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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a
California Corporation; SIERRA VIEW
LAND COMPANY, a California Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0050664

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: January 30, 2025

Time: 8:30 a.m.

Dept.: 3

Judge: Hon. Michael Jones

Filed: June 13, 2023

FAC Filed: September 7, 2023

SAC Filed: June 17, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on January 30, 2025, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 3 of the above-entitled Court, Plaintiff Anthony Affatato,
4 individually and on behalf of all other similarly situated individuals, will, and hereby does, move for
5 entry of an Order for the following:

- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff Anthony Affatato as class representative for purposes of settlement;
- 8 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed class action and Private Attorney's General Act settlement, in the
10 gross amount of \$380,000, which is incorporated herein by reference;
- 11 5. Approving the application for payment of Class Counsel of attorneys' fees in the amount of
12 \$133,000;
- 13 6. Approving the application for payment of Class Counsel of reasonable costs in the amount of
14 \$10,837.44;
- 15 7. Approving the Class Representative Enhancement Payment of \$10,000 to Plaintiff Anthony
16 Affatato;
- 17 8. Approving the appointment of ILYM Group, Inc., as the Settlement Administrator and for
18 payment ILYM Group, Inc., for administering said class action settlement in the amount of
19 \$7,950;
- 20 9. Approving the settlement of claims under the Private Attorneys General Act for the total
21 amount of \$20,000, 75% of which will be paid to the Labor and Workforce Development
22 Agency and 25% of which will be paid to Aggrieved Employees;
- 23 10. Directing that any amount from settlement checks that were not cashed by the check cashing
24 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
25 Rights under the doctrine of *cy pres*;
- 26 11. Approving and adopting the Proposed Order and its implementation schedule, which is filed
27 herewith and incorporated by reference.

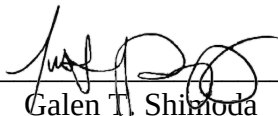
1 This Motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
2 2699(l)¹, and California Rules of Court 3.769 and 3.764, on the grounds that the preliminarily approved
3 class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class
4 Members and should be approved by the Court. This motion will be based on the notice of motion,
5 memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Nick
6 Castro, exhibits, the record and files of this case, and any further oral or documentary evidence
7 introduced at the hearing of this motion.
8

9 **Pursuant to Local Rule 20.2.3, the court will issue a tentative ruling for this matter on the court**
10 **day before the hearing. The tentative ruling will be available after 12:00 noon as an audio**
11 **recording accessible at (916) 408-6480; the tentative ruling will also be available at the court's**
12 **website, www.placer.courts.ca.gov. The tentative ruling shall become the final ruling on the**
13 **matter and no hearing will be held unless oral argument is timely requested or the tentative ruling**
14 **indicates otherwise. Requests for oral argument must be made by calling (916) 408-6481 no later**
15 **than 4:00 p.m. on the court day prior to the hearing.**

16 Dated: January 6, 2025

Shimoda & Rodriguez Law, PC

By: _____


Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

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28 ¹ Although the PAGA was recently amended, the amendments specifically state they are applicable to cases filed after June 19, 2024. See Cal. Lab. Code § 2699(v)(1). Because the PAGA notice predates this, all references to the PAGA in this Motion will be based on the statutory numbering applicable prior to the July 1, 2024, amendment.

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Case No. S-CV-0050664

CLASS ACTION

**MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Anthony Affatato (“Plaintiff”) seeks final approval of a wage and hour class action and
3 Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$380,000. *See generally*
4 Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]).
5 Plaintiff brought this class action individually and on behalf of similarly situated employees who worked
6 for Defendant Sierra View Land Company doing business as Sierra View Country Club (“Defendant”)
7 (Plaintiff and Defendant sometimes collectively referred to as the “Parties”). *See generally* Exhibit B
8 (Plaintiff’s Operative Complaint). There are approximately 176 Class Members.

9 Plaintiff has alleged that Defendant violated California law by 1) failing to pay overtime wages,
10 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest periods,
11 5) failing to provide accurate wage statements, 6) failing to pay final wages, 7) failing to reimburse
12 employees for incurred expenses, and 8) by engaging in unfair competition. *See generally* Exhibit B;
13 *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 2. Plaintiff is also alleging
14 Defendant is liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C
15 (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA
16 Claims). Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or
17 wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendant has also denied that this case is
18 appropriate for class certification other than for purposes of settlement. *See id.* However, subject to
19 Court approval, the Parties have been able to compromise and settle all asserted claims as a result of
20 extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A.
21 Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based
22 on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of
23 the issues in this case. *See* Decl. Rodriguez, ¶¶ 6-7, 9-10.

24 The reaction of Class Members to the preliminarily approved Agreement has been
25 overwhelmingly positive and gives substantial support to the Agreement and all terms and allocations
26 therein being fair, reasonable, and adequate. Only two Class Members have opted out of the settlement
27 and there have been zero objections to the Agreement. *See* Declaration of Nick Castro (“Decl. Castro”)
28

¶¶ 11-12.¹ It is well within the discretion of this Court to grant final approval of the proposed settlement as it satisfied all applicable criteria under California law. Accordingly, Plaintiff requests that the Court: (1) certify the settlement class; (2) grant final approval of the Agreement; (3) find that the procedures used to notify Class Members complied with due process; (4) grant Plaintiff's request for attorney's fees and costs, the Enhancement Payment to the Class Representative and Claims Administrator Costs; and (5) approve and adopt the proposed order granting final approval, which is filed concurrently herewith.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiff filed a class action complaint on approximately June 13, 2023, in Placer County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on approximately September 7, 2023, to include a PAGA claim and filed a Second Amended Complaint on June 17, 2024, to include additional facts and theories of liability regarding the alleged rounding of employees' time punches. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* at ¶¶ 3, 6-10. Plaintiff worked for Defendant during the time all of Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. The Parties engaged in formal and informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour

¹ Although a third opt out was received, it was deficient for lack of signature and date of birth per Paragraph 7.5.1 of the Agreement. A cure notice has been sent to the class member, who has until January 16, 2025, to cure the deficiency. Plaintiff will update the Court as to whether any cure was made before the final approval hearing. *See* Decl. Castro, ¶ 11.

1 policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See*
2 Decl. Rodriguez, ¶¶ 6-7. The information allowed Plaintiff to determine the extent and frequency of
3 any violations in accordance with Plaintiff’s contentions and create an accurate damages model to
4 assess the reasonableness of any settlement. *See id.* at ¶¶ 7, 9-10.

5 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

6 **a. Plaintiff and Defendant Engaged in Extensive Arm’s Length Negotiations**

7
8 The final settlement occurred only after extended, arm’s length negotiations. Over the course of
9 approximately fifteen (15) months, Plaintiff has been investigating the claims and discussing with
10 Defendant’s counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 5-8. The
11 Parties exchanged substantial amounts of information and legal analysis in connection with these
12 discussions. *See id.* It was only after these extended discussions, which included a full day mediation
13 with Mark LeHocky, a mediator’s proposal, and post-mediation negotiations, that the Parties were able
14 to resolve all claims and enter into the Agreement. *See id.* at ¶ 8.

15 **b. The Terms of the Agreement**

16 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
17 which include all individuals who have worked, or continue to work, for Defendant in California as a
18 non-exempt employee at any time between June 13, 2019, and April 11, 2024; and (b) Aggrieved
19 Employees, which include all individuals who have worked, or continue to work, for Defendant in
20 California as a non-exempt employee at any time between June 13, 2022, and April 11, 2024. *See*
21 Exhibit A, ¶¶ 1.2, 1.5. There are approximately 176 Class Members and 157 Aggrieved Employees.
22 *See id.*

23 2. Defendant will pay the Gross Settlement Amount of \$380,000, which is exclusive of the
24 employer’s share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will
25 revert to Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA
26 Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

27 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will
28 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶

1 5.4.

2 4. Subject to Court approval, the Parties have selected ILYM Group, Inc., to act as the
3 Settlement Administrator, whose final costs are \$7,950. *See* Decl. Castro, ¶ 15; Exhibit A, ¶ 1.33;
4 Decl. Rodriguez, ¶ 20.

5 5. The Parties agree that \$20,000 of the Gross Settlement Amount shall be allocated to
6 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
7 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
8 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
9 by Defendant to maintain compliant policies and take corrective action, the presence of what may likely
10 be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff
11 believes the \$20,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring
12 non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 5-10; *see also Nordstrom Com.*
13 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims
14 based on their being disputed and being part of a class settlement which was evaluated based on the
15 terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2
16 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
17 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA
18 claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016
19 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA
20 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
21 *Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
22 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
23 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
24 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.
25 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
26 *& Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
27 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
28 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S.

1 Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
2 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
3 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
4 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
5 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement
6 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving
7 PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

8 6. The Parties agree that up to Thirty-Five percent (35%) of the Gross Settlement Amount
9 (\$133,000) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant
10 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
11 Additionally, the Parties agree that Plaintiff will be entitled to the actual litigation costs which are
12 \$10,837.44. *See id.*; Decl. Rodriguez, ¶ 20.

13 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, an
14 Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by the Court will
15 remain part of the Net Settlement Amount and be paid out to Participating Class Members on a pro rata
16 basis as set forth in the Agreement. *See Exhibit A, ¶¶ 5.1-5.5, 5.8.* These amounts will be paid out
17 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See Exhibit A, ¶¶*
18 *5.1-5.5.*

19 8. Class Members who fail to timely opt-out of this settlement will waive all Released
20 Class Claims as set forth in the Agreement. *See Exhibit A, ¶¶ 1.5, 1.26, 1.30, 1.32, 6.1.* Aggrieved
21 Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether
22 they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

23 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
24 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
25 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
26 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
27 doctrine of *cy pres*. *See Exhibit A, at ¶ 5.6.* Because the Agreement provides for all funds such that
28 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See*

1 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
2 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
3 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
4 including providing representation for employees in wage claims before the California Labor
5 Commissioner. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 22-31.

6 **c. Allocation of Settlement Funds**

7 Payment to Participating Class Members and Aggrieved Employees will not require the
8 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
9 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class
10 Representative, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by
11 the Court. Each Class Member's share will be determined by dividing their total weeks worked within
12 the Class Period by the total weeks worked by all Class Members within the Class Period. That
13 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
14 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
15 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
16 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
17 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
18 Aggrieved Employee's individual share. *See* Exhibit A, at ¶¶ 1.17, 5.5, 5.8.

19 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
20 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

21 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
22 Court on October 17, 2024. To comply with Class Members' due process rights, the parties enlisted an
23 exhaustive method to ensure the best practical means possible was used to provide notice to the class.
24 The parties provided the Settlement Administrator the names, last known address, and social security
25 numbers for the class. The Settlement Administrator then updated this information by doing an address
26 trace for each individual using this information prior to mailing. *See* Decl. Castro, ¶¶ 6-10. If the
27 notices were returned as undeliverable, further investigation was performed and they were re-mailed
28 using updated information. *See id.* at ¶¶ 8-10. Of the 176 Notice Packets mailed, only 2 were

1 undeliverable after use of these methods. *See id.* at ¶ 10. The Notice included information regarding
2 the requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax allocations.
3 *See* Exh. A to Decl. Castro. The average distribution to participating class members is approximately
4 \$1,139.15, the maximum distribution is approximately \$2,939.80. *See id.* at ¶ 14. No objections to the
5 preliminarily approved settlement have been made and only two Class Members opted out. *See id.* at
6 ¶¶ 11-12.

7 The notice procedures used in the administration of the preliminarily approved settlement have
8 complied with Class Member's due process rights. It is not required that Class Members be given
9 actual notice of a class settlement; instead, the best practicable notice under the circumstances is all that
10 is required. *See Silber v. Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*,
11 844 F.3d 1121, 1129 (9th Cir. 2017); *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991,
12 at *12-14 (N.D. Cal. 2017); *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In
13 *Silber v. Mabon*, 18 F.3d 1449 (9th Cir. 1994), the Court rejected a class member's argument that he
14 had not received due process because he did not receive notice until after the opt out period, finding
15 that, so long as the notice process utilized is the best practicable under the circumstances, due process is
16 satisfied even if there is no actual receipt of the notice. *See Silber*, 18 F.3d at 1453-1454. A similar
17 finding was made in *Briseno v. Conagra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to
18 any undeliverable notice in this case, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010)
19 found that class members who did not receive actual notice due to their mailings being deemed
20 undeliverable were still properly held to be part of the class settlement because they received the best
21 notice practicable under the circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel*
22 *v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that
23 California has adopted a similar approach regarding providing notice to class members.

24 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice
25 contains all information necessary for a Class Member to assess the litigation, the settlement, and
26 whether they wanted to participate, object, or opt-out. *See* Exh. A to Decl. Castro. The Settlement
27 Administrator utilized a national change of address database, forwarding notices, and skip tracing in an
28 effort to ensure that all reasonable means were exhausted in attempting to provide Class Members

notice of this settlement. *See* Decl. Castro, ¶¶ 6-10. The content of the notice provided and the manner in which it was provided to Class Members was the best practicable notice to satisfy due process.

VI. THE AGREEMENT WARRANTS FINAL APPROVAL AS IT IS FAIR, REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE FACTS OF THIS CASE

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)²; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2). However, “[d]ue regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

The purpose of the Court’s final evaluation of a proposed class action settlement is to determine only whether it is within the range of reasonableness. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant preliminary approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining whether the settlement is fair, reasonable, and adequate

²The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 include the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further
2 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
3 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the
4 presence of a governmental participant, and the reaction of the class members to the proposed
5 settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court
6 should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of
7 fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation
8 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
9 in similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802.

10 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**
11 **Negotiations Between the Parties**

12 Settlement of this case was reached only after substantial litigation and extensive arm’s length
13 negotiations lasting nearly fifteen (15) months, which included a full day mediation a mediator’s
14 proposal, that the Parties were able to resolve all claims and enter into the Agreement. *See Decl.*
15 *Rodriguez*, ¶¶ 6-10. At all times, the negotiations were adversarial, although still professional in nature.
16 *See id.*

17 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
18 **Information to Enter Into an Informed and Reasonable Settlement**

19 The Parties were in possession of all necessary information during the negotiations. The Parties
20 engaged in substantial formal and informal discovery, which included all necessary components for
21 evaluating the class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiff was
22 in possession of this information prior to calculating any damages in this case. *See id.* As a result,
23 Plaintiff was able to make a reasonable estimation of Defendant’s potential liability. *See id.* For these
24 reasons, the settlement now before the Court was reached at a stage where “the parties certainly have a
25 clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *See*
26 *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

1 **iii. Plaintiff's Counsel are Experienced in Similar Litigation**

2 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA
3 actions. *See* Decl. Rodriguez, ¶¶ 12-18. Thus, Plaintiff's counsel are qualified to evaluate the class
4 claims, the value of settlement versus moving forward with litigation, and viability of possible
5 affirmative defenses. Plaintiff's counsel believe that the Agreement is fair, reasonable, and adequate in
6 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
7 benefit to Class Members. *See id.*

8 **iv. No Class Members Objected and Less Than 2% Have Opted Out**

9 The reaction by Class Members to the Agreement and all the terms and allocations stated
10 therein is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement
11 and only 2 out of 176 have opted out. *See* Decl. Castro ¶¶ 11-12. This provides strong evidence that
12 the settlement is fair, reasonable, and adequate. *In re Heritage Bond Litig.*, 2005 WL 1594403, at *10
13 ("It is established that the absence of a large number of objectors to a proposed class action settlement
14 raises a strong presumption that the terms of a proposed class settlement action are favorable to the
15 class members"); *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D.
16 Cal. 2004) ("That unanimous, positive reaction to the Proposed Settlement is compelling evidence that
17 the Proposed Settlement is fair, just, reasonable, and adequate").

18 **v. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
19 **Plaintiff's Case and the Risks and Costs of Further Litigation**

20 Plaintiff's claims and the ability to obtain and maintain certification all the way through trial
21 were heavily disputed by Defendant. *See* Decl. Rodriguez, ¶¶ 5-10. Based on the records and facts of
22 this case, Plaintiff has secured a gross recovery of approximately 10% of the maximum value of the
23 claims in this matter and between 16% and 52% of the more realistic range of recovery. *See* Decl.
24 Rodriguez, ¶¶ 9-10. The net recovery represents approximately 5% of the maximum value of the
25 claims in this matter and between 8% and 27% of the more realistic range of recovery. The average net
26 award is approximately \$1,139.15, and the highest recovery is \$2,939.80. *See* Decl. Castro, ¶ 13.

27 This settlement is a reasonable compromise of the class and PAGA claims, and is within the
28 percentile ranges of the total available damages that have been approved in other class settlements. *See*

1 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139
2 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
3 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
4 settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than
5 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
6 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
7 (approving a settlement where the net recovery to class members was approximately 7.5% of the
8 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
9 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
10 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
11 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
12 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
13 *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class
14 Members will receive an average of approximately \$198.70, with the highest payment to a Class
15 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
16 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
17 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
18 results achieved in this case were very favorable. Class members are provided with immediate
19 monetary relief, with an average award of around several hundred dollars and a minimum award of
20 \$50”).

21 **vi. The Proposed Settlement is a Reasonable Compromise of Claims**

22 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
23 information be presented in class action settlements “to ensure that the recovery represents a reasonable
24 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
25 risks and expenses of attempting to establish and collect on those claims by pursuing the
26 litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
27 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
28 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*

1 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff
2 prevailed on all the claims, provided there is a record that allows “an understanding of the amount that
3 is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

4 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the
5 data points relied upon in reaching these ranges. *See* Decl. Rodriguez ¶¶ 9-10. The record
6 demonstrates that the compromises made by Plaintiff was reasonable and have resulted in a settlement
7 with recovery percentage well within the range of what has been found to be sufficient in several other
8 cases. *See, supra*, Section VI.a.v; *see also* *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th
9 Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery
10 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
11 disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no
12 reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a
13 thousandth part of a single percent of the potential recovery”).

14 **b. Certification of the Class is Appropriate**

15 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
16 defined community of interest in the questions of law and fact involved affecting the parties to be
17 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
18 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
19 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
20 Here, the Court conditionally certified the settlement class on October 17, 2024, and nothing has
21 happened in the interim that would warrant changing that decision. *See Garcia v. City of King City*,
22 2017 WL 363257, *4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, *4
23 (N.D. Cal. 2017). Here, the Parties agree that, for the purposes of settlement, these prerequisites are
24 met. *See* Exhibit A.

25 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

26 The proposed settlement class is ascertainable because all putative Class Members can be
27 readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7
28 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex*,

1 *Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 176
2 individuals who fall within the definition of Class Member, which makes joinder of all members
3 impracticable. *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980),
4 *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no
5 set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is
6 acceptable). Thus, these requirements are satisfied.

7 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

8 The commonality requirement is met when there are questions of law or fact regarding the class
9 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
10 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
11 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
12 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
13 and class-wide treatment of a dispute must be superior to individual litigation.³ *See Richmond*, 29
14 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
15 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
16 named representative are typical of those of the class, though "they need not be substantially identical."
17 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

18 The common questions of law and fact in this case stem from Plaintiff's contention that
19 Defendant violated California law by 1) failing to pay Plaintiff and similarly situated employees all
20 minimum wages and overtime wages due to managers failing to pay Plaintiff and similarly situated
21 employees for working off-the-clock; 2) failing to incorporate the value of the mandatory service
22 charges into the regular rate of pay in calculating Plaintiff's and similarly situated employees' premium
23 wages, including meal and rest period premiums, overtime, sick leave; 3) failing to authorize and
24 permit Plaintiff and similarly situated employees to take all meal and rest periods owed to them; 4)
25 changing Plaintiff's and similarly situated employees' timecards to show that Plaintiff and similarly
26 situated employees took compliant meal and rest periods when, in fact, they had not; 5) failing to pay

27
28 ³When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 all hours worked because of rounding Plaintiff's and similarly situated employees' hours worked;
2 including but not limited to, meal period clock-ins and clock-outs; and 6) failing to reimburse Plaintiff
3 and similarly situated employees for using their cell phones, for work purposes. *See* Exhibit B. The
4 waiting time penalties, unfair competition, and PAGA claims are derivative of these violations. *See id.*
5 Plaintiff and the Class Members seek the same remedies under state law. Under these specific
6 circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality
7 requirement, Plaintiff contends he suffered from the same unlawful policies, treatment, and
8 circumstances as Class Members did, will request the same remedies, and will rely on the same
9 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
10 satisfied for settlement purposes.

11 **iii. The Adequacy Requirement is Met**

12 The adequacy of representation requirement is met if the named representative and counsel have
13 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
14 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
15 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
16 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
17 number of workweeks they worked for Defendant. *See* Exhibit A. Finally, any settlement class
18 member who wished to opt-out of the settlement was able to do so, and he or she was also able to
19 dispute the number of workweeks stated in the Notice of Settlement.

20 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
21 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
22 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
23 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
24 engaged Defendant's counsel in settlement discussions over the course of approximately fifteen (15)
25 months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims.
26 Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the
27 adequacy requirement is met. *See generally* Decl. Rodriguez.

1 **VII. THE AMOUNTS REQUESTED FOR ATTORNEY’S FEES AND COSTS, AN**
2 **ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND**
3 **SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE**
4 **APPROVED**

5 The Notice of Settlement sent to Class Members specifically identified the allocations for
6 attorney’s fees and costs, the Class Representative Enhancement Payment, and Settlement
7 Administrator Costs. See Exh. A to Decl. Castro. The reaction of Class Members to these requested
8 amounts provides useful evidence of whether they are reasonable. See *In re Heritage Bond Litig.*, 2005
9 WL 1594403, *21 (“The absence of objections or disapproval by class members to Class Counsel’s fee
10 request further supports finding the fee request reasonable”). As noted above, there were no objections
11 raised to the Agreement or any term or allocation therein whatsoever. See Decl. Castro, ¶ 12. In
12 addition to Class Members’ reactions supporting the requested amount, the facts and applicable case
13 law also support awarding these amounts in full.

14 **i. Awarding Attorneys’ Fees as a Percentage of the Common Fund Is Reasonable**
15 **and Customarily Approved by Courts**

16 California state and federal courts have recognized that when a litigant’s efforts create or
17 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
18 among all the beneficiaries to compensate those who created the fund. See *Boeing Co. v. Van Gemert*,
19 444 U.S. 472, 477-481 (1980) (“A lawyer who recovers a common fund for the benefit of persons other
20 than . . . his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*
21 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
22 (1970); see also *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1
23 Cal.5th 480, 506 (2016); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir.
24 1977). Courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards
25 where the amount of the settlement is certain or is an easily calculable sum of money. See *Dunk*, 48
26 Cal.App.4th at 1808. The Ninth Circuit has also held that the common fund doctrine applies when: (1)
27 the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the
28 fee can be shifted with some exactitude to those benefitting. See *Paul, Johnson, Alston & Hunt v.*
Grauly, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a

1 represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum
2 settlement recovered on his behalf.” *Id.* at 271 (citations omitted).

3 The three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this case because there is
4 a sufficiently identifiable class of beneficiaries (*e.g.* Class Members, Aggrieved Employees and the
5 LWDA), the benefits can be accurately traced to the Agreement Plaintiff and Plaintiff’s counsel were
6 able to negotiate on behalf of the Class Members, Aggrieved Employees, and LWDA, and the fee can be
7 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum of the common
8 fund.

9 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
10 the fund, depending on the circumstances of the case. *See* Newberg on Class Actions, (3rd Ed. 1992),
11 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
12 generally approved as reasonable in representative litigation settlements below \$10 million. *See Martin*
13 *v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
14 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
15 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
16 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
17 action settlement). Plaintiff’s request of \$133,000 (35%) falls within these typical fee arrangements and
18 should be awarded based on the excellent results achieved on behalf of the Class Members, Aggrieved
19 Employees and the LWDA. *See* Decl. Rodriguez, ¶ 19.

20 Plaintiff’s counsel seeks reimbursement of \$10,837.44 for the expenses they have and will
21 continue to incur while prosecuting this litigation through any compliance hearing(s). This is less than
22 the \$12,000 provided for in the Agreement. An itemization for these costs is being filed with this
23 motion as Exhibit D. All expenses were necessarily incurred to properly litigate this case. *See id.* The
24 appropriate analysis in determining whether particular costs are compensable is whether they are of the
25 type typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16,
26 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees those out-of pocket
27 expenses that ‘would normally be charged to a fee paying client.’”); *Abrams v. Lightolier, Inc.*, 50 F.3d
28 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Bratcher v. Bray-*

1 *Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if normally
2 billed to client). The categories of expenses for which Plaintiff's counsel seek reimbursement here are
3 categories normally charged to hourly clients and, therefore, should be reimbursed out of the common
4 fund. *See* Decl. Rodriguez, ¶ 19.

5 **ii. The Enhancement Payment to the Named Plaintiff for His Service to the Class**
6 **Members, Aggrieved Employees and the State of California As Well As For His**
7 **General Release of All Individual Claims Is Reasonable**

8 The Enhancement Payment to the named Plaintiff is intended to not only recognize the time and
9 effort expended on behalf of Class Members, Aggrieved Employees and the State of California, but
10 also provide consideration for his general release of all his individual claims, which no other class
11 Member is subject to. Indeed, Courts routinely approve enhancement payments to compensate named
12 plaintiffs for the services they provide and the risks they incurred during the course of representative
13 litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the
14 Court approved enhancement payments of \$300,000.00 to each named plaintiff in recognition of the
15 services they provided by responding to discovery, participating in the mediation process, and taking
16 the risk of stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic*
17 *Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 enhancement payment).

18 In this case, Plaintiff provided and explained documents, being available at all times to discuss
19 the case with Plaintiff's counsel. *See* Decl. Rodriguez, ¶ 7. As set forth in paragraph 6 of Plaintiff's
20 Declaration in Support of Preliminary Approval, filed on August 23, 2024, Plaintiff spent
21 approximately 160-200 hours pursuing this litigation for the benefit of all Class Members, Aggrieved
22 Employees and the State of California and has entered into a general release of all claims. *See id.*
23 Payment of \$10,000 to Plaintiff is appropriate given the risk, assistance, and time required in bringing
24 this case to a resolution as well as the fact that it provides consideration for Plaintiff waiving his
25 individual claims.

26 **iii. The Court Should Approve the Payment of Settlement Administrator Costs**

27 Since being preliminarily approved as the Settlement Administrator, ILYM Group, Inc., has
28 carried out its duties as set forth in the Court's order and the Agreement. *See generally* *See* Decl.
Hernandez. Under the Agreement, a maximum of \$12,000 was set aside for potential Settlement

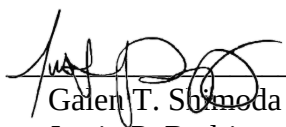
1 Administrator Costs. ILYM Group, Inc.'s, final costs are \$7,950, well under the potential maximum
2 Class Members were given notice of. The \$7,950 in Settlement Administrator Costs is also within
3 ranges approved by Courts and should be approved in this case. *See Patel v. Nike Retail Servs., Inc.*,
4 2019 WL 2029061, at *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees was not
5 excessive where PAGA group consisted of 40 employees); Decl. Rodriguez, ¶ 20. Plaintiff requests
6 that the Court approve payment to the Settlement Administrator in the amount of \$7,950 to compensate
7 it for the costs of administration as part of the final order approving the Settlement.

8 **VIII. CONCLUSION**

9 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class
10 for settlement purposes; grant final approval of the proposed settlement; including the Plaintiff's Class
11 Representative Enhancement Payment, the Settlement Administrative Costs, the payment to the LWDA
12 under PAGA, and Class Counsel's application for reasonable attorneys' fees and costs; find that the
13 Notice of Settlement and the administration process satisfied Class Members' due process rights; and
14 approve proposed order submitted concurrently herewith.

15
16
17 **Shimoda & Rodriguez Law, PC**

18
19 Dated: January 6, 2025

20 By: 
21 Galen T. Shimoda
22 Justin P. Rodriguez
23 Renald Konini
24 Attorneys for Plaintiff
25
26
27
28

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiff ANTHONY AFFATATO
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF PLACER

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a
California Corporation; SIERRA VIEW
LAND COMPANY, a California Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0050664

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: January 30, 2025

Time: 8:30 a.m.

Dept.: 3

Judge: Hon. Michael Jones

Filed: June 13, 2023

FAC Filed: September 7, 2023

SAC Filed: June 17, 2024

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letters to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: January 6, 2025

Shimoda & Rodriguez Law, PC

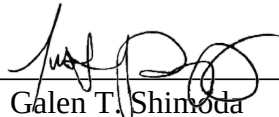
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

Exhibit A

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Attorneys for Defendant SIERRA VIEW LAND
COMPANY dba SIERRA VIEW
COUNTRY CLUB

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER**

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a
California Corporation ; SIERRA VIEW LAND
COMPANY, a California Corporation ; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: S-CV-0050664

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: June 13, 2023

FAC Filed: September 7, 2023

Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the plaintiff Anthony Affatato (“Plaintiff”), on behalf of himself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and defendant Sierra View
4 Land Company dba Sierra View Country Club, (“Defendant”). This Agreement is subject to the terms and
5 conditions set forth below and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Affatato v. Sierra View Country Club et al.*, Placer
9 County Superior Court, Case No. S-CV-0050664, filed June 13, 2023.

10 1.2 “Aggrieved Employee(s)” means all individuals who have worked, or continue to work, for
11 Defendant in California as a non-exempt employee at any time between June 13, 2022, and April 11, 2024.
12 The estimated number of Aggrieved Employees is 157.

13 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
14 Regarding Class Action and PAGA Settlement and Release.

15 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
16 Shimoda & Rodriguez Law, PC.

17 1.5 “Class Member(s)” means all individuals who have worked, or continue to work, for
18 Defendant in California as a non-exempt employee at any time between June 13, 2019, and April 11, 2024.
19 The estimated number of Class Members is 225.

20 1.6 “Class Period” means June 13, 2019 to April 11, 2024.

21 1.7 “Class Representative” means Plaintiff Anthony Affatato

22 1.8 “Class Representative’s Released Claims” means all claims arising from, could have been
23 asserted, or related in any way to the Class Representative’s employment with Defendant, under federal,
24 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether
25 anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common
26 law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages,
27 unpaid costs, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, equitable
28

1 relief or other similar relief or claims. This release includes a waiver of the protections found in California
2 Civil Code section 1542, which states:

3 A general release does not extend to claims that the creditor or releasing party
4 does not know or suspect to exist in his or her favor at the time of executing
5 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 1.9 “Complaint” means the operative Complaint on file in the Action with the Court.

7 1.10 “Court” means the Placer County Superior Court.

8 1.11 “Defendant” means Sierra View Land Company dba Sierra View Country Club.

9 1.12 “Defendants Counsel” means Dominique N. Thomas of Lewis Brisbois Bisgard & Smith
10 LLP.

11 1.13 “Enhancement Payment” means the amount approved by the Court to be paid to the Class
12 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
13 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
14 Representative as a Participating Class Member.

15 1.14 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
16 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
17 after a signed order approving this settlement has been filed provided no appellate proceeding having been
18 filed; or (b) if a timely appeal from the Judgment is filed, the day after the Appellate Court affirms the
19 judgment and issues a remittitur, whichever is later.

20 1.15 “Final Approval Date” means the date a signed order granting final approval of this
21 Agreement is filed with the Court.

22 1.16 “Gross Settlement Amount” means Three Hundred Eighty Thousand Dollars (\$380,000),
23 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph
24 10 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
25 Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
26 Expenses, Class Representative Service Payment and the Administrator’s Expenses.

27 1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
28 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in

Sections 1.19, 1.23, 5.5, and 5.8. With respect to any gross amounts owed to Plaintiff under the formulas identified in this Agreement, those amounts will be offset by \$1,672.88.

1.18 “LWDA” means the California Labor and Workforce Development Agency.

1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representative.

1.20 “Notice of Settlement” means the document substantially in the form attached hereto as Exhibit 1.

1.21 “Notice Period” means forty-five (45) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.22 “PAGA” means Private Attorneys General Act.

1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.24 “PAGA Claim Period” means June 13, 2022 to April 11, 2024.

1.25 “Parties” means Defendant and Plaintiff.

1.26 “Participating Class Member” means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain the property of Defendants until the payments required under the Agreement are made.

1.29 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members, workweeks shall be defined as the total length of service (in days) in California during the Class Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of

1 service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class
2 Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class Member
3 and/or Aggrieved Employee was actively employed in California in a particular workweek shall be
4 construed from Defendant's records.

5 1.30 "Released Class Claims" means any and all claims that are alleged in the Complaint, and
6 any additional wage and hour claims that could have been brought based on the facts alleged in the
7 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.
8 The Released Class Claims exclude claims for workers' compensation or unemployment insurance
9 benefits. This release will cover all Class Members who do not opt out.

10 1.31 "Released PAGA Claims" means any and all claims that were brought under the Private
11 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiff's notice and amended notice
12 letters to the LWDA and any additional wage and hour PAGA claims that could have been brought based
13 on the facts alleged in Plaintiff's notice and amended notice letter to the LWDA during the PAGA Claim
14 Period. Aggrieved Employees cannot opt out of this waiver of claims.

15 1.32 "Released Parties" means Defendant, as well as Defendant's current, former and future
16 predecessors, successors, affiliate entities, officers, shareholders, directors, agents, employees, attorneys,
17 and insurers.

18 1.33 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity
19 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
20 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
21 Parties each represent that they do not have any financial interest in the Settlement Administrator.

22 1.34 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the
23 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
24 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
25 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
26 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
27 Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class
28 Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees

1 associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and
2 resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any,
3 making related payment to federal and state tax authorities, if any, and issuing tax forms relating to
4 payments made under the Agreement; all costs and fees associated with preparing any tax returns and any
5 other filings required by any governmental taxing authority or agency; all costs and fees associated with
6 preparing any other notices, reports, or filings to be prepared in the course of administering Individual
7 Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator
8 in connection with the execution of its duties under this Agreement.

9 **2. DESCRIPTION OF THE LITIGATION**

10 2.1 On or about June 13, 2023, Plaintiff sent notice to the LWDA to exhaust administrative
11 remedies under the PAGA for (1) Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Wages, (3)
12 Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or
13 Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage statements, (6) Failure to Pay Final
14 Wages, (7) Failure to Pay Reimbursement for Expenses, (7) Violation of Labor Code §§ 558, 558.1
15 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order), (8) Failure
16 to Maintain Accurate Records, (9) Failure to Provide Paid Sick Leave. An amended notice was sent to the
17 LWDA on April 10, 2024, which included allegations and claims for unpaid wages based on rounding
18 entries on an employee's timecards. The LWDA did not respond to the notice and amended notice within
19 the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys
20 General on all alleged PAGA claims.

21 2.2 On or about June 13, 2023, Plaintiff filed a class action Complaint in Placer County Superior
22 Court on behalf of himself and Class Members alleging claims for (1) Failure to Pay Minimum Wages, (2)
23 Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4)
24 Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage
25 statements, (6) Failure to Pay Final Wages, (7) Failure to Pay Reimbursement for Expenses and (8) Unfair
26 Competition. Plaintiff filed a First Amended Complaint on approximately September 7, 2023 to add a
27 PAGA cause of action based on the violations alleged in the June 13, 2023 notice to the LWDA on behalf
28

of himself and Aggrieved Employees. A Second Amended Complaint was filed adding allegations and claims on a class and PAGA basis for unpaid wages based on rounding entries on an employee's timecards.

2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, information on Class Members including, but not limited to, Class Members' workweeks, dates of employment, total number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports for all Class Members.

2.4 On April 1, 2024, the Parties participated in a lengthy mediation with private mediator Mark LeHocky, Esq. At the conclusion of the mediation, the Parties were not able to come to a resolution. However, the Parties continued negotiations with the help of the mediator and were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document productions, extensive legal analysis, the provision of information by Defendants to Plaintiff and the detailed analysis of the records, including expert analysis, have permitted each side to assess the relative merits of the claims and the defenses to those claims.

2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to pay all minimum wages and overtime wages due to managers failing to pay Plaintiff and similarly situated employees for working off-the-clock, 2) failing to incorporate the value of the mandatory service charges into the regular rate of pay in calculating Plaintiff's and similarly situated employees' premium wages, including meal and rest period premiums, overtime, and sick leave, 3) failing to authorize and permit Plaintiff and similarly situated employees to take all meal and rest periods owed to them, 4) changing Plaintiff's and similarly situated employees' timecards to show that Plaintiff and similarly situated employees took compliant meal and rest periods when, in fact, they had not, 5) failing to pay all hours worked because of rounding Plaintiff's and similarly situated employees' hours worked, including but not limited to, meal period clock-in and clock-outs, and 6) failing to reimburse Plaintiff and similarly situated employees for using their cell phones, for work purposes. Plaintiff also alleges that these policies and practices resulted in inaccurate wage statements, waiting time penalties, unfair competition, and derivative

1 PAGA penalties. Defendant has denied each of Plaintiff's claims and Defendant have denied that this
2 Action is appropriate for class certification for anything other than settlement purposes. The agreed upon
3 Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the
4 underlying claims and the class data supporting these claims. The Parties, with the assistance of the
5 mediator, also assessed appropriate discounts to the potential liability based on Defendant's factual and
6 legal contentions and defenses.

7 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
8 and the information exchanged to date, are more than sufficient to assess the merits of the respective
9 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel,
10 Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a
11 manner and upon such terms and conditions set forth herein in order to avoid further expense,
12 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
13 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
14 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the
15 consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
16 circumstances.

17 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

18 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
19 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
20 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
21 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
22 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is
23 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
24 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
25 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
26 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
27 evidence that may be applicable.

1 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
2 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
3 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
4 the Effective Date does not occur, Defendant does not waive, but rather expressly reserve, all rights to
5 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,
6 without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert
7 any and all other potential defenses or privileges.

8 **4. SCOPE OF THE CLASS**

9 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
10 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
11 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class
12 Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in
13 Section 7.5.1.

14 4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under
15 this Agreement.

16 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
17 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
18 did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a
19 data request to the Settlement Administrator. The data request must contain all of the following
20 information: (a) the full name and, if applicable, Social Security Number of the individual making the
21 request; (b) the name used by such employee as of the time his or her employment with Defendant ended;
22 (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may
23 be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
24 otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the
25 Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event
26 more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant
27 review their records.

1 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
2 Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the
3 person who submitted the data request, at the address designated for that purpose in the data request. All
4 provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent
5 in response to data requests, and any person who submits a data request and is sent a Notice of Settlement
6 in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved
7 Employee for all other purposes.

8 4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or
9 Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in
10 good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
11 dispute. Defendant's records shall control unless the individual submitting the data request provides
12 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's
13 Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The
14 Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve
15 the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7)
16 calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement
17 Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject
18 to Court review.

19 **5. TERMS OF THE SETTLEMENT**

20 The Parties agree as follows:

21 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
22 Section 6, Defendant shall pay the Gross Settlement Amount (\$380,000). Funding of the Gross Settlement
23 Amount shall occur within 30 calendar days after the Effective Date to be held in trust in a QSF by the
24 Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class
25 Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action
26 incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering
27 the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement,
28 the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to

1 satisfy Defendant's tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)
2 on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement
3 Amount.

4 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35%
5 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has
6 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%
7 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation costs not to exceed
8 \$12,500, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose
9 Class Counsel's request for reimbursement for advanced litigation costs so long as they do not exceed the
10 \$12,500 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099 for the
11 attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the
12 requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class Counsel
13 shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata
14 basis.

15 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
16 Gross Settlement Amount and shall not exceed \$12,000. The difference between any actual costs and the
17 allocated \$12,000 shall be added to the Net Settlement Amount to be distributed to Participating Class
18 Members on a pro rata basis.

19 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
20 an Enhancement Payment to the Class Representative in an amount not to exceed \$10,000 to compensate
21 for the risks, time, and expense of his involvement in the Action and securing the benefits of this Agreement
22 for Class Members. The Enhancement Payment is in addition to the Individual Settlement Amount Plaintiff
23 would otherwise be due under the Agreement as a Participating Class Member. Defendant has agreed to
24 not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed
25 the amount stated herein. The Enhancement Payment will be designated as a non-wage payment and
26 reported on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement
27 Payment amount requested, then any portion of the requested amount not awarded to the Class
28

Representative shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.5 PAGA Payment: Twenty Thousand Dollars (\$20,000) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by cashing their respective settlement checks before the deadline to do so, that remaining amount shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were actually received. It is expressly understood and agreed that the receipt of such Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to any new or additional compensation or benefits under any company bonus or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement Amounts provided for in this Agreement are the sole payments to be made by Defendants to the Participating Class Members and Aggrieved Employees in connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for

1 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
2 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
3 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
4 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
5 Class Member's individual share of the Net Settlement Amount. With respect to any gross amounts owed
6 to Plaintiff under the formulas identified in this Paragraph or the enhancement identified in Paragraphs
7 1.13 and 5.4, those amounts will be offset by \$1,672.88. Any funds allocated to Class Members under this
8 formula who timely opt out of the Settlement will be redistributed to Participating Class Members on a pro
9 rata basis, *i.e.* each Participating Class Member's share will be determined by dividing their total
10 Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all Participating
11 Class Members and that fraction will then be multiplied by the Net Settlement Amount to arrive at the
12 Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's
13 share of the 25% portion of the PAGA Payment will be determined by dividing their total Qualifying
14 Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved
15 Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of
16 the PAGA Payment to arrive at the Aggrieved Employee's individual share.

17 5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to
18 Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed
19 penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes
20 on the amounts paid to Participating Class Members as wages as well as calculating all required
21 withholdings and deductions from said wage payments. The characterization of Individual Settlement
22 Amounts to Participating Class Members and Aggrieved Employees are as follows:

23 5.9.1 One Third (1/3) of each Participating Class Members' share of the Net Settlement
24 Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes.
25 Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual
26 Settlement Amount.

27 5.9.2 Two Thirds (2/3) of each Participating Class Members' share of the Net Settlement
28 Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted

1 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
2 which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and this
3 payment shall be divided equally among the 1099-MISC and 1099-INT designations.

4 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
5 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
6 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
7 which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

8 5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the
9 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
10 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants'
11 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
12 including the treatment of such payments as not subject to withholding or deduction for payroll and
13 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
14 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
15 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
16 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
17 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
18 implications of any provision of this Agreement.

19 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
20 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
21 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
22 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
23 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
24 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
25 not meet the standards for settlement approval, then Defendants and Plaintiff shall be equally responsible
26 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
27 the date of such event.

1 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
2 only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for
3 establishing class certification have been met and are met.

4 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
5 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
6 Aggrieved Employees.

7 **6. RELEASE**

8 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all
9 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims
10 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their
11 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released
12 Class Claims against any of the Released Parties.

13 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
14 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
15 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
16 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
17 Claims against any of the Released Parties.

18 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff and his respective former and present
19 spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release
20 and discharge Released Parties from all claims, transactions or occurrences, including, but not limited to:
21 (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the
22 operative Complaint (“Plaintiff’s Release.”) Plaintiff’s Release does not extend to any claims or actions
23 to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits,
24 social security benefits, workers’ compensation benefits that arose at any time. Plaintiff acknowledges that
25 Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows
26 or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all
27 respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them. In addition, on
28 the Effective Date, Plaintiff and any successors in interest will be permanently enjoined and forever barred

1 from prosecuting any of the Released Class Claims, Released PAGA Claims, and Class Representative's
2 Released Claims against any of the Released Parties.

3 **7. SETTLEMENT ADMINISTRATION**

4 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
5 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
6 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
7 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
8 any individual Class Members and Aggrieved Employee whose address or contact information as provided
9 to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class
10 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as
11 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
12 consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees,
13 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving
14 and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or
15 any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests
16 for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9)
17 determining and paying the final amounts due to be paid under the Agreement after resolution of all
18 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA
19 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
20 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-
21 outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds
22 from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the statistics of
23 the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
24 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
25 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
26 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
27 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
28 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final

1 statistics of the administration and compliance with all payment obligations under the Agreement; 14)
2 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
3 Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as
4 necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to
5 the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if
6 necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until
7 all payments and obligations contemplated by the Agreement have been fully executed.

8 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will provide
9 Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement,
10 how to participate in the settlement, how to object to the Agreement, how to dispute the individual's
11 Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform
12 Class Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount,
13 proposed attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement
14 Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and
15 extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for
16 attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's
17 and Aggrieved Employee's estimated Individual Settlement Amount. The Notice of Settlement will
18 provide information on how to access electronic copies online of the Notice of Settlement, any motions for
19 approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents
20 as the Court directs.

21 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
22 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the first and last
23 name, last known mailing address, last known telephone number, Social Security Number, start and end
24 date (if any) of employment of each Class Member and Aggrieved Employee, and any other information
25 the Settlement Administrator needs to effectuate notice to Class Members and Aggrieved Employees as
26 outlined herein. The Settlement Administrator shall review the data to determine the number of Qualifying
27 Workweeks for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days
28 after receipt of such address information, the Settlement Administrator will perform a national change of

1 address (“NCOA”) search, update the addresses per the results of the NCOA search, and then mail the
2 Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved
3 Employee by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information
4 received from Defendant confidential to itself, and Defendant’s Counsel. However, Class Counsel shall
5 be able to review the breakdown of Qualified Workweeks and estimated Individual Settlement Amounts
6 for Class Members and Aggrieved Employees prior to mailing for quality assurance provided the personal
7 identifying information is redacted and/or omitted.

8 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
9 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
10 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
11 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
12 attempt to determine a correct address using a skip-trace, computer or other search using the name, address
13 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
14 five (5) calendar days to any more recent address found as a result of the search. Following each search
15 that does not result in a corrected address, for those Class Members who appear to be current employees
16 of Defendants at the time of the Preliminary Approval Date, the Settlement Administrator shall contact
17 Defendants’ Counsel for assistance and Defendants shall cooperate in good faith with the Settlement
18 Administrator’s reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
19 are active employees of Defendants. In the event the Notice of Settlement is forwarded to a new address
20 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
21 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
22 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
23 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
24 be bound by all terms of the Agreement, including the releases contained in Section 6.

25 7.5 Responses to Notice of Settlement:

26 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
27 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
28 request to opt-out must (a) state the Class Member’s full name and date of birth; (b) a statement that he or

1 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
2 excluded from the settlement; (c) identify the case name and number (*i.e. Affatato v. Sierra View Country*
3 *Club*, Case No. S-CV-0050664); (d) be signed; and (e) be post-marked no later than the conclusion of the
4 Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the
5 request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date
6 of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a
7 request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement
8 will not be entitled to any portion of the Net Settlement Amount nor will they have any right to object,
9 appeal or comment thereon. The name of any Class Member who submits a valid and timely opt out request
10 will be specifically identified in any proposed order granting final approval. Class Members who fail to
11 submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or
12 final judgment thereon. Regardless of whether an Aggrieved Employee opts out of being a Class Member,
13 they will still receive their share of the PAGA Payment as Aggrieved Employees cannot opt out of this
14 Agreement as it relates to the PAGA Payment or Released PAGA Claims.

15 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out, but who wishes
16 to object to this Agreement or otherwise to be heard concerning this Agreement, may submit a written
17 objection to the Settlement Administrator, who will promptly provide copies of the objection to Class
18 Counsel and Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only
19 approve or deny the Agreement, not change the terms of the Agreement. The written objection should (a)
20 state the Class Member's full name and date of birth; (b) provide evidence that the individual is, in fact, a
21 Class Member; (c) state the reasons for the objection(s), including any supporting documentation; (d)
22 identify the case name and number (*i.e. Affatato v. Sierra View Country Club*, Case No. S-CV-0050664);
23 (e) be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing
24 timeline stated in Section 7.4. Additionally, or in the alternative to sending a written objection to the
25 Settlement Administrator, any Class Member may appear at the final approval hearing to state their
26 objection.

27 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
28 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)

1 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
2 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
3 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
4 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
5 dispute. Defendant's records shall presumptively control unless the Class Member can produce
6 documentation evidencing other periods of employment worked. If Defendant agree with submitted
7 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
8 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
9 Class Member's Individual Settlement Amount. If Defendant disagree with the submitted information,
10 Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
11 documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class
12 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
13 Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot
14 timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

15 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
16 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
17 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
18 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
19 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
20 letter, whichever is later.

21 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
22 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
23 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
24 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

25 7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14)
26 calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class
27 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
28

1 and detailed report regarding the statistics and responses of settlement administration to date and all the
2 Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

3 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and
4 Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the
5 amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to
6 Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall
7 calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class
8 Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these
9 calculations Class Counsel and Defendants' Counsel. Defendant shall wire the Gross Settlement Amount
10 and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement
11 Administrator within 30 calendar days after the Effective Date to be to be held in trust in a QSF. Within
12 seven (7) calendar days after Defendants fund the settlement, the Settlement Administrator shall deliver
13 payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to Plaintiff, the
14 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs, and payment
15 to Participating Class Members and/or Aggrieved Employees as required under this Agreement and
16 approved by Court.

17 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
18 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
19 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
20 after the Final Approval Date.

21 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
22 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
23 requested by Class Counsel.

24 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
25 Individual Settlement Amount.

26 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
27 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
28

Agreement. Defendants agree to reasonably cooperate with the Settlement Administrator to the extent necessary to determine the amount of the payroll tax payment required.

7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Settlement Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
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Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendants
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

1 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed
2 motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this
3 Agreement at the earliest possible date concurrently with the Court’s certification of the Action as a class
4 action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of
5 any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may
6 be requested by the Court relating to, or that are otherwise necessary to the approval and implementation
7 of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement
8 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to
9 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final
10 approval. Within two weeks of signing this Agreement Class Counsel shall provide a draft of the
11 Preliminary Approval Motion to Defendant’s Counsel. Defendant’s Counsel will provide comments and/or
12 proposed revisions within two weeks after receipt of the draft Preliminary Approval Motion from Class
13 Counsel. Class Counsel shall endeavor to file a motion for approval of this Settlement within sixty (60)
14 days of April 19, 2024. With regard to the final approval documents, a similar one-week maximum review
15 and response time shall be observed by the Parties. The Parties will request that the Court’s preliminary
16 approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and
17 PAGA Settlement.

18 9.1.1 Plaintiff’s motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
19 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice
20 of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing
21 Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement
22 administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the
23 proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of
24 reasonable attorneys’ fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
25 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
26 approved as fair, reasonable and adequate as to the Class Members.

27 9.1.2 Defendants shall not oppose Plaintiff’s motion for approval of the proposed
28 Agreement.

1 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
2 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
3 appropriate to assure effective communication to individual Class Members of information about their
4 rights and obligations under this Agreement.

5 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
6 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
7 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
8 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
9 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results
10 of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement
11 Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid
12 request to opt out during the Notice Period.

13 9.2.1 Class Counsel and Defendants shall work in good faith to draft a mutually agreeable
14 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The
15 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall
16 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
17 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
18 Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award
19 of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement
20 Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and
21 enforcement of the terms of the Agreement and the Court's orders.

22 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
23 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
24 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement
25 be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist
26 the Settlement Administrator as needed or requested in the process of identifying and locating Participating
27 Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery
28 of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each other and assist the

Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment.

9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development Agency (“LWDA”) of this settlement in accordance with Labor Code § 2699(1)(2).

10. MISCELLANEOUS TERMS

10.1 Defendant’s Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance with the provisions of the Agreement, Defendants may rescind the Agreement and all actions taken in its furtherance will be thereby null and void. Defendants must exercise this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendants. Defendants have represented that there are no more than 19,175 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 21,092.5 (*i.e.*, greater than 10% more than 19,175), then Defendant will have the option to either (a) increase the Gross Settlement Amount proportionally by the workweeks in excess of 19,175, multiplied by the workweek value; or (b) shorten the release period as of the date on which the number of workweeks reaches 21,092.5. To the extent the release period for the class claims is shortened under this paragraph, the release period for the PAGA claims shall be similarly shortened to have the same ending date. If Defendant chooses to increase the Gross Settlement Amount, as described above, then for example, if there were 11,900 workweeks represented to exist during the Class Period, but there are actually 15,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per workweek, Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 workweeks – 11,900 workweeks = 3,100 workweeks x \$5.00/workweek).

1 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
2 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
3 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
4 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
5 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
6 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
7 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
8 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
9 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
10 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
11 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
12 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
13 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
14 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
15 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
16 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
17 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
18 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
19 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
20 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
21 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
22 THIS AGREEMENT.

23 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
24 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
25 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
26 and discharged in this Agreement.

27 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
28 signing this Agreement Defendant is waiving any rights to appeal from the Court’s approval of the

1 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
2 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

3 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
4 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
5 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

6 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
7 be entered according to this Agreement. The Parties stipulate and agree that the Placer County Superior
8 Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure
9 Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the Agreement
10 after default by the other party may recover reasonable attorney's fees and costs related thereto.

11 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
12 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
13 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
14 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
15 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
16 otherwise, to effectuate this Agreement and the terms set forth herein. The Parties have stipulated to
17 Plaintiff amending the operative Complaint to include a claim for unpaid wages based on rounding.
18 Plaintiff has already amended the notice to LWDA to include a claim for unpaid wages based on rounding.
19 The Parties agree and understand that the waiver identified herein shall include the claims and allegations
20 regarding alleged Labor Code violations based on rounding as raised by Plaintiff in mediation.

21 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
22 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
23 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
24 Complaint, the representative character of the Action, the validity of any of the claims that were or could
25 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
26 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
27 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,
28 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or

wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation.

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

To Plaintiff and the Class:

Galen T. Shimoda,
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
To Defendants:

Dominique M. Thomas

Lewis Brisbois Bisgard & Smith LLP
2185 North California Boulevard, Suite 300
Walnut Creek, CA 94596

10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided in this Agreement.

10.12 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement

1 to effectuate its terms and to execute any other documents required to effectuate the terms of this
2 Agreement.

3 10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class
4 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
5 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
6 may be executed on behalf of all Class Members by the Class Representative.

7 10.15 Counterparts: This Agreement shall become effective upon its execution by all of the
8 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
9 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
10 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
11 and effect of originals.

12 10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
13 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
14 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
15 and governed by, the substantive laws of the State of California without giving effect to that State's choice
16 of law principles.

17 10.17 Headings and Captions: Section titles or captions contained in the Agreement are inserted
18 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
19 this Agreement, or any provision thereof.

20 10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be
21 construed as retaliation against any Class Members for participating or seeking to participate in this class
22 action settlement. The Parties will not discourage any class member from participating or seeking to
23 participate in this class action settlement. This is a material term of the Agreement and non-breaching
24 Parties will seek court intervention if this provision is breached.

25 10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the
26 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
27 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
28 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which

is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

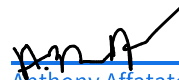
10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiff:

Date: 07/26/2024



Anthony Affatato (Jul 26, 2024 20:21 PDT)
Anthony Affatato

FOR Defendant:

Date: _____

By:
For Sierra View Land Company dba Sierra View
Country Club

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: 7/28/24

By: 

Galen T. Shimoda, Justin P. Rodriguez and
Renald Konini
Attorney for Plaintiff and Aggrieved
Employees

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2 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

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4 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

5 10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
6 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
7 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

8 10.22 Waiver of Compliance: No waiver of any condition or covenant contained in this
9 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
10 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

11 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
12 attorneys, as of the day and year herein set forth.

13 **For Plaintiff:**

14 Date: _____

15 _____
Anthony Affatato

16
17 **FOR Defendant:**

18 Date: 7/31/24

19 BILL GIBSON JR
By: BILL GIBSON JR GM/COO
For Sierra View Land Company dba Sierra View
20 Country Club

21
22
23 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

24
25 Dated: _____

26 By: _____
Galen T. Shimoda, Justin P. Rodriguez and
Renald Konini
27 Attorney for Plaintiff and Aggrieved
Employees
28

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APPROVED AS TO FORM

LEWIS BRISBOIS BISGARD & SMITH
LLP

Dated: July 31, 2024

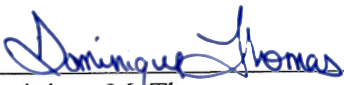
By: 
Dominique M. Thomas
Attorney for Defendant

Exhibit 1

CALIFORNIA SUPERIOR COURT

FOR THE COUNTY OF PLACER

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a California
Corporation; SIERRA VIEW LAND
COMPANY, a California Corporation ; and
DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0050664

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between June 13, 2019, to April 11, 2024 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Placer County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Anthony Affatato (“Plaintiff” or “Class Representative”), and Defendant Sierra View Land Company dba Sierra View Country Club (“Defendant”) on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On June 13, 2023, Plaintiff filed a Complaint against Defendant in the Placer County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Placer County Superior Court, Case No. S-CV-0050664. The Class Period is June 13, 2019, to April 11, 2024 (“Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by (1) failing to pay minimum wages, (2) failing to pay overtime wages, (3) failing to provide meal periods or pay premiums in lieu thereof, (4) failing to provide rest periods or pay premiums in lieu thereof, (5) failing to provide accurate wage statements, (6) failing to pay final wages, (7) failing to pay reimbursement for expenses, (7) violating labor code §§ 558, 558.1 (provisions regulating hours and days of work in any industrial welfare commission order), (8) failing to maintain accurate records, (9) failing to provide paid sick leave, (10) engaging in unfair competition, and (11) committing PAGA violations. Defendant has denied all of Plaintiff’s allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related

to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between June 13, 2019, to April 11, 2024. The Agreement also applies to Aggrieved Employees, which are defined as all individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between June 13, 2022, to April 11, 2024. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Three Hundred Eighty Thousand Dollars (\$380,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorney’s fees not to exceed 35% of the Gross Settlement Amount, attorney’s costs not to exceed \$12,500, Settlement Administrator Costs estimated not to exceed \$12,000, an Enhancement Payment to the Class Representative of up to \$10,000, and \$20,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$20,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as June 13, 2022, to April 11, 2024. Defendant’s records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to

additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [redacted]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released [1.30 text].

Aggrieved Employees will be deemed to have released [1.31 text].

The individuals released ("Released Parties") include Defendant, as well as Defendant's current, former and future predecessors, successors, affiliate entities, officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [redacted]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Affatato v. Sierra View Country Club*, S-CV-0050664); (d) be signed; and (e) be post-marked no later than [redacted]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Affatato v. Sierra View Country Club*, S-CV-0050664); (e) be signed; and (f) be post-marked no later than [redacted]. Written objections must be sent to the Settlement Administrator at the address identified in Section III.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of entry of judgment will be filed with the Court and available online at <https://webportal.placerco.org/eCourtPublic/>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department ___, [address] on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://webportal.placerco.org/eCourtPublic/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Dominique M. Thomas
Lewis Brisbois Bisgard & Smith LLP
2185 North California Boulevard, Suite 300
Walnut Creek, CA 94596
Telephone: 925-357-3456
Facsimile: 925-478-3260
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

Exhibit B

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

ELECTRONICALLY FILED
Superior Court of California,
County of Placer
06/17/2024 at 09:33:03 AM

By: Breanne E Sanders
Deputy Clerk

Attorneys for Plaintiff ANTHONY AFFATATO,
Individually and on behalf of all other similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a
California Corporation; SIERRA VIEW
LAND COMPANY, a California Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0050664

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Overtime Wages**
- 2. Failure to Pay Minimum Wages**
- 3. Meal Period Violations**
- 4. Rest Period Violations**
- 5. Wage Statement Violations**
- 6. Waiting Time Penalties**
- 7. Failure to Reimburse Expenses**
- 8. Unfair Competition**
- 9. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiff ANTHONY AFFATATO ("Plaintiff"), on behalf of himself and all other similarly
situated employees, hereby files this Second Amended Complaint against Defendants SIERRA
VIEW COUNTRY CLUB, a California Corporation; SIERRA VIEW LAND COMPANY, a
California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
"Defendants"). On information and belief, Plaintiff alleges the following:

1 **INTRODUCTION**

2 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
3 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period
4 violations, waiting time penalties, failure to reimburse expenses, and unfair competition.

5 **JURISDICTION AND VENUE**

6 2. The Placer County Superior Court has jurisdiction in this matter pursuant to California
7 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code,
8 California Business and Professions Code, and Wage Order No. 5.

9 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
10 Defendants reside in Placer County. In addition, some of the wrongful acts and violations of law
11 asserted herein occurred within Placer County, and Defendants' obligation to pay wages arose in Placer
12 County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

13 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
14 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
15 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
16 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
17 (“LWDA”) on approximately June 13, 2023. Additionally, Plaintiff gave an amended written notice via
18 online submission to the LWDA on approximately April 10, 2024. Plaintiff provided facts and legal
19 bases for his claims within the notice to the LWDA on all violations asserted under the Private
20 Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The June 13,
21 2023, notice and the April 10, 2024 notice were also sent via certified mail to Defendants on the same
22 day. To date, the LWDA has not provided any response to Plaintiff’s notice correspondence.
23 Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys
24 General Act (“PAGA”) and may bring this action on behalf of himself and all similarly situated
25 employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber*
26 *Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees
27 include, but is not limited to the following: all individuals who have worked, or continue to work, for
28 Defendants in California as a non-exempt employee at any time between June 13, 2022 to the present.

1
2 **PARTIES**

3 5. ANTHONY AFFATATO is an individual over the age of eighteen (18) and is a
4 resident of the State of California.

5 6. On information and belief, Plaintiff alleges, SIERRA VIEW COUNTRY CLUB, is
6 now and/or at all times mentioned in this Complaint was a California Corporation and the owner and
7 operator of an industry, business and/or facility doing business in the State of California.

8 7. On information and belief, Plaintiff alleges, SIERRA VIEW LAND COMPANY, is
9 now and/or at all times mentioned in this Complaint was a California Corporation and the owner and
10 operator of an industry, business and/or facility doing business in the State of California.

11 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
12 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
13 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
14 names and capacities of these DOE Defendants when they are ascertained.

15 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
16 other Defendants and was acting within the course and scope of such agency or employment. The
17 Defendants are jointly and severally liable to Plaintiff.

18 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
19 were members of and/or engaged in a joint employment, joint venture, partnership and common
20 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
21 joint venture, partnership and common enterprise.

22 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint
23 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

24 12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
25 wrongs, complaints, injuries and/or damages alleged in this Complaint.

26 **CLASS ALLEGATIONS**
27
28

1 13. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
2 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.

3 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

4 All individuals who have worked, or continue to work, for Defendants in
5 California as a non-exempt employee at any time between June 13, 2019,
to the present.

6 14. This action has been brought and may be properly maintained as a class action,
7 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
8 defined community of interests in the litigation and the proposed class is easily ascertainable.

9 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
10 is impracticable under the circumstances of this case. While the exact number of class
11 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
12 Defendants have employed as many as one hundred (100) individuals falling within the
13 above stated class definition throughout the State of California during the applicable
14 statute of limitations, who were subjected to the policies and practices outlined in this
15 Complaint. As such, joinder of all members of the putative class is not practicable.

16 (b) Common Questions Predominate: Common questions of law and fact exist as to all
17 members of the putative class and predominate over questions that affect only individual
18 members of the class. These common questions of law and fact include, without
19 limitation, the following:

- 20 (1) Whether Defendants violated the law by not paying employees for all hours
21 worked;
- 22 (2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
23 class members were not paid all minimum and overtime wages owed;
- 24 (3) Whether Defendants maintained accurate payroll records;
- 25 (4) Whether Defendants failed to correctly calculate the regular rate of pay for
26 premium wage purposes such as overtime, double time, meal and rest period
27 premiums, and sick leave wages;
- 28

- 1 (5) Whether Defendants failed to pay meal and rest period premium for meal and rest
2 period violations;
- 3 (6) Whether as a result of Defendants' policies and practices, Plaintiff and putative
4 class members were not authorized and permitted to take all meal and rest
5 periods;
- 6 (7) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
7 class members received all reimbursement owed;
- 8 (8) Whether as a result of Defendants' policies and practices Plaintiff's and putative
9 class members received all wages, due and owing, at the time of their termination
10 or separation; and
- 11 (9) Whether Defendants provided Plaintiff's and putative class members with wage
12 statements that complied with Labor Code section 226.

13 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
14 class. The putative class also sustained damages arising out of Defendants' common
15 course of conduct in violation of the law as complained of herein. Plaintiff and all
16 members of the putative class were non-exempt employees who were not paid all
17 overtime wages owed, meal and rest period premiums, as a result of Defendants' policies
18 and practices resulting in inaccurate wage statements that did not itemize the accurate
19 overtime wages owed, meal and rest period premiums, and sick leave wages.
20 Additionally, Defendants issued Plaintiff and all members of the putative class wage
21 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
22 each member of the putative class will have suffered the same type of harm and seek the
23 same type of recovery based on the same legal theories.

24 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
25 putative class. For all relevant times, Plaintiff resided in California and worked for
26 Defendants in California. Moreover, Plaintiff is an adequate representative of the
27 putative class as Plaintiff has no interests that are adverse to those of putative class
28

members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

- (e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

15. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully set forth herein.

17. Plaintiff was employed with Defendants from August 13, 2003, to January 31, 2023, as a non-exempt employee. Plaintiff was paid fifteen dollars and fifty cents (\$15.50) per hour plus a portion of mandatory service charges Defendants' patrons paid as part of their bill. Plaintiff worked as a bartender for Defendants. Defendants manage a country club in Roseville, California. Plaintiff's job duties and responsibilities included but were not limited to taking orders, preparing cocktails and drinks, processing payment for customers, cleaning the bar, stocking the bar, making sure the bar had all the necessary drinks, food, and equipment to run smoothly. Plaintiff was responsible for keeping count of the number of drinks served and how many patrons were frequenting the bar. In addition, Plaintiff was responsible for opening the bar, preparing all the ingredients, and setting up the bar for opening. Plaintiff

1 would also clean the bar and do all the necessary tasks to close the bar including informing the
2 customers of the last call for alcohol and when the bar would close.

3 18. Plaintiff and Similarly Situated Employees usually worked over six (6) or eight (8) hours
4 per day and about twenty-five (25) hours per week. At times, Plaintiff and Similarly Situated Employees
5 worked over eight (8) hours per day. Plaintiff and Similarly Situated Employees worked in a fast-paced
6 working environment and were busy most of the time. Plaintiff and Similarly Situated Employees
7 worked off the clock on many occasions. For example, Plaintiff worked off the clock on many occasions
8 due to manager's requests. Plaintiff's manager would talk to Plaintiff regarding work and employee
9 issues before Plaintiff would clock in at the beginning of his shift. Plaintiff estimates that he spent about
10 twenty (20) minutes per week talking to his manager regarding work issues prior to clocking in.
11 Moreover, Plaintiff's manager would require Plaintiff to perform certain tasks or work after Plaintiff
12 would clock out. His manager would ask Plaintiff if certain things were done after Plaintiff had already
13 clocked out and would ask Plaintiff to finish those tasks prior to Plaintiff leaving the premises. For
14 example, his manager would ask Plaintiff the status of the liquor count, if certain things were done, if
15 certain things were thrown away and to perform all those tasks prior to leaving. Plaintiff estimates that
16 he worked about thirty (30) minutes per week off the clock after the end of his shift. Plaintiff estimates
17 that he worked about fifty (50) minutes off the clock per week. Defendants were aware of Plaintiff and
18 Similarly Situated Employees were working off the clock because employees would inform Defendants
19 of this fact. For example, Plaintiff would tell his manager that he was off the clock while his manager
20 requested Plaintiff to perform certain tasks. Plaintiff even complained to Defendants' Human Resources
21 personnel, that his manager made him consistently work off the clock. However, Defendants did not
22 take any measures to have Plaintiff's manager refrain from requesting Plaintiff or other Similarly
23 Situated Employees perform work off the clock. Plaintiff and Similarly Situated Employees regularly
24 worked off the clock as a result of Defendants' practices and policies.

25 19. Defendants regularly rounded Plaintiff's and Similarly Situated Employees' time
26 punches, including, but not limited to, meal period clock-in and clock-outs. As a result, Defendants
27 failed to pay Plaintiff and Similarly Situated Employees for all hours worked, failed to provide full
28 thirty-minute meal periods, and failed to keep accurate records of all hours worked.

20. Defendants paid Plaintiff and Similarly Situated Employees a portion of mandatory service charges paid by Defendants' patrons, including, but not limited to, mandatory service charges that were added to patron's bills when they frequented the country club's restaurant. Defendants failed to incorporate the value of these amounts into the regular rate of pay in calculating Plaintiff's and Similarly Situated Employees' premium wages, including meal and rest period premiums, overtime, sick leave. This resulted in overtime, sick leave wage payments, and meal and rest period wage payments that were substantially lower than they otherwise should be. For example, Defendants paid Plaintiff and Similarly Situated Employees bi-monthly and utilized a defined workweek for overtime/regular rate calculation purposes of Sunday 12:00 a.m. to Saturday 11:59:59 p.m. During the pay period of November 16, 2021, to November 31, 2021, Plaintiff's basic hourly rate was \$14.00, and he was paid overtime at the rate of \$21.00. Despite being paid \$780.29 from mandatory services charges during this period, Defendants only paid overtime at 1.5x the base hourly rate and meal period premiums at 1x the base hours rate.

21. Plaintiff and Similarly Situated Employees regularly had to work through their meal and rest periods due to inadequate staffing. For example, Plaintiff's manager required Plaintiff to always be at the bar, unable to leave and having to eat at his workstation. Plaintiff and Similarly Situated Employees regularly worked over six (6) hours per day without being provided lawful meal periods. Due to the nature of their work and instructions of Defendants' management, employees would generally work full six (6) to eight (8) hour shifts without taking any duty-free rest or meal periods. This is because Plaintiff and other Similarly Situated Employees were always required to remain ready to work to meet the needs of patrons during their shift. Moreover, Plaintiff's manager changed Plaintiff's and Similarly Situated Employees' timecards to show that Plaintiff and Similarly Situated Employees took compliant meal and rest periods when, in fact, they had not. Again, Defendants were aware of this because Plaintiff informed them that his manager changed his timecards. The changing of the timecard time entries affected Plaintiff's and Similarly Situated Employees' meal and rest period premiums as well as minimum and overtime wages, and the accrual of sick hours. Thus, Defendants failed to accurately record Plaintiff and Aggrieved employee's meal and rest periods as well as minimum and overtime hours and wages, and the correct accrual of sick leave hours. As a result of these

practices, Plaintiff and Similarly Situated Employees were not paid wages for all hours worked and did not receive the proper accrual of sick leave hours.

22. Defendants also did not have a policy to reimburse Plaintiff and Similarly Situated Employees or use of their personal cell phones for work purposes. Plaintiff and Similarly Situated Employees used their personal cell phones to communicate with managers, supervisors, and other Similarly Situated Employees regarding work issues and scheduling. For example, Plaintiff's manager would text him regarding work issues.

23. As a result of Defendants' failure to pay Plaintiff and Similarly Situated Employees all minimum wages, overtime wages, and meal and rest period premiums owed, the wage statements Defendants issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours worked, the accurate rates of pay, minimum and overtime wages earned, the number of meal and rest period premiums owed, and the accurate gross and net wages earned.

24. As of this date of this letter, Defendants have not paid Plaintiff and Similarly Situated Employees all the overtime wages, meal and rest period premiums, and sick leave wages owed to them. To date, Defendants have not paid Plaintiff and Similarly situated employees all the overtime wages, meal and rest period premiums, and sick leave wages owed to them.

CAUSES OF ACTION

FIRST CAUSE OF ACTION **FAILURE TO PAY OVERTIME WAGES** **(As to all Defendants)**

25. Plaintiff incorporated by reference and re-alleges paragraphs 1 through 24 as though fully set forth herein.

26. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 5, section (3)(A); Cal. Lab. Code §§ 510, 1194.*

27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However,

1 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
2 worked at their regular rate of pay.

3 28. Plaintiff and similarly situated employees were not exempt from overtime protections
4 employees under the California Wage Orders and Labor Code.

5 29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
6 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
7 the extent pertinent as if set forth here in full.

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
10 **(As to all Defendants)**

11 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
12 set forth herein.

13 31. For the period preceding the filing of this Complaint, Defendants were required to
14 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
15 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code §
16 1194.

17 32. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
18 obligation to pay the minimum wage for each hour worked but failed to do so.

19 33. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
20 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
21 the extent pertinent as if set forth here in full.

22 **THIRD CAUSE OF ACTION**
23 **MEAL PERIOD VIOLATIONS**
24 **(As to all Defendants)**

25 34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully
26 set forth herein.

27 35. An employer must provide an employee a meal period in accordance with the
28 applicable Wage Order, and California Labor Code sections 226.7 and 512.

36. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

38. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

40. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully set forth herein.

43. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

44. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

45. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at

1 *the place of employment or at a central location within the State of*
2 *California.*

3 49. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
4 itemized statement or failed to provide an accurate and complete itemized statement showing the
5 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
6 accurately itemize all hours worked, all properly accrued sick leave hours, all applicable hourly rates
7 in effect during the pay period, and gross and net wages earned. Plaintiff and similarly situated
8 employees were not able to promptly and easily determine the required information from their
9 paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over
10 whether they received all wages owed and were prevented from effectively challenging information
11 on their wage statements.

12 50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
13 employees have been damaged as stated in the section below entitled "DAMAGES," which is
14 incorporated here to the extent pertinent as if set forth here in full.

15 **SIXTH CAUSE OF ACTION**
16 **WAITING TIME PENALTIES**
17 **(As to all Defendants)**

18 51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully
19 set forth herein.

20 52. An employer must pay an employee who is terminated all unpaid wages immediately
21 upon termination. *See* Cal. Lab. Code § 201.

22 53. An employer must pay an employee who resigns all unpaid wages within seventy-two
23 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

24 54. Plaintiff and similarly situated employees did not receive all wages, including minimum
25 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
26 within the required time after their separation from employment.

27 55. An employer who willfully fails to pay an employee wages in accordance with California
28 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
days. *See* Cal. Lab. Code § 203.

sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

69. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

71. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

- a. An amount to be proven at trial;
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

8. As to the Ninth Cause of Action:

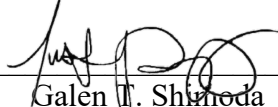
- a. For civil penalties as provided in the Labor Code for each enumerated violation;
- b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

9. For such other and further relief as this Court may deem just and proper, including, but not limited to:

- a. Wages as proved at trial;
- b. Injunctive and Declaratory relief;
- c. Attorney's fees and costs as provided for by law; and
- d. Interest.

1 Dated: May 28, 2024

Shimoda & Rodriguez Law, PC

2
3 By: 
4 Galen J. Shimoda
5 Justin P. Rodriguez
6 Renald Konini
7 Attorneys for Plaintiff
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1 *Affatato v. Sierra View Country Club*
2 *Placer County Superior Court of California, S-CV-0050664*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On June 17, 2024, I served the following documents on the party below:

9 • **SECOND AMENDED COMPLAINT FOR DAMAGES**

10 Dominique Thomas (SBN 231464) 11 Lewis Brisbois 12 2185 N California Blvd, Suite 300 13 Walnut Creek, CA 94596 14 Phone: (925) 357-3451 15 Facsimile: (925) 478-3260 16 Email: Dominique.Thomas@lewisbrisbois.com 17 Izie.Hudson@lewisbrisbois.com 18 Clare.Pardini@lewisbrisbois.com 19 Betty.Jeung@lewisbrisbois.com	
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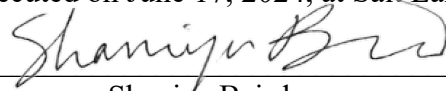
20 [] [By Mail] I am familiar with my employer's practice for the collection and
21 processing of correspondence for mailing with the United States Postal
22 Service and that each day's mail is deposited with the United States Postal
23 Service that same day in the ordinary course of business. On the date set
24 forth above, I served the aforementioned document(s) on the parties in
25 said action by placing a true copy thereof enclosed in a sealed envelope
26 with postage thereon fully prepaid, for collection and mailing on this date,
27 following ordinary business practices, at Salt Lake City, Utah, addressed
28 as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on June 17, 2024, at Salt Lake City, Utah.

26 

27 Shaniya Baird
28

Exhibit C



Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

April 10, 2024

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Affatato v. Sierra View Country Club*

Dear Labor Commissioner,

I am writing this letter on behalf of my client Anthony Affatato (“Plaintiff”) in order to amend our previously filed June 13, 2023, notice. By way of this notice, we are providing additional facts and theories of liability as well as clarifying previously stated theories of liability. Notice to the relevant employers pursuant to California Labor Code section 2699.3 is also being provided:

Sierra View Country Club
105 Alta Vista Ave
Roseville, CA 95678

Sierra View Land Company
105 Alta Vista Ave
Roseville, CA 95678

Bernard John Welch
105 Alta Vista Ave
Roseville, CA 95678

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Sierra View Country Club, Sierra View Land Company, and Bernard John Welch (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all individuals who have worked, or continue to work, for Defendants in California as a non-exempt employee at any time between one (1) year prior to the filing of this notice up to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by



one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff was employed with Defendants from August 13, 2003, to January 31, 2023, as a non-exempt employee. Plaintiff was paid fifteen dollars and fifty cents (\$15.50) per hour plus a portion of mandatory service charges Defendants' patrons paid as part of their bill. Plaintiff worked as a bartender for Defendants. Defendants manage a country club in Roseville, California. Plaintiff's job duties and responsibilities included but were not limited to taking orders, preparing cocktails and drinks, processing payment for customers, cleaning the bar, stocking the bar, making sure the bar had all the necessary drinks, food, and equipment to run smoothly. Plaintiff was responsible for keeping count of the number of drinks served and how many patrons were frequenting the bar. In addition, Plaintiff was responsible for opening the bar, preparing all the ingredients, and setting up the bar for opening. Plaintiff would also clean the bar and do all the necessary tasks to close the bar including informing the customers of the last call for alcohol and when the bar would close.

Plaintiff and Aggrieved Employees usually worked over six (6) or eight (8) hours per day and about twenty-five (25) hours per week. At times, Plaintiff and Aggrieved Employees worked over eight (8) hours per day. Plaintiff and Aggrieved Employees worked in a fast-paced working environment and were busy most of the time. Plaintiff and Aggrieved Employees worked off the clock on many occasions. For example, Plaintiff worked off the clock on many occasions due to manager's requests. Plaintiff's manager would talk to Plaintiff regarding work and employee issues before Plaintiff would clock in at the beginning of his shift. Plaintiff estimates that he spent about twenty (20) minutes per week talking to his manager regarding work issues prior to clocking in. Moreover, Plaintiff's manager would require Plaintiff to perform certain tasks or work after Plaintiff would clock out. His manager would ask Plaintiff if certain things were done after Plaintiff had already clocked out and would ask Plaintiff to finish those tasks prior to Plaintiff leaving the premises. For example, his manager would ask Plaintiff the status of the liquor count, if certain things were done, if certain things were thrown away and to perform all those tasks prior to leaving. Plaintiff estimates that he worked about thirty (30) minutes per week off the clock after the end of his shift. Plaintiff estimates that he worked about fifty (50) minutes off the clock per week. Defendants were aware of Plaintiff and Aggrieved Employees were working off the clock because employees would inform Defendants of this fact. For example, Plaintiff would tell his manager that he was off the clock while his manager requested Plaintiff to perform certain tasks. Plaintiff even complained to Defendants' Human Resources personnel, that his manager made him consistently work off the clock. However, Defendants did not take any measures to have Plaintiff's manager refrain from requesting Plaintiff or other Aggrieved Employees perform work off the clock. Plaintiff and Aggrieved Employees regularly worked off the clock as a result of Defendants' practices and policies.



Defendants regularly rounded Plaintiff's and Aggrieved Employees' hours worked, including, but not limited to, meal period clock-in and clock-outs. As a result, Defendants failed to pay Plaintiff and Aggrieved Employees for all hours worked, failed to provide full thirty-minute meal periods, and failed to keep accurate records of all hours worked.

Defendants paid Plaintiff and Aggrieved Employees a portion of mandatory service charges paid by Defendants' patrons, including, but not limited to, mandatory service charges that were added to patron's bills when they frequented the country club's restaurant. Defendants failed to incorporate the value of these amounts into the regular rate of pay in calculating Plaintiff's and Aggrieved Employees' premium wages, including meal and rest period premiums, overtime, sick leave. This resulted in overtime, sick leave wage payments, and meal and rest period wage payments that were substantially lower than they otherwise should be. For example, Defendants paid Plaintiff and Aggrieved Employees bi-monthly and utilized a defined workweek for overtime/regular rate calculation purposes of Sunday 12:00 a.m. to Saturday 11:59:59 p.m. During the pay period of November 16, 2021, to November 31, 2021, Plaintiff's basic hourly rate was \$14.00, and he was paid overtime at the rate of \$21.00. Despite being paid \$780.29 from mandatory services charges during this period, Defendants only paid overtime at 1.5x the base hourly rate and meal period premiums at 1x the base hours rate.

Plaintiff and Aggrieved Employees regularly had to work through their meal and rest periods due to inadequate staffing. For example, Plaintiff's manager required Plaintiff to always be at the bar, unable to leave and having to eat at his workstation. Plaintiff and Aggrieved Employees regularly worked over six (6) hours per day without being provided lawful meal periods. Due to the nature of their work and instructions of Defendants' management, employees would generally work full six (6) to eight (8) hour shifts without taking any duty-free rest or meal periods. This is because Plaintiff and other Aggrieved Employees were always required to remain ready to work to meet the needs of patrons during their shift. Moreover, Plaintiff's manager changed Plaintiff's and Aggrieved Employees' timecards to show that Plaintiff and Aggrieved Employees took compliant meal and rest periods when, in fact, they had not. Again, Defendants were aware of this because Plaintiff informed them that his manager changed his timecards. The changing of the timecard time entries affected Plaintiff's and Aggrieved Employees' meal and rest period premiums as well as minimum and overtime wages, and the accrual of sick hours. Thus, Defendants failed to accurately record Plaintiff and Aggrieved employee's meal and rest periods as well as minimum and overtime hours and wages, and the correct accrual of sick leave hours. As a result of these practices, Plaintiff and Aggrieved Employees were not paid wages for all hours worked and did not receive the proper accrual of sick leave hours.

Defendants also did not have a policy to reimburse Plaintiff and Aggrieved Employees or use of their personal cell phones for work purposes. Plaintiff and Aggrieved Employees used their personal cell phones to communicate with managers, supervisors, and other Aggrieved



Employees regarding work issues and scheduling. For example, Plaintiff's manager would text him regarding work issues.

As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all minimum wages, overtime wages, and meal and rest period premiums owed, the wage statements Defendants issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours worked, the accurate rates of pay, minimum and overtime wages earned, the number of meal and rest period premiums owed, and the accurate gross and net wages earned.

As of this date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees all the minimum wages, overtime wages, meal and rest period premiums, and sick leave wages owed to them.

Both Sierra View County Club and Sierra View Land Company identified Bernard John Welch as their Chief Executive Officer as of January 12, 2021, in their filings with the California Secretary of State. Plaintiff is informed and believes that Mr. Welch was responsible for creating and electing to implement the payroll and compensation policies and practices identified herein and/or that Mr. Welch was aware of such policies and practices and ratified them.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked at times over eight (8) hours per day and/or forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.,* IWC Wage Order MW-2019; IWC Wage Order No. 5, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved



Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 5, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Four – Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For



the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum wages, overtime wages, bonuses/commissions, missed meal and rest periods and paid sick time, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Seven – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements to Plaintiff and Aggrieved Employees for use of their personal cell phones for work purposes. This was in violation of the law.

Count Eight – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants’ agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Bernard John Welch is and has been an officer and managing member of the company. Mr. Welch was aware of, approved, and enforced these practices either by creating them, directly enforcing them, and/or training and counseling subordinate managers and supervisors to enforce them as detailed herein. As described above, Defendants, by and through Defendants’ agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This is against the law.



Count Nine – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Count Ten – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

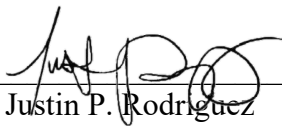
Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Defendants failed to provide Plaintiff and Aggrieved Employees with all sick leave wages because they were not paid for all hours worked, did not receive the proper accrual of sick leave hours, and Defendants failed to incorporate the mandatory service charge into the regular rate of pay for sick leave pay.



If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: _____
Justin P. Rodriguez

JPRrk
cc: Client via e-mail

Affatato v. Sierra View Country Club

**PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On April 10, 2024, I served the following documents on the party below:

• **AMENDED PRIVATE ATTORNEYS GENERAL ACT LETTER**

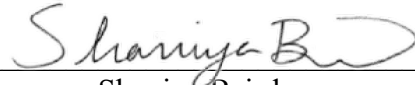
Sierra View Country Club 105 Alta Vista Ave Roseville, CA 95678	Sierra View Land Company 105 Alta Vista Ave Roseville, CA 95678
Bernard John Welch 105 Alta Vista Ave Roseville, CA 95678	

[XXX] [By Certified Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Salt Lake City, Utah, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 10, 2024, at Salt Lake City, Utah.



Shaniya Baird

Exhibit D

Date	Description	Amount
6/13/2023	Certified Mail - PAGA Letter	\$14.97
6/13/2023	Payment to LWDA - PAGA Filing Fee	\$75.00
6/28/2023	One Legal Service Fee - \$1000 complex fee, \$435 complaint fee, \$1.95 tech fee, \$55.72 filing fee order 20603295	\$1,492.67
6/28/2023	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
6/29/2023	Affordable Legal Service Fee - complaint inv 192751	\$71.50
7/3/2023	One Legal Service Fee - Proof of Service of Summons	\$15.34
9/7/2023	E-Filing Charge - FAC	\$13.60
9/13/2023	One Legal Service Fee - Complaint 1st amended order 21167678	\$14.00
9/27/2023	One Legal Service Fee - Case management statement 21280918	\$14.00
10/3/2023	Mediation - fee	\$7,609.46
10/16/2023	One Legal Service Fee - Proof of Service of Summons 21432951	\$14.00
1/12/2024	One Legal Service Fee - case management order 21967596	\$15.85
2/27/2024	One Legal Service Fee - Proposed Stipulation: Order 22281256	\$36.44
3/7/2024	One Legal Service Fee - \$60 court fee Motion 22389348	\$77.65
3/28/2024	Payment to Court - Placer county court	\$27.50
4/3/2024	One Legal Service Fee -Notice of Remote Appearance 22592720	\$13.85
5/1/2024	One Legal Service Fee -Notice: settlements of entire case 22785272	\$15.85
6/5/2024	One Legal Service Fee - Proposed Stipulation Order 22993305	\$36.44
6/20/2024	One Legal Service Fee - Second Amended Complaint Order 23136743	\$15.85
8/20/2024	Affordable Legal Service Fee -Sierra View Country Club Inv 209631	\$155.25
8/22/2024	One Legal Service Fee - E-Filing Charge	\$13.85
8/22/2024	One Legal Service Fee - Proof of Service Order 23573095	\$15.85
8/26/2024	One Legal Service Fee - Preliminary Approval Motion	\$77.62
9/19/2024	Payment to Court - Remote Appearance Fee	\$27.50
10/1/2024	Payment to Court - Remote Appearance Fee	\$57.50
10/14/2024	One Legal Service Fee -proposed order, declaration order 23871132	\$15.90
12/3/2024	Payment to Court - Remote Appearance Cancellation Fee	\$5.00
ANTICIPATED	Payment to Court - Remote Appearance Fee - FAM	\$27.50
ANTICIPATED	One Legal Service Fee - File FAM	\$125.00
ANTICIPATED	Affordable Legal Service Fee - Personal Service of Final Approval Motion	\$192.50
ANTICIPATED	One Legal Service Fee - Notice of Entry of Judgment	\$25.00
ANTICIPATED	One Legal Service Fee - Compliance Declarations	\$25.00
ANTICIPATED	Payment to Court - Remote Appearance Fee - Compliance Hearing	\$27.50

Total: \$ 10,837.44

Exhibit E

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ANTHONY AFFATATO
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a
California Corporation; SIERRA VIEW
LAND COMPANY, a California Corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0050664

CLASS ACTION

**DECLARATION OF JUSTIN P. RODRIGUEZ IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: January 30, 2025

Time: 8:30 a.m.

Dept.: 3

Judge: Hon. Michael Jones

Filed: June 13, 2023

FAC Filed: September 7, 2023

SAC Filed: June 17, 2024

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Anthony Affatato (“Plaintiff”) herein. I am making
4 this declaration on behalf of the named Plaintiff, the putative class members, and in support of
5 Plaintiff’s Motion for Final Approval of Class Action and PAGA Settlement (“Motion”). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 (“Agreement”) in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Defendant Sierra View Land Company dba Sierra View Country Club¹ (“Defendant”) violated
10 California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to
11 provide meal periods, 4) failing to provide rest periods, 5) failing to provide accurate wage statements,
12 6) failing to pay final wages, 7) failing to reimburse employees for incurred expenses, and 8) by
13 engaging in unfair competition. Plaintiff also alleged liability for civil penalties under the Private
14 Attorneys General Act (“PAGA”). These claims were based on allegations that Defendant caused the
15 violations outlined above by 1) failing to pay Plaintiff and similarly situated employees all minimum
16 wages and overtime wages due to managers failing to pay Plaintiff and similarly situated employees for
17 working off-the-clock, 2) failing to incorporate the value of the mandatory service charges into the
18 regular rate of pay in calculating Plaintiff’s and similarly situated employees’ premium wages,
19 including meal and rest period premiums, overtime, sick leave, 3) failing to authorize and permit
20 Plaintiff and similarly situated employees to take all meal and rest periods owed to them, 4) changing
21 Plaintiff’s and similarly situated employees’ timecards to show that Plaintiff and similarly situated
22 employees took compliant meal and rest periods when, in fact, they had not, 5) failing to pay all hours
23 worked because of rounding Plaintiff’s and similarly situated employees’ hours worked, including but
24 not limited to, meal period clock-ins and clock-outs, and 6) failing to reimburse Plaintiff and similarly
25 situated employees for using their cell phones, for work purposes. The PAGA, waiting time penalty,
26 wage statement violation, and unfair competition claims also derive from these violations.

27
28 ¹ Although named as two separate entities in this lawsuit, Counsel for Defendant has since confirmed that Sierra View Country Club is a dba of Sierra View Land Company.

1 3. Plaintiff is the only named representative in this matter. From our initial investigations
2 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
3 class action. We filed the action on or about June 13, 2023. Plaintiff exhausted administrative
4 remedies through the Labor and Workforce Development Agency ("LWDA") prior to amending the
5 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on June 13, 2023, setting
6 forth the facts and theories of liability. An amended notice was filed with the LWDA on April 10,
7 2024, setting forth additional facts and clarifying the theories of liability being asserted based on the
8 alleged rounding of employees' time punches. A true and correct copy of the operative notice filed
9 with the LWDA is being filed with this Motion as Exhibit C. Copies of the notices were also sent to
10 Defendant via certified mail and the \$75.00 filing fee was remitted to the LWDA at the time of the
11 initial filing. There was no response by the LWDA regarding its intent to investigate the claims in
12 response to either of Plaintiff's notices. As more than 65 days have passed since the notices were sent,
13 Plaintiff was authorized to commence a civil action under the PAGA. A First Amended Complaint was
14 filed on September 7, 2023, adding the PAGA claim. A Second Amended Complaint was filed on June
15 17, 2024, reflecting the additional facts and theories of liability regarding the alleged rounding of
16 employees' time punches. Both the First Amended Complaint and the Second Amended Complaint
17 were uploaded to the LWDA, after we received an endorsed copy back from Court. A true and correct
18 copy of Plaintiff's operative Second Amended Complaint is filed with this Motion as Exhibit B.

19 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

20 5. Defendant is represented in this matter by Dominique N. Thomas of Lewis Brisbois
21 Bisgard & Smith LLP. From the beginning, Defendant has contested the merits of this case, the
22 suitability of the case for class action or representative treatment, the manageability of the case at trial,
23 and Plaintiff's ability to prove a violation in each pay period for each employee among other defenses
24 and contentions they made challenging the propriety of this action. Defendant further contended, even
25 assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely
26 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
27 attempts to comply with California Labor Code obligations by Defendant. Notwithstanding its
28 agreement to settle this matter, Defendant believe the practices Plaintiff is contending are unlawful

1 either do not exist or, to the extent they do exist, fully comply with all state and federal employment
2 laws with respect to Plaintiff and Class Members. Also, Defendant has contended that this matter is not
3 appropriate for class certification outside of this proposed class settlement.

4 6. Based on the expected testimony from Plaintiff and Class Members, a review of
5 Defendant's policies and procedures and other documents relating to the alleged claims, information on
6 the number of Class Members, Class Members' dates of employment, and a representative sample of
7 Class Members' time and payroll data, the scope of the potential damages to Plaintiff and Class
8 Members in light of the claims alleged, the uncertainty in the law with regard to certification, and the
9 negotiations that have taken place, I am convinced that the proposed settlement is in the best interest of
10 the class. The length and risks of trial and other normal perils of litigation that impact the value of the
11 claims were also considered and weighed in reaching the Agreement. In addition, I carefully considered
12 the prospect of potential class certification issues as well as the uncertainty of class certification, the
13 difficulties of complex litigation, and the lengthy process of establishing specific damages and various
14 possible delays and appeals in agreeing to the proposed settlement. I further considered the fact that
15 penalties under the PAGA could be substantially cut at the discretion of the Court even if Plaintiff was
16 successful on proving those claims and there was risk that a Court could find no willfulness in the failure
17 to pay wages at separation, which would eliminate the value of the waiting time penalty claim entirely.
18 Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now rather than to
19 proceed with litigation and potentially obtain zero funds to the class due to legal or factual issues in the
20 case.

21 7. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, our
22 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
23 and potential damages for such claims. The parties engaged in formal and informal discovery and
24 exchange of documents, including a 20% representative sampling of employee data, covering timecards,
25 paystubs, payroll data and relevant handbooks, bulletins, and memoranda containing Defendant's
26 policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery
27 covered all aspects of the asserted claims, including certification issues, merits issues, damages, the
28 scope and configuration of Class Members, the content and implementation of the wage and hour

1 policies at issue, issues relating to manageability concerns at trial, among other relevant areas. The
2 discovery included many different documents, including employee onboarding documents, employee
3 policy and handbooks, employment agreements, and timecards. From this production we were able to
4 determine information critical to a reliable damages analysis such as the average hourly rate, average
5 daily hours worked, shifts eligible for meal and rest periods and the number of potential shifts that may
6 correspond to liability under our theories of liability, the average number of workweeks and pay periods
7 that had potential violations based on the asserted claims, the frequency with which violations occurred
8 in a given week and/or pay period, and the number of former employees. This information allowed my
9 office to assess both liability and damages and create an accurate damages model. Plaintiff assisted in
10 all aspects of this litigation including providing factual information relating to Plaintiff's and Class
11 Members' employment conditions, providing a substantial number of documents, and answering
12 questions regarding Defendant's factual contentions in this matter. This was important because it
13 directly related to our ability to maintain this case as a class action and our ability to obtain a favorable
14 settlement for the class.

15 8. Throughout this litigation our office had numerous communications with Defendant's
16 Counsel discussing our respective positions. The parties engaged in mediation on April 1, 2024, using
17 an experienced mediator, Mark LeHocky. It was only after approximately fifteen (15) months of
18 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
19 after a full-day mediation, a mediator's proposal, and post-mediation negotiations regarding the proposal,
20 before a Memorandum of Understanding covering the essential terms was agreed to. Counsel continued to
21 discuss and negotiate additional terms while drafting and finalizing the Agreement. The negotiations were at
22 all times contentious and adversarial, though still professional in nature.

23 9. The following represents the maximum recovery for each of Plaintiff's claims based on
24 my office's analysis of Defendant's relevant policies and the data produced by Defendant, including a
25 sample of time and payroll records for Class Members. There were approximately 19,175 workweeks
26 in the Class Period, 3,458 pay periods in the PAGA Claim Period, an average base hourly rate of
27 \$15.18 and an average overtime rate of \$22.77:
28

1 a) Unpaid Minimum Wages: This claim is based on allegations that Defendant did not pay
2 for all hours worked because Defendant rounded Class Members' time punches,
3 changed their timecards to reflect meal periods not actually taken, and regularly required
4 off-the-clock work to occur both before and after Class Members' scheduled shifts. This
5 claim is entirely comprised of liquidated damages under California Labor Code section
6 1194.2 and the maximum value of this claim is \$214,855.88. Plaintiff only claimed
7 liquidated damages under this cause of action to avoid double recovery for substantive
8 wage loss because Plaintiff has also assumed that all unpaid hours qualified for overtime
9 compensation. There were substantial amounts of risk with respect to certification and
10 with Plaintiff proving the merits or damages. There is substantial risk associated with
11 this claim. First, there is a split of appellate authority on whether rounding an
12 employees' hours worked is lawful. *See Woodworth v. Loma Linda Univ. Med. Ctr.*, 93
13 Cal.App.5th 1038, 1046 (2023) (finding rounding unlawful and noting its disagreement
14 with *See's Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889 (2012). The
15 California Supreme Court is set to address this legal issue in *Camp v. Home Depot*
16 *U.S.A., Inc.*, S277518. Defendant maintained a written policy prohibiting off-the-clock
17 work, which would essentially require Plaintiff to prove that Defendant effectively
18 maintained a policy and practice to violate its policy and knew or had reason to know of
19 the off-the-clock work was occurring despite time records to the contrary. *See Brinker*
20 *Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1040, 1051-1052 (2012). This is a
21 substantially high bar to meet and a very risky litigation hurdle. Beyond the legal issues
22 with the claim, the range of time worked off-the-clock ranged between .5 to .83 hours
23 work week. However, Plaintiff's calculations are based upon each violation being .83
24 hours. It is unlikely that the maximum amount of time off-the-clock would be
25 experienced each week for every employee. Putting aside the issue regarding amount of
26 damages, the legal uncertainty surrounding the claims make it likely that a Court would
27 find there was a good faith defense, which entirely wipes out a claim for liquidated
28

1 damages. See Cal. Lab. Code § 1194.2(b). Based on the facts of this case, it is unlikely
2 that there would be any recovery for this claim.

3 b) Unpaid Overtime Wages: In part, this claim is based on the same facts as the minimum
4 wage claim described above as it relates to rounding, and off the clock work, and
5 timecard alternations, and, therefore, is subject to the same risks outlined above. The
6 maximum possible damages for the rounding part of this claim are \$362,390.24. This
7 amount does not take into account any potential risks with respect to certification or
8 Plaintiff proving the merits or damages. As noted above, Plaintiff's calculations are
9 based on being able to consistently prove a net of .83 unpaid overtime hours worked per
10 week, per employee, for the entirety of their employment. It is unlikely that such a
11 finding would be made at trial for the same reasons as stated above. Based on the legal
12 risks and average off-the-clock time experienced, I believe a more realistic range for the
13 value of this claim is between \$72,587.20 to \$217,761.61.

14 Unpaid Overtime based on RROP: This claim is also based on the allegations that
15 Defendant failed to pay Plaintiff and Class Members all overtime wages due to
16 Defendant's failure to incorporate the value of mandatory service charges when
17 calculating the regular rate of pay for premium purposes such as overtime. The
18 maximum damages amount for this claim is \$24,887.85. Only 977 of the approximately
19 8,850 total pay periods were affected by this claim. While this number does not take
20 into account any potential risks with respect to Plaintiff proving the merits or damages,
21 which was heavily disputed, the potential damages were relatively small compared to
22 the claims as a whole and were more relevant during settlement discussions with how
23 they impacted liability for derivative penalties such as wage statement and waiting time
24 penalty violations. As such, Plaintiff will be utilizing the maximum value of this claim
25 for purposes of the *Kullar* analysis.

26 c) Meal and Rest Periods: Based on the sample data, the maximum exposure for these
27 claims is \$704,109.12. Class Members worked an average of seven (7) days per pay
28 period and there was approximately a 37.44% unique violation rate based on the time

1 records (*i.e.* no meal period records for shifts greater than six (6) hours, no second meal
2 periods on shifts greater than twelve (12) hours, short meal periods, etc.). This amount
3 does not take into account any potential risks associated with this claim, which was
4 heavily disputed. While Plaintiff contended that Defendant maintained a regular and
5 consistent practice of failing to provide all meal and rest periods due to lack of adequate
6 staffing and on-duty meal period requirements, Defendant's written meal and rest period
7 policies were facially compliant. These policies presented substantial risks for
8 certification and proving these claims on the merits because Defendant contends that it
9 explained in detail its meal and period policy, never actually required any on duty meal
10 periods, and it was not responsible for policing Class Members to ensure they took their
11 meal or rest periods. Furthermore, the rest period claim does not benefit from the same
12 presumption of non-compliance where time records show non-compliant breaks because
13 there is no legal obligation to keep records of rest periods. Taking these factors into
14 account, a more realistic range of recovery for these claims would be between
15 \$176,027.28 to \$528,081.84.

16 d) Reimbursement: This claim was based on Plaintiff's contention that he and Class
17 Members were required to communicate with managers, supervisors, and other
18 employees using their personal cell phones. Based on the average use for
19 communicating with supervisors and addressing scheduling, Class Members used their
20 personal cell phones for work purposes approximately 10% of the time. Utilizing a
21 standard \$100 per month single line cell phone plan, this equates to approximately \$2.31
22 owed per week and a maximum exposure of \$44,250 for this claim. This amount does
23 not take into account any potential risks associated with this claim. Defendant heavily
24 disputed whether use of personal cell phones was required given the presence of
25 company phones available on premises which could have allowed Class Members to
26 perform the same functions as on their cell phones. This raised a substantial risk that the
27 Court would find against Plaintiff on this claim. Given the risks, I believe it is unlikely
28 that there would be any recovery on this claim if the matter went to trial.

- 1 e) Sick Time RROP Violations: This claim also was based on the contention that
2 Defendants failed to properly calculate the regular rate of pay for sick pay premiums that
3 were actually paid to Class Members based on the failure to include the value of
4 mandatory service charges. However, in reviewing the sample, we did not find any
5 instances of sick leave occurring in the same week in which mandatory service charges
6 were earned. Thus, there was no value attributed to this claim due to lack of evidence in
7 the sample group substantiating its occurrence.
- 8 f) Wage Statement Violations: This claim is derivative of Plaintiffs' overtime, minimum
9 wage, and meal and rest period claims. The maximum exposure for this claim is
10 \$172,900, which is calculated based on an initial violation of \$50 per pay period per
11 employee. Based on our research, we did not find any prior Labor Commissioner or
12 court decisions that stated Defendant's practices and/or policies were improper. As
13 such, a "subsequent violation" may not be found for penalty calculation purposes and
14 the exposure analysis here is based on an "initial violation" valuation being adopted by
15 any fact finder if this matter went to trial. This amount does not take into account the
16 potential risks associated with this claim and assumes a violation in every pay period.
17 Because this claim is derivative of Plaintiff's other claims, the same risks identified
18 above for Plaintiff's minimum wages, overtime, meal period, and rest period claims
19 equally apply here, substantially affecting the potential value of this claim. Taking these
20 factors into account, a more realistic range of recovery for this claim is between \$25,935
21 to \$69,160.
- 22 g) Waiting Time Penalties: This claim is derivative of the minimum wage, overtime and
23 meal and rest period claims above. The maximum exposure for this claim is \$528,264,
24 which is based on 145 former employees within the relevant statute of limitations and a
25 daily rate of \$121.44 multiplied by 30 days for each former employee. However, this
26 amount does not take into account the potential risks associated with this claim.
27 Because this claim is derivative, the same risks mentioned above also apply to this
28 claim. Similar to the liquidated damages for minimum wage violations, there is a good

1 faith dispute defense to waiting time penalty claims. *See Diaz v. Grill Concepts Servs.,*
2 *Inc.*, 23 Cal.App.5th 859, 868 (2018). I believe that is likely that the Court would find a
3 good faith dispute on all claims other than those relating to the failure to incorporate the
4 value of mandatory service charges into the regular rate of pay violations for purposes of
5 calculating overtime premiums. However, that only affected 977 of 8,850 total pay
6 periods and substantially fewer than all 145 former employees. Assuming the number of
7 individuals was reduced to match the percentage of pay periods affected (approximately
8 16 individuals), this would lower the maximum exposure under this claim to \$58,291.20,
9 which I believe is a more realistic assessment of this claims value.

10 h) PAGA: This claim is derivative of the Labor Code violations identified above and would
11 be subject to all the same risks as the underlying claims it is based on. As noted above,
12 a “subsequent violation” may not be found for penalty calculation purposes because
13 there was no records of any prior judicial or administrative decision finding Defendant’s
14 practices to be illegal. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-
15 1209 (2008). Based on Class Members’ payroll data, the maximum total exposure for
16 this claim is \$2,098,956. This amount does not take into account any of the risks in
17 proving the merits of the underlying claims that the PAGA damages are based on. As
18 outlined above, there are substantial risks to the claims and it is unlikely that recovery
19 would be provided for several of the asserted claims let alone 100% of the potential
20 available penalty. In addition to the risks on the merits, I believe the Court may exercise
21 its discretion to reduce PAGA penalties in this case because a majority of the civil
22 penalties sought would be in addition to amounts owed for substantive violations, some
23 of the violations are due to technical non-compliance with the Labor Code, such as
24 derivative wage statement violations, and Defendant produced facially compliant
25 policies among other documents, that a Court may find demonstrates a good faith
26 attempt at compliance. Courts are statutorily authorized to use discretion to reduce
27 penalties and the range of discretion used varies substantially. *See Thurman v. Bayshore*
28 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v.*

1 Covidien, Inc., 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
2 A reduction to roughly \$9-\$50 worth of civil penalties per pay period per employee
3 depending on the total potential value of the civil penalty is more in line with actual
4 awards based on my experience and review of awards in other cases. Thus, even if
5 using the maximum values possible and setting aside risks of proving the claims on the
6 merits, the total exposure may be cut to approximately \$377,812.08 (82% reduction) to
7 \$1,469,269.20 (30%) or lower. It is important to note that this discretionary reduction is
8 completely separate and in addition to any risks on the merits. Given the substantial
9 risks associated with the claims, we believe the amount that might ultimately be awarded
10 under this claim would be significantly lower than our maximum exposure calculation.
11 Allocating \$20,000 to the PAGA claims in this case is appropriate, especially in light of
12 amounts that Courts have approved as reasonable valuations in other cases. See
13 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to
14 the resolution of PAGA claims based on their being disputed and being part of a class
15 settlement which was evaluated based on the terms of the agreement overall);
16 *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022)
17 (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
18 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving
19 settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery);
20 *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving
21 \$10,00 PAGA settlement allocation where total PAGA penalty exposure was
22 approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns*
23 *California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
24 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l,*
25 *LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA
26 allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford*
27 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000
28 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010

1 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
2 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9
3 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v.*
4 *M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving
5 \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was
6 calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon*
7 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving
8 \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
9 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from
10 \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645,
11 at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA
12 out of \$6.9 million common-fund settlement).

13 10. In summary, Plaintiff's gross recovery of \$380,000 under the Agreement equals
14 approximately 9% of the maximum value of the claims in this matter (\$4,150,613.09) and between 16%
15 and 52% of the more realistic range of recovery (\$735,450.61 to \$2,367,451.70). After deducting from
16 the Gross Settlement Amount the proposed allocations for attorneys' fees and costs, any Enhancement
17 Payment to the Class Representative, Settlement Administrator Costs, and the PAGA Payment, the net
18 recovery under the Agreement, \$198,212.56, represents approximately 5% of the maximum value of
19 the claims in this matter. The net recovery also represents between 8% and 27% of the more realistic
20 range of recovery. Based on the final numbers from the administrator, the average net recovery is
21 \$1,139.15, and the maximum net recovery is \$2,939.80. I believe the Agreement represents a
22 reasonable compromise of claims based on the legal and factual disputes in this case. The ability to
23 secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than
24 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this
25 Agreement.

26 11. In agreeing to take on this case, our office agreed to take this case on a contingency
27 basis, meaning that we would take a percentage of any settlement or judgment should we recover a
28 monetary amount. We took a risk that we would not recover any money in this matter if we were

1 unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary
2 judgment ruling. However, we believe it is important to make sure employees are able to find
3 affordable representation in order to ensure that employers are complying with all their legal
4 obligations towards employees and paying employees all their hard-earned wages. We rely on
5 attorneys' fee awards in order to continue working to ensure California wage and hour protections are
6 enforced. Otherwise, we could not continue to represent employees who are denied wages, but whose
7 cases may be time-consuming and difficult to prove. There have been many class cases we have
8 litigated where ultimately we get zero for our time because we are unable to meet certification
9 requirements or the company becomes financially insolvent.

10 12. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
11 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
12 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
13 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
14 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
15 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
16 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
17 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
18 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
19 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
20 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
21 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
22 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
23 and an officer for the Latino Law Students Association from 2009 to 2010.

24 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
25 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
26 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
27 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
28 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number

of seminars covering issues in wage and hour litigation in general and complex class and PAGA litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);

- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);

- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovation Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

1 14. The preceding list does not include those cases where, for various reasons, the case was
2 filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

3 15. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in
4 assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of
5 plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda
6 attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a
7 B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the
8 University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He
9 graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and
10 Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of
11 employment law articles for journals and our firm regularly publishes articles on our firm's website.
12 Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
13 Employment Review seminars from 2014 to the present. His speaking engagements include the
14 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
15 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
16 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
17 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
18 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
19 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
20 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
21 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
22 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
23 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
24 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
25 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
26 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
27 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
28 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -

PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017); 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013, was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized as a Super Lawyer from 2014 to present.

16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases. Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington & Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and Federal Courts, including up to certification, settlement, preliminary and final approval, and disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel. Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel include the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.

- 1 Ct.);
- 2 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 3 Sup. Ct.);
- 4 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 5 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 6 Ct.);
- 7 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 8 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 9 00209613 (Sac. Sup. Ct.);
- 10 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 11 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 12 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 13 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
- 14 (San Joaquin Sup. Ct.);
- 15 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 16 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
- 17 Sup. Ct.);
- 18 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 19 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 20 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
- 21 Sup. Ct.);
- 22 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 23 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 24 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 25 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 26 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 27 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 28 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);

- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

17. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

1 18. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr.
2 Konini graduated from Seton Hall University School of Law. Prior to moving to California, he
3 practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of
4 individual and class action cases, including those involving wage and hour claims, Private Attorney
5 General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and
6 harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing
7 as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in
8 September 2022. Mr. Konini has worked on the written and oral discovery, including defending a
9 PAGA representative's deposition, drafting special interrogatories and request for production of
10 documents, calculating class-wide damages, communicating with class representatives, drafting
11 mediation briefs, negotiating, drafting correspondence to Defendant's counsel regarding the damages
12 calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other
13 class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and*
14 *Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment*
15 *Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case
16 No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No.
17 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-
18 00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's*
19 *Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium,*
20 *Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-
21 00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-
22 OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.),
23 *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell*
24 *Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris*
25 *Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau*
26 *Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely
27 revolves around wage and hour matters, including PAGA claims.
28

1 19. My office is requesting attorneys' fees and costs pursuant to the common fund doctrine
2 pursuant to *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston &*
3 *Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and Plaintiff's Counsel have been able to
4 secure an identifiable benefit on behalf of the class and equity counsels that the cost of the
5 representation should be born equally amongst all class members receiving these benefits. The
6 settlement recovery provides a good result and is the product of substantial time and effort in analyzing
7 the facts and law applicable to this case. There was substantial risk in agreeing to take this case on a
8 contingency basis and as a class action with the possibility that our firm would not receive any
9 compensation their time and efforts due to issues regarding the merits and/or certification and have
10 carried that risk over the course of the case. In my experience, the attorney's fee request of thirty-five
11 percent (35%) of the common fund is within ranges typically approved in wage and hour class action
12 litigation. In my experience with contingency cases in employment law cases, the typical percentage
13 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual
14 litigation. In class action and PAGA litigation, my experience in our firm and working with several
15 other firms has been that the typical percentage negotiated between parties and approved by a court
16 ranges from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed
17 several recent Federal District Court Cases where the Court has approved common fund-based fee
18 requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal.
19 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v.*
20 *Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske*
21 *Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*,
22 USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern
23 District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern District,
24 Case No. 1:00-cv-05695. I believe our request of \$133,000 (35%) for attorneys' fees is justified given
25 the results obtained on behalf of Class Members, Aggrieved Employees and the LWDA. Moreover, at
26 this time, my firm has advanced all costs for Plaintiff, Class Members, and Aggrieved Employees and
27 has not received any compensation whatsoever for our time expended in this case. The incurred costs
28 to date and the expected costs through overseeing the complete distribution of all settlement proceeds

are \$10,837.44. Attached as Exhibit D is a true and correct copy of an itemization of our firm's incurred costs and expected costs through the complete distribution of all settlement proceeds.

20. I have used several class action administrator companies in the wage and hour class actions I have resolved in the past and believe ILYM Group, Inc., will provide the best service to administer the proposed class settlement. ILYM Group, Inc. has provided a quote for the estimated maximum cost of administering the class settlement of approximately \$7,950. Under the settlement the difference between the originally allocated \$12,000 and the actual administration costs of \$7,950 will be paid to the Participating Class Members on a pro rata basis.

21. A copy of the Agreement and the entire Motion was submitted to the LWDA for review at the same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit E.

22. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. ("CPB") and The Center For Workers Rights ("CFWR"). Only those funds that remain from uncashed settlement checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

23. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent, primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo, San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced, Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services Program of Northern California ("VLSP") to Capital Pro Bono, Inc. CPB has been the recipient of *cy pres* funds from several jurisdictions in the State of California, including from Sacramento County Superior Court.

24. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to their current or former employment. This assistance regularly includes, but is not limited to, free legal

1 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
2 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
3 forms, and direct representation in administrative hearings, including administrative hearings in front of
4 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
5 who provide assistance, along with experienced employment law attorney volunteers. These services
6 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
7 and continuing through today under CPB.

8 25. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
9 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
10 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
11 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
12 workers and advises them as to the available legal remedies. In addition to individual counseling on
13 employment issues, the CFWR educates workers, unions, and community members about workplace
14 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

15 26. The CFWR provides limited representation for low-wage workers in wage claims before
16 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
17 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
18 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
19 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
20 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
21 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
22 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
23 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
24 respect to those wage claims.

25 27. I believe the services provided by CPB and the CFWR promote the law consistent with
26 the objective of wage and hour class actions in general and in this case specifically.

27 28. I have spoken with every other attorney at my firm to determine whether they have any
28 relationship with either of the proposed *cy pres* beneficiaries.

29. I have volunteered for both organizations numerous times over the past several years, either directly in the advice clinics or by presenting seminars on wage and hour laws for law students seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB's advisory committee. These organizations are non-profits that assist low-income workers throughout California, giving free legal advice regarding employment law issues and representing employees with wage claims before the California Labor Commissioner. I have witnessed firsthand the quality service and attention these entities provide to individuals in need of employment law advice and representation at the California Labor Commissioner.

30. Galen T. Shimoda has volunteered for both organizations on and off over the past several years through either presenting wage and hour seminars to law students who staff the free advice clinics or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer work with either organization since approximately March 2020. Mr. Shimoda has never received payment or compensation of any kind in connection with any work he's done with either of the proposed *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro Bono, Inc. or the Center For Workers' Rights.

31. Neither my firm, myself, Mr. Konini, nor Mr. Shimoda have ever received any compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in connection with any of the volunteer work we have done with the organizations.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 6, 2025 in Sacramento, California.


Justin P. Rodriguez

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
4 **Shimoda & Rodriguez Law, PC**
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9 Attorneys for Plaintiff ANTHONY AFFATATO
10 Individually and on behalf of similarly situated employees

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a
California Corporation; SIERRA VIEW
LAND COMPANY, a California Corporation;
and DOES 1 to 100, inclusive,

Defendant.

Case No.: S-CV-0050664

CLASS ACTION

**DECLARATION OF NICK CASTRO OF
ILYM GROUP, INC., IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 30, 2025
Time: 8:30 a.m.
Judge: Hon. Michael Jones
Dept.: 3

Filed: June 13, 2023
FAC File: September 7, 2023
Tial Date: None Set

1 I, Nick Castro, declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am the Case
3 Manager for ILYM Group, Inc., (herein after referred to as “ILYM Group”), the professional settlement
4 services provider who has been retained by the Parties’ Counsel and subsequently appointed by the Court
5 to serve as the Settlement Administrator for the above captioned *Affatato v. Sierra View Country Club et*
6 *al*, matter. I am authorized to make this declaration on behalf of ILYM Group and myself. I have
7 personal knowledge of the facts herein, and, if called upon to testify, I could and would testify
8 competently to such facts.

9 2. ILYM Group has extensive experience in administering Class Action Settlements,
10 including direct mail services, database management, claims processing and settlement fund distribution
11 services for Class Actions ranging in size from 26 to 4.5 million Settlement Class Members.

12 3. ILYM Group was engaged by the Parties’ Counsel and subsequently approved and
13 appointed by the Court to provide notification services and claims administration, pursuant to the terms
14 of the Settlement, in the above referenced Action. Duties performed to-date and to be performed after
15 Final Approval of the Settlement is granted, include: (a) printing and mailing the *Notice of Proposed*
16 *Class Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement*, in
17 English, and Spanish (“Notice of Settlement”); (b) receiving and processing requests for exclusion; (c)
18 resolving Class Members’ disputes over the number of workweeks Defendants have record of them
19 working during the Class Period, which was pre-printed on their individualized Notice of Settlement;
20 (d) calculating individual settlement award amounts; (e) processing and mailing settlement award
21 checks; (f) handling tax withholdings as required by the Settlement and the law; (g) preparing, issuing
22 and filing tax returns and other applicable tax forms; (h) handling the distribution of any unclaimed
23 funds pursuant to the terms of the Settlement; and (i) performing other tasks as the Parties mutually
24 agree to and/or the Court orders ILYM Group to perform.

25 4. On October 8, 2024, ILYM Group received the Court approved text for the Notice of
26 Settlement from Plaintiff’s Counsel. ILYM Group prepared a draft of the formatted Notice of
27 Settlement, which was approved by the Parties’ Counsel and translated to Spanish prior to mailing.
28

1 5. On October 23, 2024, ILYM Group received the class data file from Counsel for
2 Defendants, which contained the name, social security number, last known mailing address, last known
3 telephone, last known email, class workweeks, PAGA pay periods, and employment dates for each Class
4 Member (“Class List”). The data file was uploaded to our database and checked for duplicates and other
5 possible discrepancies. The Class List contained 176 individuals who worked 17,283.37 work weeks.

6 6. As part of the preparation for mailing, all 176 names and addresses contained in the Class
7 List were then processed against the National Change of Address (“NCOA”) database, maintained by
8 the United States Postal Service (“USPS”), for purposes of updating and confirming the mailing
9 addresses of the Class Members before mailing of the Notice of Settlement. The NCOA contains
10 requested change of addresses filed with the USPS. To the extent that an updated address was found in
11 the NCOA database, the updated address was used for the mailing of the Notice of Settlement. To the
12 extent that no updated address was found in the NCOA database, the original address provided by
13 Counsel for Defendants was used for the mailing of the Notice of Settlement.

14 7. On November 19, 2024, the Notice of Settlement was mailed, via U.S First Class Mail,
15 to all 176 individuals contained in the Class List. Attached hereto, as **Exhibit A**, is a true and correct
16 copy of the mailed Notice of Settlement.

17 8. As of the date of this declaration, 6 Notice of Settlement mailings have been returned to
18 our office as undeliverable. Of the 6 returned Notice of Settlements, none were returned with a forwarding
19 address. ILYM Group performed a computerized skip trace on the 6 returned Notice of Settlements that
20 did not have a forwarding address in an effort to obtain an updated address for the purpose of re-mailing
21 the Notice of Settlement. As a result of this skip trace, 4 updated addresses were obtained and the Notice
22 of Settlement mailings were promptly re-mailed to those Class Members, via U.S First Class Mail.

23 9. As of the date of this declaration, a total of 4 Notice of Settlement mailings have been re-
24 mailed. Specifically, 4 have been re-mailed as a result of ILYM Group’s skip tracing efforts.

25 10. As of the date of this declaration, a total of 2 Notice of Settlements have been deemed
26 undeliverable. Specifically, 2 have been deemed undeliverable as no updated address was found
27 notwithstanding the skip tracing.

11. As of the date of this declaration, ILYM Group has received 2 valid requests for exclusion from Christopher Dean Walker and Lorenzo Garcia. We also received 1 deficient request for exclusion from Victoria Terrazas on January 6, 2025, that was mailed before the deadline to request exclusion from the Settlement, which was January 3, 2025. Ms. Terrazas' request to opt out was not signed and did not have the date of birth as required under Paragraph 7.5.1 of the Agreement. Pursuant to Paragraph 7.5.4 of the Agreement, we mailed a notice of deficiency to her on January 6, 2025. Her deadline to cure the deficiency is January 16, 2025. The deadline to request exclusion from the Settlement was January 3, 2025.

12. As of the date of this declaration, ILYM Group has not received any objections to the Settlement. The deadline to file an objection to the Settlement was January 3, 2025.

13. Participating Class Members will receive a proportional share of the Net Settlement Amount through individual settlement payments, calculated by a pro-rata formula, based on the number of workweeks worked by Class Members during the Class Period. The Net Settlement Amount is the amount remaining after deduction of the Court-approved payments from the Gross Settlement Amount for Class Counsel Fees and Litigation Costs, the Class Representative Enhancement Awards, Claims Administration Fees to ILYM Group, and the PAGA allocation, e.g.,

Gross Settlement Amount	\$380,000.00
- Class Counsel Fees	\$133,000.00
- Class Counsel Expenses	\$10,837.44
- Class Representative Service Payments	\$10,000.00
- ILYM Group Fees	\$7,950.00
- LWDA	\$15,000.00
- PAGA Allocation to Aggrieved Employees	\$5,000.00
Net Settlement Amount	\$198,212.56

14. To determine a Participating Class Members individual settlement amount, the Net Settlement Amount will be divided by the total number of workweeks worked by all Class Members during the Class Period, multiplied by the number of workweeks worked by that Participating Class Members. Based on these calculations, the Participating Class Members will receive an estimated average gross payment of \$1,139.15, with the estimated highest gross payment being \$2,939.80.

15. ILYM Group's total fees and costs for services in connection with the administration of this Settlement, which includes fees and costs incurred to date, as well as anticipated fees and costs for completion of the settlement administration, are \$7,950.00. ILYM Group's work in connection with this matter will continue with the calculation of the settlement award payments, issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that the Parties mutually agree to and/or the Court orders ILYM Group to perform.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed this 6th day of January 2025, at Tustin, California.

Nick Castro
NICK CASTRO

EXHIBIT “A”

CALIFORNIA SUPERIOR COURT

FOR THE COUNTY OF PLACER

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a California
Corporation; SIERRA VIEW LAND
COMPANY, a California Corporation ; and
DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0050664

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between June 13, 2019, to April 11, 2024 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Placer County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Anthony Affatato (“Plaintiff” or “Class Representative”), and Defendant Sierra View Land Company dba Sierra View Country Club (“Defendant”) on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked _____ weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be \$_____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On June 13, 2023, Plaintiff filed a Complaint against Defendant in the Placer County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Placer County Superior Court, Case No. S-CV-0050664. The Class Period is June 13, 2019, to April 11, 2024 (“Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by (1) failing to pay minimum wages, (2) failing to pay overtime wages, (3) failing to provide meal periods or pay premiums in lieu thereof, (4) failing to provide rest periods or pay premiums in lieu thereof, (5) failing to provide accurate wage statements, (6) failing to pay final wages, (7) failing to pay reimbursement for expenses, (7) violating labor code §§ 558, 558.1 (provisions regulating hours and days of work in any industrial welfare commission order), (8) failing to maintain accurate records, (9) failing to provide paid sick leave, (10) engaging in unfair competition, and (11) committing PAGA violations. Defendant has denied all of Plaintiff’s allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related

to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between June 13, 2019, to April 11, 2024. The Agreement also applies to Aggrieved Employees, which are defined as all individuals who have worked, or continue to work, for Defendant in California as a non-exempt employee at any time between June 13, 2022, to April 11, 2024. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Three Hundred Eighty Thousand Dollars (\$380,000) (“Gross Settlement Amount”). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorney’s fees not to exceed 35% of the Gross Settlement Amount, attorney’s costs not to exceed \$12,500, Settlement Administrator Costs estimated not to exceed \$12,000, an Enhancement Payment to the Class Representative of up to \$10,000, and \$20,000 for alleged PAGA penalties (the “PAGA Payment”), which will result in a “Net Settlement Amount” for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member’s share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$20,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment (“Individual Settlement Amount”) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees’ allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member’s share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member’s individual share of the Net Settlement Amount. Each Aggrieved Employee’s share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee’s individual share. The PAGA Claim Period is defined as June 13, 2022, to April 11, 2024. Defendant’s records indicate that you worked ___ weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be \$____. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than January 3, 2025. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code 2698 et seq., contained in Plaintiff's notice and amended notice letters to the LWDA and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in Plaintiff's notice and amended notice letter to the LWDA during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, as well as Defendant's current, former and future predecessors, successors, affiliate entities, officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by January 3, 2025. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (i.e. *Affatato v. Sierra View Country Club*, S-CV-0050664); (d) be signed; and (e) be post-marked no later than January 3, 2025. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

If you submit a request to opt out which is not postmarked by January 3, 2025, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Affatato v. Sierra View Country Club*, S-CV-0050664); (e) be signed; and (f) be post-marked no later than January 3, 2025. Written objections must be sent to the Settlement Administrator at the address identified in Section III.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at <https://webportal.placerco.org/eCourtPublic/>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 3, Historic Courthouse, 101 Maple Street, Auburn, CA 95603 on January 30, 2025, at 8:30 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://webportal.placerco.org/eCourtPublic/>. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Dominique N. Thomas
Lewis Brisbois Bisgaard & Smith LLP
2185 North California Boulevard, Suite 300
Walnut Creek, CA 94596
Telephone: 925-357-3456
Facsimile: 925-478-3260
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL (888) 250-6810

BY ORDER OF THE COURT

TRIBUNAL SUPERIOR DE CALIFORNIA

PARA EL CONDADO DE PLACER

ANTHONY AFFATATO, de forma individual y en nombre de otros empleados en situación similar,

Demandante,

vs.

SIERRA VIEW COUNTRY CLUB, una Corporación de California; SIERRA VIEW LAND COMPANY, corporación de California ; and HECHOS 1 a 100, ambos inclusive,

Acusados.

Núm. de Caso. S-CV-0050664

AVISO DE PROPUESTA DE DEMANDA COLETIVA ACUERDO “PAGA” Y FECHA DE LA AUDIENCIA PARA LA APROBACIÓN JUDICIAL DEFINITIVA DEL ACUERDO

AL INTERÉS DE: Todas las personas que hayan trabajado o sigan trabajando para los Acusados en California como empleados no exentos en cualquier momento entre el 13 de junio de 2019 y el 11 de abril de 2024 (los “Miembros del Grupo”).

POR FAVOR, LEA ATENTAMENTE ESTA NOTIFICACIÓN. ESTA NOTIFICACIÓN SE REFIERE A UN ACUERDO PROPUESTO EN UN LITIGIO DE ACCIÓN COLECTIVA Y PODRÍA SUPONER UN POSIBLE DESEMBOLSO DE LOS FONDOS DEL ACUERDO EN SU FAVOR. SI USTED FORMA PARTE DEL GRUPO DE DEMANDANTES, CONTIENE INFORMACIÓN IMPORTANTE ACERCA DE SU DERECHO A PARTICIPAR EN EL ACUERDO O RENUNCIAR AL MISMO, DE ACUERDO CON LOS PROCEDIMIENTOS QUE SE DESCRIBEN A CONTINUACIÓN.

Recibe esta notificación de conformidad con una orden judicial del Tribunal Superior del Condado de Placer (el “Tribunal”) por la que se concede la moción del Demandante para la aprobación preliminar de una Estipulación Conjunta relativa a la Demanda Colectiva y el Acuerdo y Descargo PAGA (el “Acuerdo”) de forma justa, razonable y adecuada. Las partes que entraron en el Acuerdo fueron el Demandante, Anthony Affatato (el “Demandante” o “Representante del Grupo”) y los Acusados Sierra View Land Company y Sierra View Country Club (los “Acusados”) en nombre de los Miembros del Grupo tal como se definieron anteriormente. Los términos del Acuerdo se detallan en la presente. Recibe esta notificación porque los registros de los Acusados indican que usted entra en la definición de “Miembro del Grupo”. Los registros de los Acusados también indican que usted trabajó durante _____ semanas a lo largo del Período de Clase aplicable (tal como se define a continuación), lo que significa que se estima que su parte total de los ingresos del acuerdo asciende a \$ _____. Su parte total de los ingresos del acuerdo variará en función del número total de Miembros del Grupo que decidan participar y de cómo se resuelvan los conflictos sobre la semana laboral que se describen en esta notificación.

Los términos del Acuerdo, así como una descripción del caso, se incluyen en esta notificación. De conformidad con la orden judicial del Tribunal, SE LE INFORMA POR LA PRESENTE DE LO SIGUIENTE:

I. TRASFONDO DEL CASO

El 13 de junio de 2023, el Demandante presentó, en su nombre y en nombre de los Miembros del Grupo, una Demanda contra los Acusados en el Tribunal Superior del Condado de Placer en California. El término “Acción” se refiere a esta demanda colectiva putativa pendiente en el Tribunal Superior del Condado de Placer, Núm. de Caso S-CV-0050664. El Período de Clase comprende desde el 13 de junio de 2019 hasta el 11 de abril de 2024 (el “Período de Clase”).

En esta Acción, el Demandante aspiraba a obtener salarios impagados, intereses, sanciones legales, sanciones civiles, honorarios y costes en su nombre y también en el de los Miembros del Grupo y los Empleados Agraviados. El Demandante alegó que los Acusados violaron las leyes de California al (1) no pagar el salario mínimo, (2) no pagar los salarios por horas extra, (3) no proporcionar períodos para comer o pagar primas en su lugar, (4) no proporcionar períodos de descanso o pagar primas en su lugar, (5) no proporcionar desgloses salariales detallados (6) no pagar los salarios finales, (7) no reembolsar los gastos, (8), violar el código laboral §§ 558, 558.1 (disposiciones que regulan las horas y días de trabajo en cualquier orden de la comisión de asuntos sociales),

(9) no mantener registros precisos, (10) no proporcionar compensaciones para ausencias por enfermedad, (11) participar en competencia desleal, y (12) violar las normas del PAGA. Los Acusados han negado todas las alegaciones del Demandante. La acción ha sido activamente litigada. Hay investigaciones en marcha y se ha producido un extenso intercambio de documentos e información. En base a las negociaciones y a todos los hechos y circunstancias conocidos, incluyendo los diversos riesgos e inseguridades propios de las acciones legales, las Partes alcanzaron un acuerdo colectivo. Comprometiéndose al acuerdo, las Partes evitarán los riesgos propios de los procesos litigantes prolongados. Pese a mostrarse conforme con el Acuerdo y apoyarlo, los Acusados siguen negando todas las alegaciones y acusaciones. Los Acusados han entrado en este Acuerdo para resolver esta Acción de forma absoluta y definitiva en base a los términos establecidos en el Acuerdo, evitando así los inconvenientes y gastos propios de litigios en marcha.

El Acuerdo se aplica a todos los Miembros del Grupo, definidos como individuos que trabajaron o siguen trabajando para los Acusados en California como empleados no exentos en cualquier momento entre el 13 de junio de 2019 y el 11 de abril de 2024. El Acuerdo también se aplica a los Empleados Agraviados, los cuales se definen como individuos que trabajaron o siguen trabajando para los Acusados en California como empleados no exentos en cualquier momento entre el 13 de junio de 2022 y el 11 de abril de 2024. Si usted es un Miembro del Grupo, tiene la oportunidad de participar en el Acuerdo o excluirse del mismo (“exclusión”). Esta notificación informa a los Miembros del Grupo sobre cómo pueden participar o excluirse del Acuerdo. Tal como se establece a continuación, los Empleados Agraviados no pueden excluirse de este Acuerdo, ya que está relacionado con el pago PAGA o las reclamaciones PAGA liberadas independientemente de si se excluyeron o no como Miembros del Grupo. Los Empleados Agraviados recibirán su parte del Pago PAGA independientemente de si se excluyeron o no como Miembros del Grupo.

II. RESUMEN DEL ACUERDO PROPUESTO

A. El Importe del Acuerdo

Bajo los términos del Acuerdo, los Acusados han acordado pagar una suma total de Trescientos ochenta mil dólares (380.000\$) (“El importe bruto del acuerdo”). De este importe bruto del acuerdo se deducirán las cantidades que el Tribunal apruebe para los honorarios de los abogados, sin exceder el 35% del importe bruto del acuerdo. Los honorarios de los abogados tampoco excederán los 12.500\$ y se estima que los costes del administrador del acuerdo no excederán los 12.000\$. También habrá un Pago de Mejora de hasta 10.000\$ al Representante del Grupo y uno de 20.000\$ para presuntas sanciones PAGA (el “Pago PAGA”), lo que resultará en un “importe neto de liquidación” que se distribuirá entre todos los Miembros del Grupo. Los Acusados pagarán cualquier impuesto adicional del empleador que pueda atribuirse a pagos asignados como salarios, además del importe bruto del acuerdo. Como se explica más adelante, el importe de la parte correspondiente a cada Miembro del Grupo del Importe Neto del Acuerdo dependerá del número de semanas trabajadas por los Miembros del Grupo participantes durante el Período del Grupo. De los 20.000\$ destinados a resolver las reclamaciones PAGA, el 75% del Pago PAGA se pagará a la Agencia de Empleo y Desarrollo Laboral del Estado de California, mientras que el 25% restante se dividirá entre los Empleados Agraviados.

El número de semanas que trabajó durante el Período de Clase y su parte estimada del importe neto del acuerdo y el Pago PAGA (el “Importe Individual de Acuerdo”) se detallan en la primera página de esta notificación. La cantidad que finalmente se reciba podría ser más o menos que el importe indicado dependiendo del número de semanas en que trabajó cada Miembro Participante del Grupo (es decir, los que no se excluyeron del Acuerdo), la resolución de cualquier disputa relacionada con las semanas trabajadas y las distribuciones que apruebe y decrete finalmente el Tribunal. No obstante, tanto si hay Miembros del Grupo que se excluyen como si no, el importe que recibirán los Empleados Agraviados por las reclamaciones PAGA no se verá afectado.

B. Importes Individuales del Acuerdo y Asignación entre Miembros del Grupo y Empleados Agraviados

A través del Administrador del Acuerdo y tal como se describe a continuación, los Acusados pagarán los Importes Individuales del Acuerdo a cada Miembro del Grupo Participante y a los Empleados Agraviados. Todos los Importes Individuales del Acuerdo estarán sujetos a los impuestos correspondientes. Basándose en las alegaciones de la Demanda, las partes han acordado que, de la cantidad que se pagará a los Miembros del Grupo elegibles del Importe Neto del Acuerdo, se asignarán y pagarán 2/3 por intereses en litigio, sanciones legales y otros daños no salariales -para los que se emitirán los Formularios 1099-MISC y 1099-INT del IRS- y 1/3 por salarios en litigio, para los que se emitirán los Formularios W-2 del IRS. El pago PAGA a los Empleados Agraviados se abonará en un 100% en concepto de sanciones civiles.

El pago a Miembros Participantes del Grupo y Empleados Agraviados no requerirá el envío de un formulario de reclamación. La parte correspondiente a cada Miembro Participante del Grupo se determinará dividiendo su número total de semanas trabajadas dentro del Período de Clase por el número total de semanas trabajadas por todos los Miembros Participantes del Grupo durante el Período de Clase. Esa fracción se multiplicará por el Importe Neto del Acuerdo, obteniendo así la parte individual del Importe Neto del Acuerdo para cada Miembro del Grupo. La parte de cada Empleado Agraviado procedente del 25% del Pago PAGA se determinará dividiendo el total de sus semanas trabajadas dentro del Período de Reclamación PAGA por el total de semanas trabajadas por todos los Empleados Agraviados dentro del Período de Reclamación PAGA. A continuación, esa fracción se multiplicará por el 25% del pago PAGA para

obtener la parte individual de cada Empleado Agraviado. El Período de Reclamación PAGA comprende entre el 13 de junio de 2022 y el 11 de abril de 2024. Los registros de los Acusados indican que usted trabajó durante ___ dentro del Período de Reclamación PAGA aplicable, por lo que se estima que su parte correspondiente del pago PAGA será de \$____. Esta suma no se añade, sino que se incluye en su Importe Individual del Acuerdo, el cual aparece en la primera página de esta notificación. Usted recibirá su parte del Pago PAGA incluso aunque decida excluirse como Miembro del Grupo. Recibir los Importes Individuales del Acuerdo no implica que ningún Miembro del Grupo o Empleado Agraviado tendrán derecho a percibir compensaciones o beneficios adicionales en virtud de ningún plan o acuerdo de compensación, jubilación o beneficios vigente durante el periodo cubierto por el Acuerdo.

C. Cálculos basados en los registros de los Acusados y en la resolución de las Disputas sobre las Semanas

Trabajadas

El Administrador del Acuerdo calculará el importe pagadero para cada Miembro del Grupo a partir de los registros de los Acusados. Se presupondrá que los registros de los Acusados son correctos a menos que el Administrador del Acuerdo proporcione pruebas de lo contrario. El Administrador del Acuerdo revisará los registros de los Acusados y todas las pruebas adicionales si se produce alguna disputa respecto al número de semanas que trabajó un Miembro del Grupo. Si un Miembro del Grupo disputa la veracidad de los registros de los Acusados, el Miembro del Grupo deberá enviar documentación que demuestre que trabajó durante más semanas. La disputa debe (a) identificar la naturaleza de esta; (b) proporcionar cualquier información o documentación que la apoye; (c) estar firmada; y (d) matasellarse el 3 de enero de 2025 como fecha límite. El Administrador del Acuerdo resolverá la disputa basándose en los registros y las pruebas aportadas.

D. Exención de Reclamaciones

Para los Miembros del Grupo que no se excluyeron y los Empleados Agraviados, el Acuerdo contiene las siguientes exenciones:

En cuanto a los Miembros del Grupo que no opten por excluirse, se considerará que renuncian a todas y cada una de las reclamaciones que se alegan en la Demanda, así como a cualquier reclamación adicional relacionada con salarios y horas que pudiera haberse presentado basándose en los hechos alegados en la Demanda durante el Periodo de Clase. Esto excluye la liberación de reclamaciones no permitidas por la ley. Las Reclamaciones Liberadas del Grupo excluyen las reclamaciones por indemnización laboral o prestaciones del seguro de desempleo. Esta exención cubrirá a todos los Miembros de la Clase que no decidan no participar.

En cuanto a los Empleados Agraviados, se considerará que renuncian a todas y cada una de las reclamaciones presentadas en virtud de la Ley de Abogados Generales Privados, Código Laboral 2698 y siguientes, incluidas en la notificación del Demandante y en las cartas de notificación enmendadas a la LWDA, así como a cualquier reclamación PAGA adicional relacionada con salarios y horas que pudiera haberse presentado basándose en los hechos detallados en la notificación del Demandante y en la carta de notificación enmendada a la LWDA durante el Período de Reclamación PAGA. Los Empleados Agraviados no pueden excluirse de esta exención de reclamaciones.

Los individuos liberados (“Partes Liberadas”) incluyen a los Acusados, así como a pasados, presentes o futuros predecesores, sucesores, entidades afiliadas, representantes, accionistas, directores, agentes, empleados, abogados y aseguradores de los Acusados.

Los Miembros del Grupo y/o los Empleados Agraviados pueden conversar con uno de los abogados contratados como Representante Legal del Grupo (indicado a continuación) de forma gratuita, o bien hablar con su propio abogado si tienen preguntas acerca de las reclamaciones liberadas y su significado.

III. CUÁLES SON SUS DERECHOS COMO MIEMBRO DEL GRUPO

A. Participar en el Acuerdo como Miembro del Grupo

Si desea ser un Miembro Participante del Grupo y cree que la información relativa a sus semanas trabajadas es correcta, **no ha de realizar ningún trámite más**. Los pagos se le harán automáticamente de acuerdo con los términos del Acuerdo y de la Orden Judicial. Si quiere impugnar el cálculo de las semanas trabajadas, puede seguir los procedimientos detallados en la Sección II.C que se muestra arriba. La ley de California protege a los Miembros del Grupo frente a posibles represalias por haber decidido participar en el Acuerdo.

B. Excluirse del Acuerdo como Miembro del Grupo

El Tribunal le excluirá como Miembro del Grupo si así lo solicita usted el 3 de enero de 2025. Si no desea incluirse en el Acuerdo como Miembro del Grupo, puede solicitar que lo excluyan (es decir, “renunciar”) enviando puntualmente una solicitud por escrito al Administrador del Acuerdo. La solicitud de renuncia debe incluir: (a) su nombre completo y su fecha de nacimiento; (b) una declaración

en la que afirme que no desea ser Miembro del Grupo ni participar en el Acuerdo, y/o que desea excluirse de este Acuerdo; (c) el nombre y número del caso (es decir, *Affatato v. Sierra View Country Club*, S-CV-0050664); (d) su firma; y (e) un matasello con el 3 de enero de 2025 como fecha límite. La solicitud de exclusión debe enviarse postalmente por First Class U.S. Mail o un servicio equivalente a:

ILYM Group, Inc.
P.O. Box 2031, Tustin, CA 92781

Si su solicitud de exclusión no está matasellada el día 3 de enero de 2025 o antes, su solicitud de exclusión será rechazada y usted quedará ligado/a la exención y otros términos del Acuerdo. No utilice un medidor de franqueo, ya que es posible que el matasello no aparezca en el sobre que contiene su solicitud de exclusión voluntaria. Todo Miembro del Grupo que presente una solicitud de exclusión completa y puntual dejará de ser Miembro del Grupo y no recibirá su parte del Importe Neto del Acuerdo cuando el Administrador del Acuerdo la reciba. Los Empleados Agravados no pueden excluirse de este Acuerdo y recibirán su parte del Pago PAGA independientemente de si optan por ser Miembros del Grupo o no.

C. Objeción al Acuerdo

Si no se excluye del Acuerdo, puede objetar los términos del Acuerdo. Sin embargo, si el Tribunal rechaza su objeción, seguirá vinculado/a a los términos del Acuerdo. Puede solicitar al Tribunal que rechace la aprobación enviando una objeción. **No puede** solicitar al Tribunal que orden un Acuerdo mayor; el Tribunal solo puede aprobar o denegar el acuerdo. Si el Tribunal rechaza la aprobación, no se enviarán pagos por el acuerdo y el pleito continuará. Puede enviar una objeción por escrito, en cuyo caso deberá incluir (a) su nombre completo y fecha de nacimiento; (b) pruebas que demuestren que usted es un Miembro del Grupo; (c) una explicación de las razones por las que objeta, incluyendo documentación de respaldo; (d) el nombre y el número del caso (es decir, *Affatato v. Sierra View Country Club*, S-CV-0050664); (e) su firma; y (f) un matasello con el 3 de enero de 2025 como fecha límite. Las objeciones por escrito deben enviarse al Administrador del Acuerdo, cuya dirección figura en la Sección III.B.

Además, o como alternativa al envío de una objeción por escrito al Administrador del Acuerdo, puede comparecer en la audiencia de aprobación definitiva para exponer su objeción. Cualquier Miembro del grupo que no solicite la exclusión puede, si así lo desea, comparecer a través de un abogado. Si comparece a través de su propio abogado, usted será responsable de pagarle.

IV. EFFECTO DEL ACUERDO: DERECHOS Y RECLAMACIONES LIBERADAS

Si el Tribunal concede la aprobación final del Acuerdo, el Tribunal dictará una sentencia coherente con la misma. Se presentará ante el Tribunal una notificación de anotación de sentencia, la cual podrá consultarse electrónicamente en <https://webportal.placerco.org/eCourtPublic/>. La sentencia, ya sea favorable o no, vinculará a todos los Miembros del Grupo que no hayan solicitado su exclusión. Tras la aprobación definitiva, todos y cada uno de los Miembros del Grupo que se hayan excluido del Acuerdo y los Empleados Agravados, liberarán a los Acusados y a las Partes Exoneradas de todas las Reclamaciones del Grupo Exoneradas y de las Reclamaciones PAGA Exoneradas descritas anteriormente. En otras palabras: si como Miembro del Grupo trabajó usted para los Acusados en California durante el Período de Clase y decide no excluirse del Acuerdo, se considerará que ha aceptado estas exenciones y que libera por tanto las reclamaciones descritas anteriormente. Además, se le prohibirá demandar a los Acusados y a las Partes Exoneradas con respecto a las reclamaciones que cubre este Acuerdo. Si el Acuerdo no recibe la aprobación del Tribunal o no se convierte en definitivo por alguna otra razón, el pleito continuará.

V. AUDIENCIA DE APROBACIÓN FINAL DEL ACUERDO

El Tribunal celebrará una audiencia en el Departamento 3, Historic Courthouse, 101 Maple Street, Auburn, CA 95603 el 30 de enero de 2025, a las 8:30 a.m. para determinar si el Acuerdo debe aprobarse finalmente por ser justo, razonable y adecuado. Al Tribunal también se le pedirá que apruebe la solicitud del Representante Legal del Grupo para cubrir los costes y honorarios de los abogados, los costes del Administrador del Acuerdo y el Pago de Mejora para el Representante Legal del Grupo. La audiencia podrá prorrogarse sin previo aviso. No está usted obligado a comparecer en esta audiencia.

VI. INFORMACIÓN ADICIONAL

Puede consultar la Demanda, la petición de aprobación preliminar del Representante Legal del Grupo, el Acuerdo y cualquier otro documento exigido por el Tribunal en <https://webportal.placerco.org/eCourtPublic/>. También puede ponerse en contacto con el Representante Legal del Grupo o el Representante Legal de los Acusados por las siguientes vías:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Teléfono: (916) 525-0716
Fax: (916) 760-3733

En nombre del Demandante

Dominique N. Thomas
Lewis Brisbois Bisgaard & Smith LLP
2185 North California Boulevard, Suite 300
Walnut Creek, CA 94596
Teléfono : 925-357-3456
Fax: 925-478-3260

En nombre de los Acusados

POR FAVOR, NO LLAME POR TELÉFONO AL TRIBUNAL NI AL DESPACHO DEL SECRETARIO DEL TRIBUNAL PARA FORMULAR PREGUNTAS ACERCA DE ESTE ACUERDO O EL PROCESO DE RECLAMACIÓN. PARA CUALQUIER PREGUNTA, LLAME AL (888) 250-6810

POR ORDEN DEL TRIBUNAL

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ANTHONY AFFATATO
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF PLACER

ANTHONY AFFATATO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA VIEW COUNTRY CLUB, a
California Corporation; SIERRA VIEW
LAND COMPANY, a California Corporation;
and DOES 1 to 100, inclusive,

Defendant.

Case No. S-CV-0050664

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: January 30, 2025

Time: 8:30 a.m.

Dept.: 3

Judge: Hon. Michael Jones

Filed: June 13, 2023

FAC Filed: September 7, 2023

SAC Filed: June 17, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on January 30, 2025, at 8:30 a.m., in Department 3 before the
4 Honorable Michael Jones, presiding. Plaintiff Anthony Affatato (“Plaintiff”) filed this putative class
5 action on June 13, 2023. The operative Complaint alleges that Defendant Sierra View Land Company
6 dba Sierra View Country Club (“Defendant”) violated California law by 1) failing to pay overtime
7 wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu
8 thereof, 4) failing to provide rest periods or pay premiums in lieu thereof, 5) failing to provide accurate
9 wage statements , 6) failing to pay final wages, , 7) failing to reimburse expenses, and 8) engaging in
10 unfair competition. Plaintiff has also alleged Defendant is liable for civil penalties under the Private
11 Attorney’s General Act (“PAGA”) based on these violations. Plaintiff sought attorney’s fees and costs
12 as part of this Action. Defendant denies all of Plaintiff’s claims and denies that this case was
13 appropriate for class treatment other than for purposes of settlement. No class has been certified. The
14 class settlement was preliminarily approved by this Court on October 17, 2024.

15 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
16 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
17 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
18 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
19 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Final Approval of
20 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
21 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
22 FOLLOWS:

23 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
24 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is
26 appropriate under the California Code of Civil Procedure and related case law:

27 All individuals who have worked, or continue to work, for Defendant in
28 California as a non-exempt employee at any time between June 13, 2019,
and April 11, 2024.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement. A “Class Member” shall not include any of the individuals who timely opted out of the
4 Settlement as identified in paragraph 11 of the declaration of Nick Castro. These individuals shall not
5 be bound by the Agreement or any of the releases or obligations therein except for the releases and
6 covenants regarding to the PAGA claims as set forth in section 1.31 and 6.2 as they are still Aggrieved
7 Employees under the Agreement and there is no ability to opt out of a PAGA settlement.

8 For settlement purposes only, the Court finds that Class Members meet the ascertainability and
9 numerosity requirements since the parties can identify with a matter of certainty, based on payroll
10 records, individuals who fall within the definition and the number of Class Members would make
11 joinder impractical. The commonality and predominance requirements are met for settlement purposes
12 since there are questions of law and fact common to Class Members. The common questions of law or
13 fact in this case all stem from Plaintiff’s contentions that Defendant caused the violations outlined above
14 by 1) failing to pay Plaintiff and similarly situated employees all minimum wages and overtime wages
15 due to managers failing to pay Plaintiff and similarly situated employees for working off-the-clock, 2)
16 failing to incorporate the value of the mandatory service charges into the regular rate of pay in
17 calculating Plaintiff’s and similarly situated employees’ premium wages, including meal and rest period
18 premiums, overtime, sick leave, 3) failing to authorize and permit Plaintiff and similarly situated
19 employees to take all meal and rest periods owed to them, 4) changing Plaintiff’s and similarly situated
20 employees’ timecards to show that Plaintiff and similarly situated employees took compliant meal and
21 rest periods when, in fact, they had not, 5) failing to pay all hours worked because of rounding
22 Plaintiff’s and similarly situated employees’ hours worked, including but not limited to, meal period
23 clock-ins and clock-outs, and 6) failing to reimburse Plaintiff and similarly situated employees for using
24 their cell phones, for work purposes. The PAGA, waiting time penalty, wage statement violation, and
25 unfair competition claims also derive from these violations. Additionally, Class Members seek the
26 same remedies under state law. The typicality requirement for settlement purposes is also satisfied since
27 the claims of the Class Representative is based on the same facts and legal theories as those applicable to
28 the class members.

1 The Court also finds that certifying the settlement class is required to avoid each Class Member
2 from litigating similar claims individually. This Settlement will achieve economies of scale for Class
3 Members with relatively small individual claims and conserve the resources of the judicial system.

4 The Court finds that Plaintiff Anthony Affatato and Plaintiff's counsel, Galen T. Shimoda
5 Justin P. Rodriguez, Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate representatives of
6 the settlement class. The Court appoints them as Class Representative and Class Counsel, respectively.

7 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

8 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
9 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Settlement falls
10 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
11 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length
12 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
13 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
14 were able to object to the Agreement and its terms through the administrative process and at a fairness
15 hearing or opt-out of being bound by the preliminarily approved Agreement.

16 No objections were made by Class Members and less than two percent (2%) of Class Members
17 opted out of the settlement. Because the Court finds the Parties' settlement to have been agreed upon
18 only after an extensive investigation and arms-length negotiations, and in an attempt to avoid further
19 delays and costs, the Court gives final approval to the Agreement and all terms therein as if stated here
20 in full, including the \$380,000 Gross Settlement Amount.

21 Class Counsel sought an award of attorneys' fees of \$133,000, attorney's costs of \$10,837.44, an
22 Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement
23 Administrator Costs in the amount of \$7,950. Defendants do not oppose these requests. The Notice of
24 Settlement sent to Class Members included information regarding these amounts and that they would be
25 requested in connection with final approval of the Agreement. Class Members have been given the
26 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.

27 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
28 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that

1 Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced
2 as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee
3 request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half*
4 *Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271
5 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a
6 common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee
7 from the fund as a whole.”). The Court finds the attorneys’ fees request of Thirty Five Percent (35%) of
8 the Gross Settlement Amount, *i.e.* \$133,500, to be appropriate compensation for Plaintiff’s Counsel.
9 The attorneys’ fees request is within the range of percentages that have been approved by other Courts
10 in similar cases and is reasonable in light of the circumstances of this case, the substantial and beneficial
11 results obtained on behalf of Class Members, Aggrieved Employees and the LWDA, and the contingent
12 nature of the recovery over the course of this case, which included potential loss at summary judgment
13 and/or trial proceedings. Additionally, the Court orders that \$10,837.44 of the Gross Settlement Amount
14 will be paid to Plaintiff’s Counsel for reasonable costs incurred in this case.

15 The Court orders and approves ILYM Group, Inc., to act as the Settlement Administrator in this
16 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are
17 \$7,950. Any difference between the actual Settlement Administrator Costs and the maximum amount
18 allocated under the Agreement will be added to the Net Settlement Amount for distribution between the
19 Participating Class Members pro rata as set forth in the Agreement.

20 The Court orders that Plaintiff will receive an Enhancement Payment of \$10,000 from the Gross
21 Settlement Amount for his work on behalf of the Class Members, Aggrieved Employees and the LWDA
22 and in exchange for his general release of all his individual claims in addition to any amount Plaintiff
23 may be entitled to under the Agreement’s pro rata distribution formula.

24 The Court approves of the Twenty Thousand Dollar (\$20,000) PAGA Payment, which shall be
25 paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
26 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
27 Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved
28 Employees on a pro rata basis as described in the Agreement. The Court also finds that based on the

1 facts of this case and the disputed issues, the Agreement provides a recovery that creates an effective,
2 substantial deterrent to any potential future non-compliance, furthering the purpose of the Labor Code
3 and LWDA.

4 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
5 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
6 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
7 Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
8 Gross Settlement Amount will revert to Defendant for any reason.

9 The releases and waivers for Class Members who do not opt out of being bound by the
10 Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are
11 also approved by the Court as set forth in the Agreement.

12 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,** 13 **INCLUDING THE NOTICE OF SETTLEMENT**

14 The Court finds that the Notice of Settlement, filed with the Motion as Exhibit A to the
15 Declaration of Nick Castro, fairly and adequately advised Class Members of the terms of the
16 Agreement, the rights being waived, their right to opt out, the ability to dispute the number of
17 workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to
18 participate in the settlement, how to file documentation in opposition to the proposed settlement, and
19 when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and
20 proposed distribution of such notice by first class mail to each identified Class Member at his or her
21 most recent address based on a National Change of Address database search from the Class Members'
22 last known address and a skip trace on any Class Members who have the Notice of Settlement returned
23 as "undeliverable" or "not at this address" comported with all constitutional requirements, including
24 those of due process.

25 **IV. IMPLEMENTATION SCHEDULE**

26 Accordingly, with good cause shown, the Court hereby approves and orders that the following
27 implementation schedule be adhered to:
28

1 2 3 4 5	Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
6 7	Last day for Defendant to fund settlement	Within 30 calendar days after the Effective Date
8 9 10 11	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
12 13 14	Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
15 16 17	Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
18 19	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

20
21 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
22 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
23 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
24 Agreement pursuant to California Civil Procedure Code section 664.6.

25 **IT IS SO ORDERED.**

26
27 Date: _____

By: _____

Judge of the Superior Court