This release will be for the Class Period,

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Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

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10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and ABR has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against ABR, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue or participate in any other PAGA claim against ABR or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action, including, e.g., failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination, and failure to reimburse/illegal deductions. This release will be for the PAGA Period.

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4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in ABR's records, are stated in the first page of this Notice. You have until INSERT to challenge the number of Workweeks and/or Pay Periods credited

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to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator’s contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept ABR’s calculation of Workweeks and/or Pay Periods based on ABR’s records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and ABR’s Counsel. The Administrator’s decision is final. You can’t appeal or otherwise challenge its final decision.

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5. HOW WILL I GET PAID?

- 1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn’t opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
- 2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator’s contact information.

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

Submit a written and signed letter with your name, present address, telephone number and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Giron v. Accent Building Restoration, Inc.*, and include your identifying information (full name, address, telephone number, approximate dates of employment and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [INSERT], or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

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7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and ABR are asking the

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Court to approve. At least [INSERT] days before the [INSERT] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website at [INSERT], or the Court's by searching for Case Number "23STCV08941" at:

<https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [INSERT].** Be sure to tell the Administrator what you object to, why you object and any facts that support your objection. Make sure you identify the Action *Giron v. Accent Building Restoration, Inc.*, and include your name, current address, telephone number and approximate dates of employment for ABR, and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [INSERT] at [INSERT] in Department 6 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website at [INSERT] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

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9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything ABR and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the settlement website at [INSERT].

You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 23STCV08941. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

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

Class Counsel:

Name of Attorney: David Mara and Jill Vecchi

Email Address: dmara@maralawfirm.com; jvecchi@maralawfirm.com

Name of Firm: MARA LAW FIRM, PC

Mailing Address: 2650 Camino Del Rio North, Suite 302, San Diego, CA 92108

Telephone: (619) 234-2833

Name of Attorney: Peter Horton

Email Address: phorton@lfecr.com

Name of Firm: LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS

Mailing Address: 4100 West Alameda Avenue, Third Floor, Burbank, CA 91505

Telephone: (323) 486-5101

Settlement Administrator:

Name of Company: ILYM Group, Inc.

Email Address: [INSERT]

Mailing Address: [INSERT]

Telephone: [INSERT]

Fax Number: [INSERT]

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund at http://www.sco.ca.gov/search_upd.html for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

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ⁱ This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.

ⁱⁱ Whether the "date of preliminary approval" yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between

the date when parties reached a settlement and the date of preliminary approval. The Parties' *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount "represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of pursuing the litigation." (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94-95, internal quotation marks omitted.)

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Exhibit 3

David Mara
Grace Campbell
Taylor Hanks
Jill Vecchi
Joann B. Gerrity
Matthew Crawford
Taylor Getman



2650 Camino Del Rio North
Suite 302, San Diego, CA 92108
Phone: (619) 234-2833
Fax: (619) 234-4048

MaraLawFirm.com

April 19, 2023

Via Upload to the LWDA Website and U.S. Certified Mail

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

TO: California Labor and Workforce Development Agency; Accent Building Restoration, Inc.

William Giron, on behalf of himself, others similarly situated, and the general public v. Accent Building Restoration, Inc.

Factual Statement and Theories of Labor Code Violations

William Giron was formerly employed by Accent Building Restoration, Inc. ("ACCENT BUILDING") as a non-exempt hourly employee working out of ACCENT BUILDING's principal place of business in Cerritos, California. Mr. Giron's job title was an hourly painter. Mr. Giron's employment with ACCENT BUILDING ended on or about January 23, 2023.

Mr. Giron gives notice of his intent to file a lawsuit for violations of the Private Attorneys General Act of 2004 ("PAGA") for ACCENT BUILDING's failure to comply with California's wage and hour requirements on behalf of himself and similarly aggrieved employees.

ACCENT BUILDING offers a wide variety of property improvement services. They include painting contractor services for residential and commercial buildings, as well as graffiti removal and historical paint and restoration projects. ACCENT BUILDING also provides services related to commercial and industrial doors, including installation, upgrades, painting, restoration, custom coatings, or hardware. ACCENT BUILDING further provides gate, fencing and access control services for the automatic gate industry, gated residential communities or individual properties. Additional services ACCENT BUILDING provides include plumbing, waterproofing, safety and security review, gutter and roof maintenance, electrical and lighting upgrades, parking lot striping and resurfacing, drywall and acoustical tile installation. ACCENT BUILDING employs hourly non-exempt employees, such as Mr. Giron, to perform these services in California.

I. ACCENT BUILDING Fails to Pay All Straight Time Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor*

Code section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

ACCENT BUILDING has a continuous policy of not paying Mr. Giron and the aggrieved employees for all hours worked. Specifically, ACCENT BUILDING has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods. Mr. Giron and the aggrieved employees are not paid for this time. For example, Mr. Giron and the aggrieved employees were told to clock out and keep working when they had not finished an assignment before the end of the day. Mr. Giron and the aggrieved employees were also told to arrive early to worksites but were not permitted to clock-in until their scheduled start time, and thus, were not paid for this time. Additionally, ACCENT BUILDING calls and/or otherwise contacts Mr. Giron and the aggrieved employees while they are off the clock for business related purposes. Thus, Mr. Giron and the aggrieved employees are owed wages for the unpaid time during which they are subject to ACCENT BUILDING's control and/or during which they are not free from all work duties.

Further, ACCENT BUILDING requires Mr. Giron and the aggrieved employees to use his personal vehicle for work related purposes. Mr. Giron would have to transport tools he used to perform work for ACCENT BUILDING care in his personal vehicle. ACCENT BUILDING would call and/or text Mr. Giron with the address of his first work location and then Mr. Giron would have to get into his personal vehicle and drive to the job site. Mr. Giron was not paid for the time it took him to get to his first job site or back from his last job site.

Moreover, Mr. Giron and the aggrieved employees are not relieved of all duties and/or employer control during their meal periods. Mr. Giron and the aggrieved employees are informed and believe and thereon allege that ACCENT BUILDING breached the legal duty to pay for all hours worked by Mr. Giron by failing to pay Mr. Giron and similarly aggrieved employees for meal period time when Mr. Giron and the aggrieved employees were not relieved of all duties and/or employer control.

Mr. Giron and the aggrieved employees are informed and believe and thereon allege that ACCENT BUILDING breached the legal duty to pay full wages to Mr. Giron by failing to pay Mr. Giron and similarly aggrieved employees for meal period time when Mr. Giron and the aggrieved employees were not relieved of all duties and/or employer control.

ACCENT BUILDING committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Mr. Giron and the aggrieved employees. ACCENT

BUILDING acted with malice or in conscious disregard of Mr. Giron's and the aggrieved employees' rights.

These claims are for Mr. Giron and all similarly situated non-exempt employees who worked for ACCENT BUILDING in California.

Mr. Giron, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 1194, 1194.2, 1197.1, and 1199.

II. ACCENT BUILDING Fails to Pay All Overtime Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* section 510 states that eight (8) hours of labor constitutes a day's work. Any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half (1.5) times the regular rate of pay for an employee.

California Labor Code section 510 dictates that any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than two (2) times the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than two (2) times the regular rate of pay of an employee.

ACCENT BUILDING failed to pay overtime when Mr. Giron and the aggrieved employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. ACCENT BUILDING has a consistent policy that fails to require employees be paid the overtime rate for overtime hours worked over eight (8) hours in a day when the total recorded hours in that week are less than forty (40) hours. See Company Handbook, at p. 10.

Mr. Giron and the aggrieved employees were deprived of wages for overtime hours worked because ACCENT BUILDING failed to pay them overtime wages for all overtime hours worked. This resulted in Mr. Giron and the aggrieved employees not being paid all overtime wages owed to them.

ACCENT BUILDING also failed to pay Mr. Giron and the aggrieved employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week, thus depriving Mr. Giron and the aggrieved employees of overtime wages.

ACCENT BUILDING has a continuous policy of not paying Mr. Giron and the aggrieved employees for all hours worked. Specifically, ACCENT BUILDING has a continuous and consistent policy of requiring employees to work before clocking in, after clocking out, and during meal periods. Mr. Giron and the aggrieved employees are not paid for this time. For example, Mr. Giron and the aggrieved employees were told to clock out and keep working when they had not

finished an assignment before the end of the day. Mr. Giron and the aggrieved employees were also told to arrive early to worksites but were not permitted to clock-in until their scheduled start time, and thus, were not paid for this time. Additionally, ACCENT BUILDING calls and/or otherwise contacts Mr. Giron and the aggrieved while they are off the clock for business related purposes. Thus, Mr. Giron and the aggrieved employees are owed wages for the unpaid time during which they are subject to ACCENT BUILDING's control and/or during which they are not free from all work duties. Because Mr. Giron and the aggrieved employees ordinarily work shifts lasting over eight (8) hours, the majority of these unpaid hours would qualify for the overtime rate.

Further, ACCENT BUILDING requires Mr. Giron and the aggrieved employees to use his personal vehicle for work related purposes. Mr. Giron would have to transport tools he used to perform work for ACCENT BUILDING care in his personal vehicle. ACCENT BUILDING would call and/or text Mr. Giron with the address of his first work location and then Mr. Giron would have to get into his personal vehicle and drive to the job site. Mr. Giron was not paid for the time it took him to get to his first job site or back from his last job site. Because Mr. Giron and the aggrieved employees ordinarily work shifts lasting over eight (8) hours, the majority of these unpaid hours would qualify for the overtime rate.

Moreover, Mr. Giron and the aggrieved employees are not relieved of all duties and/or employer control during their meal periods. Mr. Giron and the aggrieved employees are informed and believe and thereon allege that ACCENT BUILDING breached the legal duty to pay for all hours worked by Mr. Giron by failing to pay Mr. Giron and similarly aggrieved employees for meal period time when Mr. Giron and the aggrieved employees were not relieved of all duties and/or employer control. When Mr. Giron and the aggrieved employees work over eight (8) hours in a shift, these unpaid hours must be compensated at an overtime rate.

Additionally, ACCENT BUILDING failed to pay Mr. Giron and the aggrieved employees at the appropriate regular rate of pay for all overtime hours worked. ACCENT BUILDING fails to incorporate bonuses employees were paid when calculating employees' regular rate of pay for purposes of paying overtime compensation. For example, Mr. Giron and the aggrieved employees are paid non-discretionary performance bonuses and other amounts titled "Taxable Benefits" on employees' wage statements, yet these bonuses and other amounts were not included in employees' regular rate of pay.

Mr. Giron and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Mr. Giron and all similarly situated non-exempt employees who worked for ACCENT BUILDING in California.

Mr. Giron, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

III. ACCENT BUILDING Failed to Provide Lawful Meal Periods

Under *California Labor Code* section 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

ACCENT BUILDING breached the legal duty to provide meal periods to employees by failing to provide employees with meal periods within the timeframes outlined by California law. Specifically, ACCENT BUILDING fails to provide Mr. Giron and the aggrieved employees with meal periods within the first five (5) continuous hours of work. Mr. Giron and the aggrieved employees can only take meal periods when their supervisor tells them to. As such, if Mr. Giron's and the aggrieved employees' time records show late or missed meal periods, this is due to ACCENT BUILDING failing to provide meal periods in accordance with California law.

When Mr. Giron and the aggrieved employees are able to take a meal period, Mr. Giron and the aggrieved employees are not relieved of all duties and/or employer control during their meal periods. Additionally, ACCENT BUILDING did not allow Mr. Giron or the aggrieved employees to leave the premises during meal periods. Further, ACCENT BUILDING fails to provide a suitable rest area to employees.

Alternatively, ACCENT BUILDING breached the legal duty to provide meal periods to employees by imposing a continuous and consistent policy requiring Mr. Giron and the aggrieved employees to work through their meal periods to satisfy the demanding workload duties imposed by ACCENT BUILDING, thereby denying Mr. Giron and the aggrieved employees of the right to be completely free from employer control under California law.

Further, ACCENT BUILDING instituted a consistent policy/practice of not providing second meal periods to Mr. Giron and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Mr. Giron and the aggrieved employees are required to work shifts greater than ten (10) hours long but never received second meal periods in shifts over ten (10) hours long. Indeed, regardless of the duration of employees' shifts, ACCENT BUILDING had a consistent policy that "[a]ll full-time Regular employees are provided with one meal period of 30 minutes in length each workday." As employees frequently worked shifts over ten (10) hours long, they were deprived of a second meal period on those shifts.

By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, ACCENT BUILDING willfully violated the provisions of *Labor Code* sections 226.7 and 512.

ACCENT BUILDING's policies fail to provide meal periods to employees that are at least thirty minutes long. ACCENT BUILDING's policies also state that employees may be "confined to [the] plant premises" or other worksite during meal periods.

These claims are for Mr. Giron and all similarly situated non-exempt employees who worked for ACCENT BUILDING in California.

Mr. Giron, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Mr. Giron has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* sections 226.7 and 512.

IV. ACCENT BUILDING Failed to Provide Lawful Rest Periods

ACCENT BUILDING has had a consistent policy and/or practice of not providing duty free paid ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Mr. Giron and the aggrieved employees.

Industrial Welfare Commission Order No. 16-2001 section 11(A) states "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period....The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof."

ACCENT BUILDING breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Mr. Giron and the aggrieved employees to work through their rest periods to satisfy the demanding workload duties imposed by ACCENT BUILDING, thereby denying Mr. Giron and the aggrieved employees of the right to be completely free from employer control under California law.

Additionally, ACCENT BUILDING has a continuous policy and practice that fails to provide Mr. Giron and the aggrieved employees with rest periods "at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof." Specifically, ACCENT BUILDING does not provide Mr. Giron and the aggrieved employees with rest periods consisting of ten (10) minutes net rest time, nor does ACCENT BUILDING provide them with a rest period per four (4) hours worked or major fraction thereof.

Further, ACCENT BUILDING fails to provide a suitable rest area to employees. Mr. Giron and the aggrieved employees were not provided portable restrooms or other regular restroom access.

By failing to provide rest periods for every four hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided rest periods, as alleged above, ACCENT BUILDING willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 16-2001 section 11(A).

These claims are for Mr. Giron and all similarly situated non-exempt employees who worked for ACCENT BUILDING in California.

Mr. Giron, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Mr. Giron has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5 and Industrial Welfare Commission Order No. 16-2001 section 18 for violations of *California Labor Code* section 226.7 and Industrial Welfare Commission Order No. 16-2001 section 11(A).

V. ACCENT BUILDING Failed to Pay All Wages Due at Termination and During Employment

ACCENT BUILDING willfully failed to pay, in a timely manner, wages owed to the aggrieved employees who left ACCENT BUILDING'S employ or who were terminated.

The aggrieved employees who ended their employment with ACCENT BUILDING during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *California Labor Code* sections 201 through 203.

At all relevant times, *California Labor Code* sections 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 if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

During the relevant time period, ACCENT BUILDING intentionally and willfully failed to pay the aggrieved employees who are no longer employed by ACCENT BUILDING their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving ACCENT BUILDING'S employ.

On information and belief, Mr. Giron's employment with ACCENT BUILDING terminated on or about January 23, 2023. ACCENT BUILDING failed to provide Mr. Giron his final wages within seventy-two (72) hours of termination in accordance with *California Labor Code* sections 201 through 203. Mr. Giron did not receive his final paycheck until the next regularly scheduled payday, approximately one week later.

ACCENT BUILDING has a continuous policy of not providing final wages to employees who are fired at the time of termination or who quit within seventy-two (72) hours of their leaving ACCENT BUILDING's employ.

As outlined above, ACCENT BUILDING has a continuous policy of not paying Mr. Giron and similarly aggrieved employees for all hours worked by requiring employees to work before clocking in, after clocking out, and during meal periods. Mr. Giron and the aggrieved employees

are not paid for this time. For example, Mr. Giron and the aggrieved employees were told to clock out and keep working when they had not finished an assignment before the end of the day. Mr. Giron and the aggrieved employees were also told to arrive early to worksites but were not permitted to clock-in until their scheduled start time, and thus, were not paid for this time. Additionally, ACCENT BUILDING calls and/or otherwise contacts Mr. Giron and the aggrieved employees before clocking in, after clocking out, and during meal periods for business related purposes. Thus, Mr. Giron and the aggrieved employees are owed wages for the unpaid time during which they are subject to ACCENT BUILDING's control and/or during which they are not free from all work duties.

Further, ACCENT BUILDING requires Mr. Giron and the aggrieved employees to use his personal vehicle for work related purposes. Mr. Giron would have to transport tools he used to perform work for ACCENT BUILDING care in his personal vehicle. ACCENT BUILDING would call and/or text Mr. Giron with the address of his first work location and then Mr. Giron would have to get into his personal vehicle and drive to the job site. Mr. Giron was not paid for the time it took him to get to his first job site or back from his last job site.

In addition, ACCENT BUILDING fails to pay all meal and rest period premiums owed to Mr. Giron and the aggrieved employees at the time of termination.

ACCENT BUILDING'S failure to pay the aggrieved employees who are no longer employed by ACCENT BUILDING their wages, that were earned and unpaid, at the time of termination or within seventy-two (72) hours of their leaving ACCENT BUILDING'S employ, is in violation of *California Labor Code* sections 201 and 202.

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

These claims are for Mr. Giron and all similarly situated non-exempt employees who worked for ACCENT BUILDING in California.

Mr. Giron, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 201 through 203.

VI. ACCENT BUILDING's Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions

Section 226(a) of the *California Labor Code* requires ACCENT BUILDING to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Mr. Giron and the aggrieved employees.

California Labor Code section 226 subdivision (a) requires that ACCENT BUILDING, at the time

of each payment of wages, “furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee...”

California Labor Code section 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California” to itemize in wage statements and to accurately report the total hours worked and total wages earned.

In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with *California Labor Code* section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

ACCENT BUILDING has knowingly and intentionally failed to comply with *California Labor Code* section 226(a) on each and every wage statement provided to Mr. Giron and the other aggrieved employees.

In every pay period during the period of the relevant statute of limitations, ACCENT BUILDING knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, ACCENT BUILDING knowingly and intentionally did not include the total hours worked on wage statements. ACCENT BUILDING therefore knowingly and intentionally failed to itemize the total hours worked on Mr. Giron’s and the aggrieved employees’ wage statements.

In every pay period during the period of the relevant statute of limitations, ACCENT BUILDING knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226, subsection (a), requires. ACCENT BUILDING has a continuous policy of not paying Mr. Giron and similarly aggrieved employees for all hours worked by requiring employees to work before clocking in, after clocking out, and during meal periods. Mr. Giron and the aggrieved employees are not paid for this time. For example, Mr. Giron and the aggrieved employees were told to clock out and keep working when they had not finished an

assignment before the end of the day. Mr. Giron and the aggrieved employees were also told to arrive early to worksites but were not permitted to clock-in until their scheduled start time, and thus, were not paid for this time. Additionally, ACCENT BUILDING calls and/or otherwise contacts Mr. Giron and the aggrieved employees before clocking in, after clocking out, and during meal periods for business related purposes. Thus, Mr. Giron and the aggrieved employees are owed wages for the unpaid time during which they are subject to ACCENT BUILDING's control and/or during which they are not free from all work duties. As ACCENT BUILDING knew or had reason to know Mr. Giron and the aggrieved employees were working during this time, ACCENT BUILDING knowingly and intentionally failed to comply with *Labor Code* Section 226, subdivision (a).

Additionally, ACCENT BUILDING has a continuous policy of not paying Mr. Giron and the aggrieved employees for all hours worked by deducting from their wages. For example, ACCENT BUILDING informs employees that if they report to a worksite and/or perform work without both ACCENT BUILDING's knowledge and consent, then "time may be deducted from [the employee's] paycheck without consent if [ACCENT BUILDING's] prior approval is not received." Company Handbook, at p. 9.

In addition, ACCENT BUILDING failed to pay all meal and rest period premiums owed to Mr. Giron and the aggrieved employees for unprovided meal and rest periods.

ACCENT BUILDING fails to include the last four digits of the employee's security number or an employee identification number other than a social security number on Mr. Giron's and the aggrieved employees' wage statements.

ACCENT BUILDING has also failed to correctly provide the name of the legal entity that employs Mr. Giron and the aggrieved employees by citing their employer as "Accent Building Restoration, Inc", whereas ACCENT BUILDING has a period at the end of its name. Further, ACCENT BUILDING fails to list the employing legal entity's city, state, and zip code. Therefore, the legal entity employing Mr. Giron and the aggrieved employees has not been itemized on their wage statements in compliance with *California Labor Code* section 226(a).

ACCENT BUILDING failed to pay Mr. Giron and the aggrieved employees at the appropriate regular rate of pay for all overtime hours worked, as discussed above. ACCENT BUILDING fails to incorporate bonuses employees were paid when calculating employees' regular rate of pay for purposes of paying overtime compensation. For example, Mr. Giron and the aggrieved employees are paid non-discretionary performance bonuses and other amounts titled "Taxable Benefits" on employees' wage statements, yet these bonuses and other amounts were not included in employees' regular rate of pay.

ACCENT BUILDING also failed to itemize the amount of sick leave available for use on employee's wage statements in violation of *California Labor Code* section 246(i).

Throughout the statutory period, as a result of the knowing and intentional failure by ACCENT BUILDING to comply with itemized employee wage statement provisions, Mr. Giron and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked

and have, therefore, not received full compensation.

Further, in addition to any penalties levied upon ACCENT BUILDING for its failure to comply with *California Labor Code* section 226 subdivision (a)'s requirement to provide Mr. Giron and the aggrieved employees accurate, itemized wage statements, *California Labor Code* section 226.3 assesses additional penalties for the failure to keep the records required in subdivision (a) of Section 226. *California Labor Code* section 226 subdivision (a) requires ACCENT BUILDING to maintain records that "accurately shows all of the information required by this subdivision." ACCENT BUILDING has violated its statutory duty to maintain records for Mr. Giron and the aggrieved employees that contain all of the information under *California Labor Code* section 226(a)(1) through (9).

These claims are for Mr. Giron and all similarly situated non-exempt employees who worked for ACCENT BUILDING in California.

Mr. Giron, as a non-exempt employee who ACCENT BUILDING failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Mr. Giron has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5 for violations of *California Labor Code* section 226 and 226.3.

VII. ACCENT BUILDING Failed to Provide Paid Sick Days

Section 246(a) of the *California Labor Code* requires "[a]n employee who, on or after July 1, 2015, works in California for the same employer for thirty (30) or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." *California Labor Code* section 246, subdivision (b)(1), provides, in pertinent part, "an employee shall accrue paid sick days at the rate of not less than one hour per every thirty (30) hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later."

California Labor Code section 246(b) requires "[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked...." Employers may only use a different accrual method if "the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period." Cal. Lab. Code § 246(b)(3).

California Labor Code section 246(d) requires that "[a]ccrued paid sick days shall carry over to the following year of employment. However, an employer may limit an employee's use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year, or 12-month period. This section shall be satisfied and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period...."

California Labor Code sections 248.2 and 248.6 provide "COVID-19 supplemental paid sick leave," which "shall be in addition to any paid sick leave that may be available to the covered employee under [*California Labor Code*] Section 246." Cal. Lab. Code § 248.2(b)(2)(D); Cal.

Lab. Code § 248.6(b)(2)(F).

California Labor Code section 246(i) requires that, “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

California Labor Code section 233(c) states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5” *California Labor Code* section 233(d) provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

California Labor Code section 234 further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.

ACCENT BUILDING does not provide paid sick leave in compliance with these provisions. ACCENT BUILDING continuous policy failing to provide employees with paid sick time as required by law. ACCENT BUILDING informs employees that, “[s]ick pay is not offered as an employment benefit. Employees may be allowed to work addition hours in a given week to compensate for missing time due to an illness or a family emergency or if they had been awarded "Paid Time off" they may use that.” Company Handbook at p. 11; see also Company Handbook at p. 9 (listing “[a]bsence for illness, holiday or vacation” as non-compensable time.) Yet, ACCENT BUILDING’s paid time off policy also fails to provide paid time off for sick leave in compliance with California law.

ACCENT BUILDING further failed to provide COVID-19 supplemental paid sick leave to Mr. Giron and the aggrieved employees as required by *California Labor Code* sections 248.2 and 248.6.

ACCENT BUILDING operates under an absence control policy that counts absences due to illness taken pursuant to *California Labor Code* sections 233, 248.2, and 248.6 as an unexcused absence. Thus, ACCENT BUILDING’s sick pay policy punishes employees for use of protected and appropriate sick leave. ACCENT BUILDING further failed to provide paid sick days for all hours worked in compliance with these sections.

In addition, ACCENT BUILDING fails to provide employees with written notice that sets forth the amount of sick leave available for use, either in employees’ itemized wage statements or in a separate writing provided to employees on the designated pay date.

These claims are for Mr. Giron and all similarly situated non-exempt employees who worked for ACCENT BUILDING in California.

Mr. Giron, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in *California Labor Code* section 2699.5 for violations of section 246 and 247.5.

VIII. ACCENT BUILDING Failed to Reimburse Employees for Business Expenses

Section 2802(a) of the *California Labor Code* requires “[a]n employer [to] indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

Mr. Giron and the aggrieved employees incurred expenses necessary for the discharge of their duties without receiving reimbursement from ACCENT BUILDING. These expenses include, but are not limited to, the purchase of tools and safety measures such as face masks, paint brushes, gloves, tape, rollers, drills, saws, hammers, protective glasses, and items to be worn in compliance with ACCENT BUILDING’s uniform policies and/or practices such as protective shoes, white pants, and replacement shirts with ACCENT BUILDING’s logo when needed.

ACCENT BUILDING required employees to use to use their personal cell phones and vehicles for business purposes, but failed to reimburse these expenses. ACCENT BUILDING required employees to clock-in and clock-out on a smartphone application called TimeShift. Mr. Giron and the aggrieved employees had to use their personal cell phones for this process as well as for calls and/or text messages to communicate with their managers and supervisors throughout the day. ACCENT BUILDING further required Mr. Giron and the aggrieved employees to use their personal vehicles to travel to and from the locations of ACCENT BUILDING’s customers in their personal vehicles, but failed to reimburse related expenses incurred.

California Labor Code section 2802(a) entitles Mr. Giron and the aggrieved employees to reimbursement for said necessary expenditures, plus interest and expenses.

These claims are for Mr. Giron and all similarly situated non-exempt employees who worked for ACCENT BUILDING in California.

Mr. Giron is an aggrieved employee with standing to bring an action under the PAGA. Furthermore, Mr. Giron satisfies all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 2802(a).

IX. ACCENT BUILDING Failed to Pay Employees Twice Per Month

Section 204(a) of the *California Labor Code* required ACCENT BUILDING to pay Mr. Giron and the aggrieved employees twice during each calendar month.

California Labor Code section 204 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar 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 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.”

During the relevant time period, ACCENT BUILDING intentionally and willfully failed to pay Mr. Giron and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

ACCENT BUILDING’s failure to pay Mr. Giron and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month, is in violation of *California Labor Code* section 204.

During the relevant time period, ACCENT BUILDING intentionally and willfully failed to pay Mr. Giron and the aggrieved employees their wages, that were earned and unpaid, within the timeframes as required by *California Labor Code* section 204. Further, ACCENT BUILDING informs employees that “[i]n the event that a regularly scheduled payday falls on a day off such as a weekend or holiday, employees will be paid on the first day of work following the regularly scheduled payday.” Company Handbook at p. 8. When “a regular payday falls during an employee’s vacation, the employee’s paycheck will be available upon his or her return from vacation.” *Id.*

These claims are for Mr. Giron and all similarly situated non-exempt employees who worked for ACCENT BUILDING in California.

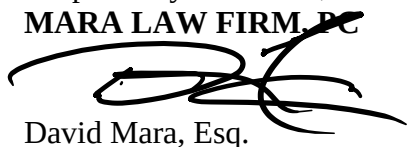
Mr. Giron, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of section 204.

X. Conclusion

If after 65 days from the date of this letter, the LWDA does not take action or declines to intervene, Mr. Giron will file a complaint alleging PAGA violations, as described above.

Respectfully submitted,

MARA LAW FIRM, PC

A handwritten signature in black ink, appearing to read 'David Mara', is written over the printed name and firm name.

David Mara, Esq.

Attn: PAGA Administrator
California Labor and Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Via Web Submission

Jonathan Gerber
18301 Von Karman Ave., Ste 950,
Irvine, CA 92612
Agent for Service of Process for Defendant
Accent Building Restoration, Inc.
Via Certified Mail

Accent Building Restoration, Inc.
19309 Carmenita Rd.,
Cerritos, CA 90703
Via Certified Mail

Case Name: William Giron v. Accent Building Restoration, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of: San Diego, State of California.

I am over the age of 18 and not a party to the within action; my business address is:
2650 Camino Del Rio N. Suite 302, San Diego, CA 92108

On April 19, 2023, I served the foregoing document(s) described as:

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

On interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jonathan Gerber
18301 Von Karman Ave., Ste 950,
Irvine, CA 92612
Agent for Service of Process for Defendant
Accent Building Restoration, Inc.
(Via Certified Mail)

Attn: PAGA Administrator
**California Labor and Workforce
Development Agency**
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(Via Electronic Filing)

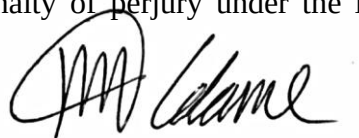
Accent Building Restoration, Inc.
19309 Carmenita Rd.,
Cerritos, CA 90703
(Via Certified Mail)

[XX] (BY UNITED STATES CERTIFIED MAIL) On April 19, 2023, I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses named above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

[XX] (BY ELECTRONIC SUBMISSION) On April 19, 2023, I caused the documents to be sent to the persons at the electronic notification addresses of the parties named above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[XX] (DECLARATION) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: April 19, 2023


Mathew Adame

Matthew Adame

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, April 19, 2023 1:09 PM
To: Matthew Adame
Subject: Thank you for submission of your PAGA Case.

4/19/2023

LWDA Case No. LWDA-CM-949560-23
Law Firm : Mara Law Firm, PC
Plaintiff Name : William Giron
Employer: accent Building Restoration, 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