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Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CLARENCE PHILLIPS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

HARDY WINDOW COMPANY, a
California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVSB2312048

*[Assigned to Hon. Jessica Morgan, Dept S26, for
all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Hearing

Date: August 1, 2024

Time: 8:30 a.m.

Dept.: S26

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 300 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered well in excess of
14 \$250 million in damages for my clients and the class members (who often work as nurses,
15 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
16 occupations and countless other trades). My team and I once held the record for the largest
17 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
18 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
19 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
25 the PAGA case was reversed and remanded.

26 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
27 the May 2023 issue of Consumer Attorney's of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last 5+ consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Following a contested litigation process, Plaintiff and Defendant (collectively, the
5 “Parties”) finalized a Class Action and PAGA Settlement Agreement (the “Settlement
6 Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**.

7 8. The Settlement Agreement seeks to release and discharge Defendant from the
8 claims brought against it in exchange for Defendant’s agreement to pay \$662,500 on a non-
9 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
10 Settlement Amount without having to submit a claim form or take any action). As set forth in
11 the motion and Settlement Agreement, Plaintiff seeks to represent “All current and former
12 nonexempt employees who were employed by Hardy Window Company in California at any
13 time during the Class Period.”

14 9. Under the terms of the Settlement Agreement, Defendant will not oppose my
15 firm’s application for a reasonable award of attorneys’ fees not to exceed \$220,833.33 (1/3 of
16 the Gross Settlement Amount), litigation expenses not to exceed \$25,000, an Administration
17 Expenses Payment of \$9,500, PAGA penalties of \$40,000 (75% to the LWDA and 25% to the
18 Aggrieved Employees on a pro rata basis), and a Service Payment not to exceed \$10,000 to
19 Plaintiff Clarence Phillips (“Class Representative”). After subtracting the agreed-upon
20 deductions from the Settlement Amount, approximately \$357,166.67 will be available to pay
21 the individual settlement amounts to approximately the Class Members who do not opt-out of
22 the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 662,500.00
Attorneys’ Fees (1/3)	\$ 220,833.33
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 9,500.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Payment	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 357,166.67

10. Assuming 450 Class Members, the average payment will be approximately \$793.70 (\$357,166.67 / 450). However, the actual payments will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with an estimated net value of \$13.95 per workweek (the Parties settled at \$25 per workweek [$25 \times 26,500 = \$662,500$] but, after deductions, the net value per workweek is \$13.95 [$357,166.67 / 26,500$ workweeks]). In addition, approximately 240 Aggrieved Employees will receive a share of the \$10,000 PAGA Penalties (25% of the \$40,000 allocation), shared pro-rata based on Weeks Worked during the PAGA Period.

11. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks or Pay Periods he/she is credited with working during the Class Period which is attached hereto as **Exhibit 2**.

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

13. After being retained by Plaintiff, we sent a letter to Defendant requesting the production of Plaintiff's personnel and timekeeping records in order to further evaluate her wage and hour claims. On January 21, 2022, we submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit 3**.

14. Then, on May 5, 2023, my office (on behalf of Plaintiff) filed this class action, alleging that Defendant violated various sections of the Labor Code. After the LWDA declined to assert jurisdiction over the PAGA claims, we filed the operative First Amended Complaint on July 10, 2023, which added PAGA claims to the action.

1 15. Hardy retained counsel and immediately began to defend the case. However,
2 after discussions among counsel, the Parties agreed to attend private mediation prior to formal
3 discovery and possible motion practice.

4 16. In preparation for mediation, the Parties informally exchanged documents and
5 information that allowed both sides to calculate the potential damages and evaluate potential risk,
6 including policies and procedures pertaining to the claims, statistics relating to the number of
7 current and former employees, number of shifts, pay periods worked and other things, and a
8 sampling of payroll and timekeeping records for Class Members. This information, which
9 included more than 5,000 pages of documents and substantial excel data for a sampling of
10 employees, enabled both parties to take a deep dive into the claims. Additionally, during this
11 process, my firm analyzed, researched, and investigated the potential issues, including matters
12 related to the calculation of damages, trial, and appellate issues and risks.

13 17. On March 14, 2024, Plaintiff and Defendant participated in mediation with Kelly
14 Knight, Esq. a well-respected employment mediator. After a full-day mediation, the matter
15 resolved after a mediator's proposal, and the Parties entered into the Settlement Agreement. The
16 Parties now seek the Court's preliminary approval of the Settlement.

17 **SUMMARY OF THE CLAIMS AND DEFENSES**

18 18. Here, Plaintiff alleged numerous wage and hour violations on behalf of the Class
19 Members. However, Defendant vigorously contested and denied Plaintiff's material allegations
20 on the merits and as to the propriety of a class action or PAGA representative action. Still,
21 Plaintiff believed there were several strong claims.

22 19. For instance, Plaintiff alleged Defendant failed to pay proper wages due to several
23 distinct wage violations. First, Plaintiff alleged that Defendant utilized a practice that "rounded"
24 the Class Members' timekeeping and paid in quarter-hour increments, and further alleged that
25 this practice illegally underpaid the Class because it did not pay all wages owed. *Camp v. Home*
26 *Depot U.S.A. Inc.*, (2022) 84 Cal.App.5th 638, 660. Second, Plaintiff also alleged that Defendant
27 paid the Class at a base hourly rate, along with a lower hourly rate for "drive time." And Plaintiff
28 alleged that this lower "drive time" rate violated California law because it was less than several

1 of the local minimum wage rates established by cities and counties where the Class performed
2 their work. Third, Plaintiff argued that Defendant failed to pay all overtime owed because of a
3 failure to calculate and pay overtime at the correct “weighted average” on occasions that Class
4 Members earned two or more rates of pay in a workweek. Plaintiff thus argued these violations
5 resulted in unpaid minimum wages and overtime, waiting time penalties under Labor Code §
6 203, and other derivative penalties. However, Defendant opposed each of these unpaid wage
7 claims on the merits and as to the propriety of class certification.

8 20. Plaintiff also alleged that Class Members were denied compliant meal and rest
9 breaks. However, Defendant argued it provided and made all mandated breaks available to the
10 Class, and any employee who did not take a break did so of their own volition. Thus, Defendant
11 argued these claims were without merit because, for each violation, a fact-finder would have to
12 determine why a break was noncompliant, because if it was by the employee’s choice, no
13 liability attaches to Defendant.

14 21. Finally, Plaintiff alleged a variety of other claims (all of which Defendant
15 disputed), such as the failure to reimburse expenses, failure to timely pay wages each period and
16 upon separation of employment, and failure to provide accurate itemized wage statement.

17 22. Despite the disputed nature of the claims, the Parties concluded that further
18 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
19 be fully and finally settled to limit further risk, expense, and protracted litigation.

20 **EVALUATION OF THE SETTLEMENT**

21 23. In preparation for mediation, Peter Carlson, a senior associate with 10 years of
22 litigation experience within my office, and I formulated a damages model and risk analysis based
23 upon detailed data obtained through informal discovery and information exchanges. The
24 summary of the claims below is based on calculations by our expert and us, and the risks that we
25 potentially faced, giving significant credit to the defenses that Defendant raised or would likely
26 raise in further proceedings.

27 24. Following the informal exchange and other information provided by Defendant,
28 we estimated the following data points through the date of mediation: (1) 420 Class Members,

1 (2) 250 *former* Class Members for purposes of Labor Code § 203, (3) 26,500 workweeks, (4)
2 119,250 shifts worked, and (4) approximately 12,250 wage statements during the PAGA Period.

3 25. Here, Plaintiff alleged a variety of claims against Defendant, which boil down to
4 these categories: (1) unpaid wages, (2) meal and rest break violations, (3) waiting time penalties
5 under Labor Code §§ 201 – 203, (4) wage statement penalties under § 226(e), and (5) PAGA
6 civil penalties for the same claims.

7 26. Plaintiff's unpaid wage claims had several distinct theories of liability, including:
8 (1) alleged rounding violations, (2) alleged failure to pay at the required *local* minimum wage
9 rates (which may be higher than the statewide minimum wage, based on municipality), and (3)
10 alleged failure to pay all overtime owed due to a "weighted average" violation. However,
11 Defendant vehemently opposed these unpaid wage claims on the merits and as to the propriety of
12 class certification. On this point, Defendant raised several strong defenses, including that: (1)
13 their timekeeping and payroll practices did not underpay employees due to "rounding" or any
14 other practices and any challenge would require unwieldy individuals inquiries that are not
15 proper for certification, (2) Defendant did not have Class Members perform work in
16 municipalities with higher local minimum wages and, moreover, time spent driving through a
17 municipality (without performing other work) does not trigger the local minimum wages, and (3)
18 Defendant paid all overtime at the proper rate of pay. As a result, for mediation and settlement
19 purposes, Plaintiff and Class Counsel applied appropriate risk reductions from the maximum
20 potential unpaid wages to account for risks of defeat at class certification and on the merits.

21 27. Plaintiff also alleged meal and rest break claims against Defendant. Based on the
22 pre-mediation analysis and investigation, and when incorporating violation rates from expert
23 review of the timekeeping records and other evidence, Class Counsel estimated a 53.4%
24 violation rate for meal periods and a 50% violation rate for rest breaks. However, Defendant
25 argued that it maintained fully compliant written policies and specifically authorized the Class
26 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
27 or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to
28 determine for each Class Member whether a break was missed and why, and why a break was

1 noncompliant or nonexistent, because if it was the employee's choice, no liability attaches to
2 Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues
3 raise questions regarding whether the meal and rest break claims could be certified. Second,
4 these defenses also go toward the merits given the evidentiary question of proving the number of
5 meal and rest violations. As such, Plaintiff and Class Counsel considered these risks and
6 defenses and, for purposes of mediation and settlement, applied appropriate risk reductions
7 regarding the risks of defeat at class certification and on the merits.

8 28. Plaintiff also alleged claims for failure to reimburse business expenses based on
9 the argument that Class Members were required to purchase and provide tools and other
10 equipment to perform their tasks for Defendant. But Defendant vehemently opposed this claim
11 and argued that it provided and made available all tools and equipment needed to perform tasks.
12 Thus, Defendant argued that any expenses incurred were not "necessary" and do not trigger
13 liability under California law.

14 29. Finally, Plaintiff also alleged claims for waiting time penalties and wage
15 statement violations. But these claims were entirely derivative of the claims above, meaning that
16 they only had merit if the claims for unpaid wages or meal/rest breaks were successful. But
17 Defendant raised a variety of defenses to these derivative claims that impacted the valuation.
18 Namely, as to the wage statement violations, Defendant argued that the wage statements did not
19 violate Labor Code § 226 and even if there was a "technical" violation, that Plaintiff would be
20 unable to prove the required "knowing and intentional" and "injury" elements. Then, as to the
21 waiting time penalty claim, Plaintiff's valuation had to account for the fact that this claim was
22 derivative of the unpaid wage and meal/rest break claims (*e.g.*, the unpaid wage premiums) and,
23 if those claims failed at certification or on the merits, there would be no waiting time penalties
24 owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid
25 wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to
26 prove that the violations (if any existed) were "willful" under the meaning of Labor Code § 203.
27 And, here, Defendant argued that there could not be a finding of a "willful" violation since they
28 had compliant written policies, and any deviations therefrom were inadvertent and unintentional.

1 30. In sum, Plaintiff calculated the *maximum* potential Class damages as
2 approximately \$5,000,000. However, that figure fails to consider the various risks at class
3 certification, on the merits, and the many evidentiary issues. When considering all relevant
4 factors, Class Counsel estimated the risk-adjusted value of the Class claims at approximately
5 \$1,500,000.

6 31. And while the PAGA penalties had a potential maximum value in the seven
7 figures, this also fails to incorporate the risks above and, further, fails to acknowledge that courts
8 have wide latitude to reduce the civil penalties “based on the facts and circumstances of a
9 particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and
10 oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the
11 merits of the underlying claims and particularly that the “willfulness” standard and/or “good
12 faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain.
13 Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory
14 claims. For these reasons, the Parties submit that this settlement is fair and reasonable.

15 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

16 32. The settlement was the product of extensive arm’s length negotiations, facilitated
17 by an experienced mediator. Though cordial and professional, the settlement negotiations were
18 adversarial and non-collusive in nature. The settlement reached is the product of substantial
19 effort by the parties and their counsel. Although we believed that there was a possibility of
20 certifying the claims, we recognized the potential risk, expense, and complexity posed by
21 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
22 on the damages awarded, and/or on an appeal that can take several more years to litigate.

23 33. The settlement will result in a fair payment to each Class Member based on the
24 percentage of weeks worked during the Class Period and other factors as set forth in the
25 Settlement Agreement. As set forth hereinabove, Plaintiff and her counsel have diligently
26 investigated the claims and defenses on behalf of the Class Members and worked to achieve a
27 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys’
28 fees and costs. After evaluating the significant risks attendant with further litigation described

1 above and weighing them against the benefits of a known compromise and settlement as set forth
2 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
3 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

4 34. My office brought to bear a great deal of experience in negotiating the settlement
5 of this case. As detailed herein, my office engaged in the necessary discovery and investigation,
6 making it possible to exercise informed judgment throughout the settlement process, including
7 significant document review (e.g. documents pertaining to Defendant's policies and procedures,
8 personnel documents, among others), and conducted an extensive analysis of the detailed class-
9 wide data provided by Defendant.

10 35. Based on my experience in other cases, including wage and hour matters, I
11 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
12 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
13 settlement at this time is in the best interests of the class. The settlement provides each class
14 member with compensation for the alleged violations when viewed in relation to the costs and
15 risks inherent in obtaining class certification and proceeding to trial.

16 36. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
17 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

18 37. Of course, the settlement amount represents a compromise figure, taking into
19 account the various risks surrounding class certification and the merits of Defendant's asserted
20 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
21 members, with no reversion to Defendant.

22 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

23 38. Plaintiff seeks an enhancement payment of \$10,000 for his service to the class,
24 which I believe is fair and warranted. Plaintiff came forward in an effort to effectuate a policy
25 and practice change that benefitted all other Class Members, and to recover unpaid wages. He
26 assumed significant risk in bringing this litigation—namely, had he lost, he would have been
27 ordered to pay Defendant's costs.
28

1 39. Plaintiff provided invaluable assistance to my office and the Class in this case,
2 including providing factual background for the Class Complaint; reviewing the litigation
3 documents; providing information and documents about Defendant's policies and practices;
4 participating in phone calls to discuss litigation and settlement strategy; drafting responses to
5 formal discovery; and reviewing the settlement documents. Plaintiff agreed to participate in this
6 case with no guarantee of personal benefit. At final approval, Plaintiff will submit a
7 comprehensive declaration setting forth all of the reasons why she believes that the service award
8 should be approved.

9 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
10 **REQUESTED FEES AND COSTS**

11 40. As set forth above, I have handled over 500 class and representative actions, have
12 been appointed as class counsel and have successfully resolved over half of those cases, and
13 many others remain pending and will successfully resolve in the future.

14 41. When this case was taken on a contingency fee basis, with my firm agreeing to
15 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
16 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
17 and mediation costs. There was never a guarantee that we would recoup those expenditures.

18 42. It is my experience that attorney fee awards of one-third of a common fund
19 settlement is the standard in California. In this case, my firm agreed to seek one-third of the
20 Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The fee is
21 further warranted because it is within the range of reasonableness typically awarded in class
22 actions. The costs are reasonably capped at \$25,000 and will be based on the actual amount of
23 costs incurred at the time of final approval.

24 **SETTLEMENT ADMINISTRATOR**

25 43. The parties request that the Court appoint Phoenix Settlement Administrators to
26 serve as the Administrator. Phoenix is experienced in administering class action settlements and
27 has provided a proposal to administer this settlement for a total of \$9,500, which is attached
28 hereto as **Exhibit 4**.

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EXHIBITS AND CONCLUSION

45. A true and correct copy of the Settlement Agreement is attached as **Exhibit 1**.

46. A true and correct copy of the proposed Class Notice is attached hereto as **Exhibit**

2.

48. A true and correct copy of Phoenix's proposal to administer the Settlement is attached as **Exhibit 4**.

50. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “1”

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Clarence Phillips (“Plaintiff”) and Hardy Window Company (“Defendant”). Plaintiff and Defendant shall collectively be referred to as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Clarence Phillips v. Hardy Window Company*, San Bernardino County Superior Court Case No. CIVSB2312048, which was initiated on May 5, 2023, and pending in Superior Court of the State of California, County of San Bernardino.

1.2. “Adjusted Gross Settlement Amount” – in the event that the Escalator Clause is triggered (see Paragraph 9.1 below) – means the Gross Settlement Amount minus the Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, and Class Counsel Litigation Expenses Payment.

1.3. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.4. “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.

1.5. “Agreement” shall mean this Class Action and PAGA Settlement Agreement, including the Class Notice.

1.6. “Aggrieved Employee” means all current and former nonexempt employees who were employed by Hardy Window Company in California at any time during the PAGA Period. Aggrieved Employees may not exclude themselves from receipt of the PAGA Penalties.

1.7. “Class” consists of all current and former nonexempt employees who were employed by Hardy Window Company in California at any time during the Class Period.

1.8. “Class Counsel” means Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP.

1.9. “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.

1.10. “Class Data” means Class Member and Aggrieved Employee identifying information in Defendant’s possession including the Class Member’s and Aggrieved Employee’s name, last-known mailing address, Social Security number, and number of

Class Period workweeks and PAGA pay periods, as applicable..

1.11. “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).

1.12. “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.

1.13. “Class Notice” means the court approved notice of class action settlement to be mailed to Class Members and Aggrieved Employees in English only in the form attached as Exhibit A and incorporated by reference into this Agreement.

1.14. “Class Period” means the period from December 10, 2019, to Preliminary Approval.

1.15. “Class Representative” means the named Plaintiff in the operative Complaint in the Action seeking Court approval to serve as a class representative.

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

1.17. “Complaint” refers to the original complaint filed by Plaintiff in the Action on or about May 5, 2023, and the operative First Amended Complaint on file in the Action, filed on or about July 10, 2023, which is pending in the Court and designated as Case No. CIVSB2312048.

1.18. “Court” means the Superior Court of California, County of San Bernardino.

1.19. “Defendant” means Hardy Window Company.

1.20. “Defense Counsel” means Roger M. Mansukhani and Emma R. Horner, of Gordon Rees Scully Mansukhani, LLP.

1.21. “Effective Date” means and refers to the latest of the following dates: (i) if no Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure § 663, then the date the Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or other collateral attack (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

1.22. “Exclusion List” means the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion.

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

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

1.25. “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.

1.26. “Gross Settlement Amount” or “GSA” means \$662,500, which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below and except for the employer’s share of applicable payroll tax obligations that Defendant shall pay to the Administrator. 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.

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

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

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

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

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

1.32. “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.

1.33. “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. A Non-Participating Class Member shall still receive their share of the PAGA Penalties.

1.34. “PAGA Period” means the period from May 4, 2022, through Preliminary Approval.

1.35. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.36. “PAGA Notice” means Plaintiff’s May 4, 2023, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.37. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$40,000), allocated 25% to the Aggrieved Employee (\$10,000) and 75% to LWDA (\$30,000) in settlement of PAGA claims.

1.38. “Participating Class Member” means all Class Members except for those who opt-out by submitting a timely valid Request for Exclusion.

1.39. “Plaintiff” means Clarence Phillips, the named plaintiff in the Action.

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

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

1.42. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.

1.43. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.

1.44. “Released Parties” means: Defendant and its former and present parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, insurers (including, but not limited to, insurers and reinsurers), servants, joint employers, and employees, and each of them and anyone acting in concert with the foregoing.

1.45. “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.

1.46. “Response Deadline” means 45 days after the Administrator mails the Class 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 or her 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 after the Response Deadline has expired.

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

1.48. “Weekly Report” refers to the report that the Administrator must email to Defense Counsel and Class Counsel on a weekly basis that, among other things, tallies 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 credited Weeks Worked, and checks mailed for Individual Class Payments and Individual PAGA Payments. The

Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

1.49. "Weeks Worked" in the context of the Class Members, means all weeks during the Class Period in which the Class Member was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek. In the context of Aggrieved Employees, it means all weeks during the PAGA Period in which the Aggrieved Employee was employed by Defendant as a non-exempt employee in California and worked at least one shift during the workweek.

2. RECITALS.

2.1. On May 5, 2023, Plaintiff commenced this Action by filing the original complaint alleging causes of action against Defendant for (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages upon separation of employment, (7) failure to provide accurate itemized wage statements; and (8) unfair and unlawful competition. Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified in the Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice. After the LWDA declined jurisdiction over the PAGA Claims, Plaintiff filed the operative first amended complaint on about July 10, 2023, alleging the same causes of action as in the originally filed complaint and adding PAGA claims (including failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest breaks, failure to reimburse business expenses, failure to timely pay wages each period, failure to timely pay final wages, and failure to provide accurate itemized wage statements).

2.3. On March 14, 2024, the Parties participated in an all-day mediation presided over by Kelly Knight, which culminated in a mediator's proposal. The Parties accepted the mediator's proposal, and thereafter entered into this Agreement to settle the Action.

2.4. Prior to the mediation and negotiating the Settlement, Plaintiff obtained, through informal discovery, documents and information, including but not limited to Defendant's written policies and practices, information relating to the size of the Class and Aggrieved Employees, number of weeks worked, as well as a sampling of payroll and timekeeping records. 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 9 below, Defendant agrees to pay \$662,500 and no more as the Gross Settlement Amount, and to separately pay to the Administrator any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

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

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant 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 the Class Representative Service Payment on a date set by the Court at the Preliminary Approval Hearing and 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 one-third of the GSA (33.333%), which is currently estimated to be \$220,833.33 and a Class Counsel Litigation Expenses Payment of not more than \$25,000. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment on a date set by the Court at the Preliminary Approval Hearing and 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 of 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 Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$9,500 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 \$9,500, 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 Weeks Worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Weeks Worked.

3.2.4.1. Tax Allocation of Individual Class Payments. Portions of the Individual Class Payment paid to the Participating Class Members will be allocated as 15% to wage claims (the "Wage Portion") and remaining 85% will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$40,000 to be paid from the Gross Settlement Amount, with 75% (\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.

3.2.6. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$10,000) by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Weeks Worked during the PAGA period. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.6.1. 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. Weeks Worked. See Paragraph 9 below.

4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who

need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 10 days after Defendant 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 (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 Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will also send checks for Individual PAGA Payments to all Aggrieved Employees. If the recipient is both a Participating Class Member and Aggrieved Employee, the Payments may be contained on one check. 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 a 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, and 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 State Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of

California Code of Civil Procedure Section 384, subd. (b).

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

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

6.1 Plaintiff's Release. Plaintiff individually and on behalf of Plaintiff's successors, assigns, heirs, estates, executors, administrators, agents, representatives, and attorneys, and each of them, voluntarily, irrevocably, and unconditionally releases, acquits, and forever discharges Company and any of its present and former parents, subsidiaries, affiliates, affiliated entities, co-employers, officers, directors, trustees, employees, agents, representatives, members, managers, attorneys, and insurers (including but not limited to insurers and reinsurers), and/or any of their predecessors, successors and assigns, and each of them (referred collectively with Company as the "Plaintiff's Released Parties"), from any and all charges, complaints, claims, promises, agreements, controversies, suits, demands, costs, losses, debts, actions, causes of action, damages, judgments, obligations, liabilities, and expenses of whatever kind and character, known or unknown, suspected or unsuspected, including any claims for attorneys' fees and costs, which Employee now has, owns, holds, or claims to have, own, or hold, or may have had, owned, or held, or may claim to have, own, or hold against the Plaintiff's Released Parties, against the Plaintiff's Released Parties regarding, related, or connected to Plaintiff's employment with Defendant, or regarding, related, or connected to any acts or inactions of the Plaintiff's Released Parties, including, without limitation, any and all claims that have or could have been asserted in the Action, or through any related claim or complaint, cross-complaint, or cross-action of any kind, any and all claims that in any way relate to the facts and circumstances alleged in the Action, or any alleged violation of: Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; Sections 1981 through 1988 of Title 42 of the United States Code, as amended; the Employee Retirement Income Security Act of 1974; the Immigration Reform and Control Act; the Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Workers Adjustment and Retraining Notification Act; the Occupational Safety and Health Act; the Sarbanes-Oxley Act of 2002; the Fair Credit Reporting Act; the Family and Medical Leave Act; the Equal Pay Act; the Genetic Information Nondiscrimination Act of 2008; California Family Rights Act – Cal. Gov't Code § 12945.2; California Fair Employment and Housing Act – Cal. Gov't Code § 12900 *et seq.*; California Unruh Civil Rights Act – Cal. Civ. Code § 51 *et seq.*; statutory provisions regarding the confidentiality of AIDS information – Cal. Health & Safety Code § 120775 *et seq.*; California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 *et seq.*; California Parental Leave Law – Cal. Lab. Code § 230.7 *et seq.*; California Apprenticeship Program Bias Law – Cal. Lab. Code § 3070 *et seq.*; California Equal Pay Law – Cal. Lab. Code § 1197.5; California Whistleblower Protection Law – Cal. Lab. Code § 1102.5; California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394; statutory provisions regarding California Family and Medical Leave – Cal. Lab. Code § 233; statutory provisions regarding California Electronic Monitoring of Employees – Cal. Lab. Code § 435; California Obligations of Investigative Consumer Reporting Agencies Law – Cal. Civ. Code § 1786.10 *et seq.*; California Political Activities of Employees Law – Cal. Lab. Code § 1101 *et seq.*; California Domestic Violence Victim Employment Leave Law – Cal. Lab. Code § 230.1; California Court Leave Law – Cal. Lab. Code § 230; California Private Attorney General Act – Cal. Lab. Code § 2698 *et seq.* (both on an individual and non-individual basis, to the extent permitted by law); any and all local, state, and/or federal wage and hour law, including but not limited to such law contained within the California Labor Code and Fair Labor Standards Act); those other provisions of the California Labor Code that lawfully may be released; any other federal,

state or local civil or human rights law or any other federal, state or local law, regulation or ordinance; any public policy, contract, tort or common law; and/or any basis for recovering costs, fees or other expenses including attorneys' fees incurred in these matters, with the express exception of Plaintiff's right to bring a claim or institute a proceeding for claims that cannot lawfully be released ("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. 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 shall remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California 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 California Civil Code, which reads:

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

6.2 Release by Participating Class Members: All Participating Class Members will be bound by a release of all claims alleged in the Complaint, as set forth below: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged in the Complaint, or that reasonably could have been alleged based upon the facts stated in the Complaint, including, but not limited to,: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, and (8) unfair and unlawful competition. The time period governing the Released Class Claims shall be the Class Period ("Released Class Claims"). The operative release period for the Released Class Claims is the Class Period.

6.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in the Complaint and in Plaintiff's PAGA Notice to the LWDA, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the

facts or claims alleged in the LWDA notice letter and Complaint. The time period governing the PAGA Released Claims shall be the PAGA Period. The Released PAGA Claims do not release any potential claims for wages or statutory penalties.

7. MOTION FOR PRELIMINARY APPROVAL. Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”), as set forth below.

7.1 Deleted.

7.2 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, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) 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; (v) 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 (Labor Code section 2699.3, subd. (a)), Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) 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.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval by Code in accordance with the hearing date set for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator, and all related documents.

7.4 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.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected the Administrator to serve and verified that, as a condition of appointment, the Administrator 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.

8.2 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.

8.3 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.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Weeks Worked (for the Class Period and PAGA Period, respectively) in the Class Data and whether the Escalator Clause has been triggered.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 10 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A, or as modified by the Court and agreed to by the Parties. 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 Weeks Worked as a Class Member and Aggrieved Employee (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.

8.4.3 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.

8.4.4 The deadlines for Class Members’ written objections, Challenges to Weeks Worked, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline 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.

8.4.5 If the Administrator, Defense Counsel, Class Counsel, Plaintiff or Defendant is/are 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, whichever are later. Nothing in this section shall require Defendant to contribute any additional sums to the Settlement of the Action.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 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 the Response Deadline (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 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.

8.5.2 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.

8.5.3 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 Paragraph 6.2 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 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 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Weeks Worked. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Weeks Worked that were 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 Weeks Worked 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 Weeks Worked shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Weeks Worked to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

8.7 Objections to Settlement.

8.7.1 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.

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

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

8.8 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.

8.8.1 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.

8.8.2 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 the Exclusion 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; (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).

8.8.3 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 Weeks Worked received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Weeks Worked 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 Weeks Worked. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 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 must also provide a breakdown of the Gross Settlement Amount, high/low/average payments to Participating Class Members, the total Weeks Worked by Class Members and Aggrieved Employees and the per Weeks Worked value of each. 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.

8.8.6 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.

9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE Based on its records, Defendant estimates that there are 405 Class Members who worked approximately 26,500 workweeks during the Class Period. If the workweek number increases by more than 15% of the estimate stated herein by the end of the Class Period, Defendant will either: a) increase the Adjusted Gross Settlement Amount proportionately for the percentage of workweeks in excess of

the 15% threshold (i.e., a 16% increase in workweeks will result in a 1% increase of the Adjusted Gross Settlement Amount); or 2) adjust the end date of the Class Period so that the release covers no more than 30,475 workweeks. If Defendant chooses option 2, the end date of the PAGA Period shall be adjusted to match the end date of the Class Period, but under no circumstance shall the Class Period and/or PAGA Period be adjusted prior to the date of mediation (March 14, 2024).

10. DEFENDANT’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% or more of all Class Members, Defendant may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

11. 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, subd. (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 5 court 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.

11.1 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 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

12. 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 a proposed amended judgment.

13. ADDITIONAL PROVISIONS.

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

13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,

all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

13.3 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.

13.4 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.

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

13.6 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.

13.7 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 any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

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

CFR Part 10, as amended) or otherwise.

13.9 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.

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

13.11 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.

13.12 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.

13.13 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.

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

13.15 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.

13.16 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.

13.17 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:

Brian Mankin
brian@LMLfirm.com
Lauby Mankin Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

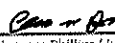
Roger M. Mansukhani
Emma R. Horner
rmansukhani@grsm.com
ehorner@grsm.com
Gordon Rees Scully Mansukhani, LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071
Tel: (213) 576-5000 | Fax: (213) 680-4470
Cc: *mxdiaz@grsm.com*

13.18 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 exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 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, upon the signing of this Agreement and pursuant to CCP section 583.330, to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: Jun 7, 2024

PLAINTIFF AND CLASS REPRESENTATIVE:


Clarence Phillips (Jun 7, 2024 13:14 PDT)

Clarence Phillips

Dated: 6/10/24

DEFENDANT:
HARDY WINDOW COMPANY

By: Chance Hardy
Title: Owner

AS TO FORM ONLY:

Dated: June 7, 2024

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP



Brian J. Mankin
Attorneys for Plaintiff

Dated: June 10, 2024

DEFENDANT'S COUNSEL:
GORDON REES SCULLY MANSUKHANI, LLP



Emma Horner
Attorneys for Defendant

END OF DOCUMENT

EXHIBIT “2”

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

Clarence Phillips v. Hardy Window Company
(San Bernardino Superior Court, Case No. CIVSB2312048)

***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.***

Attention: All current and former non-exempt employees who were employed by Hardy Window Company (“Defendant”) in California at any time from December 10, 2019, to **INSERT DATE** (the “Class Period”), you are a putative Class Member in a class action settlement.

You may be eligible to receive money as a putative Class Member in the above-captioned class action lawsuit (“Action”) against Defendant for alleged wage and hour violations. The Action was filed by Clarence Phillips (“Plaintiff” and “Class Representative”) and seeks payment of unpaid wages, statutory damages, interest and attorneys’ fees on behalf of all Class Members (defined above). Additionally, the Action seeks civil penalties under the California Private Attorney General Act (“PAGA”) for all current and former nonexempt employees who were employed by Defendant in California at any time from May 4, 2022, through **INSERT DATE** (the “PAGA Period”), who are referred to as “Aggrieved Employees.”

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied and continues to comply with all applicable laws. Defendant is settling the Action in order to avoid the further burden and expense of litigation.

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

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Weeks Worked	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendant’s records, your Individual Class Payment (less withholding) and your Individual PAGA Payment (to the extent applicable) are shown in the chart above, along with the weeks you are credited with working during the Class Period and during the PAGA Period. 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 Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you did not work

during the PAGA Period.)

If you believe that you worked more weeks during either period than what Defendant's records show, you can submit a challenge by **DATE**, 2024 (the "Response Deadline"). 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 do 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 Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you were employed by Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING & PARTICIPATE IN THE SETTLEMENT	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described below.
OPT-OUT (EXCLUDE YOURSELF) RESPONSE DEADLINE: DATE , 2024	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. If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT RESPONSE DEADLINE: DATE , 2024	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.
DISPUTE YOUR PAY PERIODS WORKED RESPONSE DEADLINE: , 2024	If you believe that your number of weeks worked listed above is incorrect, you may challenge it. The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many weeks you worked during the Class Period and how many weeks you worked during the PAGA Period, respectively. The numbers you are credited are shown in the chart on the first page, and are based on Defendant's records. If you disagree with either of these numbers, you must submit a challenge by the deadline. See Section 4 of this Notice.

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

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT IS NOT REQUIRED	
DATE: , 2024 TIME: A.M. / P.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You do not 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.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failing to pay overtime wages, minimum wages, meal and rest period premiums, and wages due upon termination, and failing to provide meal periods, rest breaks, reimbursement for expenses, and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA").

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied and continues to comply with all applicable laws. Defendant has agreed to settle the case in order to avoid the burden and expense of further litigation.

Plaintiff is represented by attorneys in the Action ("Class Counsel"). See Section 9 below for their contact information.

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

So far, the Court has made no determination of whether Defendant or Plaintiff is correct on the merits of Plaintiff's claims. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to 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 Defendant 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, Defendant 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) Defendant 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. Defendant Will Pay \$662,500 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s 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, Defendant will fund the Gross Settlement Amount not more than 30 days after the Judgment is entered by the Court and the Settlement becomes 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 \$220,833.33 (one-third of the Gross Settlement Amount) to Class Counsel for attorneys’ fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000 to Plaintiff as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive from the Settlement other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$9,500 to Phoenix Settlement Administrators (the “Settlement Administrator” or “Administrator”) for services administering the Settlement.
 - D. Up to \$40,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their

share of weeks worked.

E. 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 weeks worked during the Class Period.
4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 15% of each Individual Class Payment to taxable wages (“Wage Portion”) and 85% to penalties and interest (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay, to the Administrator, 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 Defendant 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 the Response Deadline, 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 Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth the 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 Defendant subject to the applicable statute(s) of limitations. Section 9 of this Notice has the Administrator’s contact information.

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 Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void, Defendant will not pay any money and Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Settlement Administrator” or “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 weeks worked, 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 Defendant 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 Defendant or related entities for claims based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

All Participating Class Members will be bound by a release of all claims alleged in the Complaint, as set forth below: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged in the Complaint, or that reasonably could have been alleged based upon the facts stated in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, and (8) unfair and unlawful competition. The time period governing the Released Class Claims shall be the Class Period. (“Released Class Claims”). The operative release period for the Released Class Claims is the Class Period.

As used herein, “Released Parties” means Defendant and its parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, insurers (including, but not limited to, insurers and reinsurers), servants, joint employers, and employees, past and present, and each of them and anyone acting in concert with the foregoing.

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes to the Settlement Administrator), all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, 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 Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in the Complaint and in Plaintiff's PAGA Notice to the LWDA, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the LWDA notice letter and Complaint ("Released PAGA Claims"). The time period governing the Released PAGA Claims shall be the entire time during the PAGA Period. The Released PAGA Claims do not release any potential claims for wages or statutory penalties.

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

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of weeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of weeks worked by each individual Participating Class Member during the Class Period.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of weeks worked by each individual Aggrieved Employee during the PAGA Period.
3. Weeks Worked Challenges. The number of weeks you worked during the Class Period as recorded in Defendant's records, are stated in the first page of this Notice. You have until the Response Deadline, or [REDACTED], to challenge the number of weeks worked 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 as accurate Defendant's calculation of weeks worked based on Defendant's records 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 weeks worked challenges based on your submission and on

input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant'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 and Aggrieved Employees. 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) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

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 Phillips v. Hardy Window Company, San Bernardino Superior Court, Case No. CIVSB2312048, 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. **Send your request to be excluded to the Administrator by INSERT DATE (the "Response Deadline"), 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 Defendant are asking the Court to approve. At least 16 court days before the INSERT DATE 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 Payment. 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 INSERT URL or the Court's website INSERT URL.

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 DATE (the “Response Deadline”).** 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 Phillips v. Hardy Window Company, San Bernardino Superior Court, Case No. CIVSB2312048, and include your name, current address, telephone number, and approximate dates of employment for Defendant 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 DATE at INSERT TIME in Department S26 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415. 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.

It’s possible the Court will reschedule the Final Approval Hearing. You should check the Administrator’s website INSERT URL 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 Defendant 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 Administrator’s website at INSERT URL. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below. The court records are also available to be inspected at any time during regular business hours at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

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

The contact information for Class Counsel, Defense Counsel, and the Settlement Administrator are below:

<u>Class Counsel:</u>	<u>Defense Counsel:</u>
Brian Mankin, Esq. <i>brian@lmfirm.com</i> Peter Carlson, Esq. <i>peter@lmfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Roger M. Mansukhani <i>rmansukhani@grsm.com</i> Emma R. Horner <i>ehorne@grsm.com</i> Gordon Rees Scully Mansukhani, LLP 633 West Fifth Street, 52nd floor Los Angeles, CA 90071 Phone: (213) 576-5000

<u>Settlement Administrator:</u>
XX Email Address Mailing Address Telephone Number Fax Number Case URL

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 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 “3”



LAUBY, MANKIN & LAUBY LLP

May 4, 2023

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Hardy Window Company
1639 E. Miraloma Avenue
Placentia, CA 92870

Chance Hardy
1639 E. Miraloma Avenue
Placentia, CA 92870

Re: PAGA Civil Penalty Claim
Clarence Phillips v. Hardy Window Company, et al.

To the Labor and Workforce Development Agency, Hardy Window Company, and Mr. Chance Hardy:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Clarence Phillips (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his employer, Hardy Window Company and any affiliated entities as well as its owner/officer Mr. Chance Hardy and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately March through May 2022. Claimant alleges that he and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to which Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. This violates California law. *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

Also, at all relevant times, the Company utilized a rounding policy and practice that routinely undercompensated Claimant and resulted in a net benefit to the Company and a net loss for Claimant. In

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other words, the Company's rounding policy is not neutral and results in systematic undercompensation for the Aggrieved Employees, in violation of California law. *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 903 (rounding policy is illegal where it is not "neutral, both facially and as applied"). Moreover, all underpayments caused by this rounding policy violate California law and lead to minimum, regular, and overtime wage violations under *Camp v. Home Depot U.S.A. Inc.*, (2022) 84 Cal. App. 5th 638, 660 (if an employer "can capture and has captured the exact time an employee has worked during a shift, the employer must pay the employee for 'all the time' worked").

Also, at all relevant times, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional earned nondiscretionary compensation. However, on the occasions when the Aggrieved Employees worked overtime hours and received additional earned compensation during the same workweek, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay – in violation of California law and which led to the failure to pay proper overtime.

Furthermore, Claimant and the Aggrieved Employees would often work at two or more base rates of pay in the same workweek. Yet, when the Aggrieved Employees worked overtime and worked at two or more base rates of pay in the same workweek, the Company illegally paid overtime at the "rate-in-effect" method rather than using the correct "weighted average" method. See DLSE Manual § 49.2.6.2 (when an employee performs prevailing and non prevailing jobs during the same workweek, the company is required to pay overtime at the "weighted average" of the blended rate, averaging the normal base hourly rate and prevailing wage rate).

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks. Also, the Company illegally required Claimant and the Aggrieved Employees to take the rest breaks at the same time as their meal periods.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining expensive tools to perform their tasks for the Company, such as cordless power drill and impact gun, along with various other tools. Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, on the occasions when Claimant and the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay for these earned wages and, further, failed to pay for vested and unused vacation at the "final rate" as required by Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as

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well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, meal and rest break premiums, vacation wages, and the Company further failed to pay the Aggrieved Employees for mandated sick time at a rate “calculated in the same manner as the regular rate of pay” as required by Labor Code § 246.

Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of the Company and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the Company and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the Company and the Owners are an integrated enterprise and should be treated as a single employer because the Company and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the Company and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all material times herein mentioned was the owners/officers of the Company, and Claimant’s and the Aggrieved Employees’ actual employer or, in the alternative, was an individual employed by the Company as a managerial and/or supervisory employee and/or agent. In addition, Claimant alleges that at all relevant times herein the Owners had the authority, in the interest of the Company to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant’s chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant’s complaint herein. Claimant also alleges that the Company and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the Company and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that the Company was merely the alter ego of the Owners in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and the Owners exercised undue dominance, control, influence, and management over the Company. Claimant further alleges that, at all relevant times, the Company has been inadequately capitalized to conduct its business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to the Company should be imposed jointly and severally against the Owners. Adherence to the fiction of the separate existence of the corporate entity of the Company would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Owners are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820

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(“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (holding the same)

Based on Claimant’s own personal observations, all Aggrieved Employees employed or formerly employed by the Company are entitled to similar wage and hour claims, as further set forth below.

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked and the failure to pay proper overtime. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work 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 per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

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FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay all vested vacation upon separation of employment and, further, only paid vested vacation upon separation at the base rate of pay, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." IWC Wage Order § 9(b) states "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer."

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation. However, when Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay, not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2). As such, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Under Labor Code § 204(a), wages are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states "[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period."

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As a result of the Company's failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 210 and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202(a) states in pertinent part "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Labor Code § 203(a) states "If an employer willfully fails to pay, without abatement or reduction, [...] any wages of an employee who is discharged or who quits, 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 therefor is commenced; but the wages shall not continue for more than 30 days."

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a "waiting time penalty." (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Here, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state total hours worked (the paystubs failed to accurately reflect total compensable hours); failure to accurately state gross/net wages earned and all deductions (due to the failure to pay all required minimum/overtime wages); failure to state the applicable hourly rates (including the accurate overtime rate of pay); failure to state the accurate start/end dates of the pay period; failure to accurately state the name and address of the legal entity that is the employer, and; failure to accurately state the number of hours worked at each hourly rate. Additionally, the Company's wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal/rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

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PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

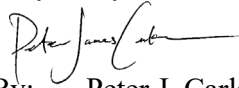
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment or other employees of the Company, he reserves the right to supplement this notice letter.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com

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EXHIBIT “4”



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

April 23, 2024

CASE ASSUMPTIONS

Class Members	500
Opt Out Rate	1%
Opt Outs Received	9
Total Class Claimants	491
Subtotal Admin Only	\$9,928.45

Flat Fee Total \$9,500.00

For 500 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

Case: Phillips vs. Hardy Window, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
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Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on **500** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	58		\$116.00
NCOA (USPS)	\$100.00	1		\$100.00
Total				\$716.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Language Translation	\$1,000.00	1		\$1,000.00
Data Merge & Duplication Scrub	\$0.10	500		\$50.00
Notice Packet & Opt-Out Form	\$1.30	500		\$650.00
Estimated Postage (up to 2 oz.)*	\$0.84	500		\$420.00
Static Website	\$200.00	1		\$200.00
Total				\$2,520.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	75		\$75.00
Remail Notice Packets	\$1.00	72		\$72.00
Estimated Postage	\$0.87	72		\$62.64
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$419.64

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	5		\$275.00
Deficiency & Dispute Letters	\$10.00	9		\$90.00
Case Manager	\$85.00	2		\$170.00
			Total	\$885.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	3		\$285.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	5		\$675.00
Mail Class Checks *	\$0.85	491		\$417.35
Estimated Postage	\$0.64	491		\$314.24
			Total	\$2,231.59

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



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Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	103		\$206.22
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$3,156.22

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$9,928.45



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CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “5”