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individually and on behalf of similarly situated employees

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

RICHARD GOMEZ, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

B&M BUILDERS, INC., an unknown
business entity; JONATHAN BROWN, an
individual; PATRICK MULLEN, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV005888

*Assigned for All Purposes to Hon. Jill H. Talley
Department 23*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT SETTLEMENT**

Reservation No. A-05888-001

Date: May 16, 2025

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: March 27, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on May 16, 2025, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 23 of the above-entitled Court, Plaintiff Richard Gomez (“Plaintiff”) will
4 move for entry of an Order for the following:

- 5 1. Finding that Plaintiff exhausted administrative remedies under the Private Attorneys General
6 Act (“PAGA”) and, as such, became authorized to enter into this settlement on behalf of the
7 Labor and Workforce Development Agency;
- 8 2. Approving the \$415,000 PAGA Settlement, which is incorporated by reference as if stated
9 here in full;
- 10 3. Approving the application for payment to Plaintiff’s Counsel of reasonable attorneys’ fees in
11 the amount of 35% of the Gross Settlement Amount;
- 12 4. Approving the application for payment to Plaintiff’s Counsel of reasonable costs in the
13 amount of \$6,364.56;
- 14 5. Approving the appointment of ILYM Group, Inc., as the Settlement Administrator and for
15 payment to ILYM Group, Inc., for administering said settlement in the amount of \$4,950.00;
- 16 6. Approving an Enhancement Payment of \$10,000 to Plaintiff from the Gross Settlement
17 Amount for his work on behalf of the Aggrieved Employees and the LWDA and in exchange
18 for his general release of all his individual claims in addition to any amount Plaintiff may be
19 entitled to under the Agreement’s pro rata distribution formula;
- 20 7. Approving as to form and content the proposed Notice of Settlement, which provides
21 Aggrieved Employees information regarding the nature and scope of the Settlement;
- 22 8. Approving the proposed procedures to notify, and deliver payment to, Aggrieved Employees;
- 23 9. Directing Defendants to report employment information, as set forth in the Agreement, to the
24 Settlement Administrator to administer the settlement proceeds;
- 25 10. Directing that any funds from settlement checks that were not cashed by the check cashing
26 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
27 Rights under the doctrine of *cy pres*; and
28

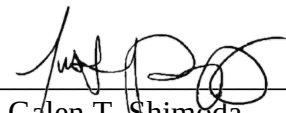
11. Approving and adopting the Proposed Order and its implementation schedule, which is filed herewith and incorporated by reference.

This Motion is being made pursuant to California Labor Code section 2699(l)(2)¹ on the grounds that the proposed PAGA settlement is fair, reasonable, and adequate and furthers the purpose behind the asserted California Labor Code statutes in deterring non-compliance. As a result, the PAGA settlement should be approved by the Court. This Motion will be based on the notice of motion, memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Richard Gomez, exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the hearing of this Motion.

Pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: April 24, 2025

Shimoda & Rodriguez Law, PC

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

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 in this case predates this, all further 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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8
9

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 RICHARD GOMEZ, individually and on
13 behalf of all other similarly situated
14 employees,

15 Plaintiff,

16 vs.

17 B&M BUILDERS, INC., an unknown
business entity; JONATHAN BROWN, an
18 individual; PATRICK MULLEN, an
19 individual; and DOES 1 to 100, inclusive,
20 Defendants.

Case No. 24CV005888

*Assigned for All Purposes to Hon. Jill H. Talley
Department 23*

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT SETTLEMENT**

Reservation No. A-05888-001

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Richard Gomez (“Plaintiff”) seeks approval of a non-reversionary Private Attorneys
3 General Act (“PAGA”) Settlement in the gross amount of \$415,000. *See generally* Exhibit A (Proposed
4 PAGA Settlement [“Agreement”]). Plaintiff brought this lawsuit asserting his individual claims as well
5 as a PAGA claim on behalf of the Labor and Workforce Development Agency (“LWDA”) and
6 Aggrieved Employees who worked for Defendants B&M Builders, Inc., Jonathan Brown, and Patrick
7 Mullen, (“Defendants”) (Plaintiff and Defendants sometimes collectively referred to as the “Parties”).
8 *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately 249 Aggrieved
9 Employees.

10 Plaintiff has alleged that Defendants 1) failed to pay overtime wages, 2) failed to pay minimum
11 wages, 3) failed to provide meal periods or pay premiums in lieu thereof, 4) failed to provide rest
12 periods or pay premiums in lieu thereof, 5) failed to provide accurate wage statements, 6) failed to pay
13 final wages, 7) failed to pay reimbursements for expenses, 8) violated Labor Code sections 558 and
14 558.1 regarding provisions regulating hours and days of work in any Industrial Welfare Commission
15 Order, 9) failed to maintain accurate records, and 10) failed to provide sick leave. *See generally* Exhibit
16 B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 2, 9-10. Defendants have denied
17 all of Plaintiff’s allegations and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5.
18 However, subject to Court approval, the Parties have been able to compromise and settle all asserted
19 claims as a result of extensive investigations, document and data exchanges, and extended negotiations.
20 *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and
21 adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed
22 knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 6-12; Declaration of Richard Gomez
23 (“Decl. Gomez”), ¶ 7. The Agreement was entered into in good faith by the Parties to resolve heavily
24 contested claims and guarantees a reasonable recovery for Aggrieved Employees and the LWDA.

25 Accordingly, Plaintiff is requesting that the Court: (1) make a finding that Plaintiff has exhausted
26 all administrative remedies and that Plaintiff is authorized to enter into the proposed Agreement on
27 behalf of the LWDA; (2) approve the proposed Agreement as fair, reasonable, and adequate; (3) set
28 dates for, and direct distribution of, payment and the Notice of Settlement (Exhibit E) to Aggrieved

Employees as set forth in the Agreement and (4) adopt the implementation schedule contained in the proposed order.

II. PROCEDURAL AND LITIGATION HISTORY

On January 10, 2024, Plaintiff gave written notice to the LWDA and Defendants, providing facts and the legal basis for all claims asserted in the Complaint and being resolved under the Agreement. *See* Exhibit C (Plaintiff's Ltr. to the LWDA). Plaintiff also submitted the \$75.00 filing fee. *See* Decl. Rodriguez ¶ 3. The January 10, 2024, notice was also sent via certified mail to Defendants on the same day. *See* Exhibit C. The LWDA did not provide any response to Plaintiff's notice correspondence within the statutorily required time frame and, as a result, Plaintiff became authorized to act as a Private Attorney General for the asserted claims. *See* Decl. Rodriguez, ¶ 3; Cal. Lab. Code § 2699.3(a), (c)¹. Plaintiff filed this lawsuit on March 27, 2024, and uploaded a copy of the filed Complaint to the LWDA after receiving a filed copy back from Court. *See* Decl. Rodriguez ¶ 3. No trial date has been set in this matter. *See id.*

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated the merits of the claims and potential damages for such claims. *See id.* at ¶¶ 6-12; Decl. Gomez, ¶¶ 5-8. Plaintiff worked during the time all of Defendants' 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. *See* Decl. Gomez, ¶ 2. The Parties engaged in 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 merits issues, damages, the scope and configuration of Aggrieved Employees, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶¶ 6-7. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.* at ¶¶ 7, 9-12.

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 in this case predates this, all further references to the PAGA will be based on the statutory numbering applicable prior to the July 1, 2024, amendment.

1 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

2 **a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations**

3 The final settlement occurred only after extended, arm's length negotiations. Over the course of
4 approximately eighteen (18) months, Plaintiff has been investigating the claims and discussing with
5 Defendants' counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 3, 6-10. The
6 Parties exchanged substantial amounts of information and legal analysis in connection with these
7 discussions. *See id.* at ¶ 7. It was only after these extended discussions, which included a full day
8 mediation with Russ J. Wunderli, Esq., that the Parties were able resolve all claims and enter into the
9 Agreement. *See id.* at ¶ 8.

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

11 1. The scope of Aggrieved Employees covered under the Agreement includes all non-
12 exempt employees who worked or continue to work for Defendants in California at any time between
13 January 10, 2023, up to either (1) April 8, 2025, or (2) the Final Approval Date, whichever is earlier.
14 *See Exhibit A, ¶ 1.2.* There are approximately 249 Aggrieved Employees. *See id.*

15 2. Defendants will pay the Gross Settlement Amount of \$415,000. *See id.* at ¶ 5.1. No
16 portion of the Gross Settlement Amount will revert to Defendants. *See id.* at ¶ 5.4.

17 3. Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the
18 Settlement Administrator, who has provided a maximum cost estimate of \$4,950.00. *See Exhibit D*
19 *(ILYM Group, Inc. Bid); Exhibit A, ¶¶ 1.27-1.28; Decl. Rodriguez, ¶ 24.*

20 4. The Parties agree that up to Thirty Five Percent (35%) of the Gross Settlement Amount
21 (\$145,250) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendants
22 will not oppose any application for attorneys' fees so long as it is within this threshold. *See Exhibit A, ¶*
23 *5.2.* Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as
24 approved by the Court in an amount not to exceed \$12,500. *See id.* At the time this Motion was filed,
25 the estimated total costs incurred and that will be incurred in the future as a result of the litigation and
26 implementing the terms of the Agreement are \$6,364.56. *See Decl. Rodriguez ¶ 23; Exhibit G*
27 *(Plaintiff's Itemized Costs).*

1 5. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will be
2 in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶ 5.3.

3 6. Any allocated amounts under the Agreement for attorney's fees and costs, any
4 Enhancement Payment, and Settlement Administrator Costs that are not ultimately awarded by the Court
5 will remain part of the Net Settlement Amount and be paid out to the LWDA and Aggrieved Employees
6 as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.14, 1.17, 5.8. These amounts will be paid from the
7 Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See id.* at ¶¶ 5.1-5.4.

8 7. Any and all claims for civil penalties under the PAGA that were asserted in Plaintiff's
9 notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have
10 been brought based on the facts alleged therein will be deemed fully, finally, and forever released
11 against the Released Parties. *See* Exhibit A, ¶¶ 1.17, 1.25-1.26, 6.1.

12 8. The Settlement Administrator will perform searches to locate Aggrieved Employees
13 based on the last contact information in Defendants' possession. *See id.* at ¶¶ 7.2, 7.5-7.7. The searches
14 will include reference to the U.S. Postal Service's National Change of Address Database and, for any
15 notice returned as undeliverable, skip tracing using the individual's social security number and other
16 pertinent identifying information. *See id.* Although not required to provide a notice of settlement to
17 Aggrieved Employees in connection with the Individual Settlement Amount, the Agreement provides
18 that Aggrieved Employees will receive a notice giving them information concerning all material terms
19 of the settlement. *See id.* at ¶ 7.5; Exhibit E; *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
20 1340777, *5 (N.D. Cal. 2010) ("Unnamed employees need not be given notice of the PAGA claim, nor
21 do they have the ability to opt-out of the representative PAGA claim"); *see also* *Arias v. Superior Ct.*, 46
22 Cal.4th 969, 984-988 (2009) (rejecting a defendant's due process argument that aggrieved employees
23 must be given notice similar to class members in class actions).

24 9. For any portion of the Net Settlement Amount allocated to Aggrieved Employees that is
25 not claimed by them by cashing their respective settlement checks within 180 days of issuance, the
26 remaining amount shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
27 Workers' Rights under the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.5. Because the Agreement
28 provides for the distribution of all funds such that there is no residue, the provisions of California Civil

1 Procedure Code section 384 are inapplicable. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718,
2 720 (2006). The designated beneficiaries clearly promote the law consistent with the objectives and
3 purposes underlying the lawsuit, as they are non-profits aimed at assisting employees with wage and
4 hour claims who cannot afford legal representation, including providing representation for employees in
5 wage claims before the California Labor Commissioner. *See In re Microsoft I-V Cases*, 135
6 Cal.App.4th 706, 718, 720, 722-724 (2006).

7 **c. Allocation of Settlement Funds**

8 A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount
9 any attorneys' fees and costs, any Enhancement Payment, and/or Settlement Administrator Costs
10 awarded by the Court. *See Exhibit A, ¶¶ 1.14, 5.8.* The Net Settlement Amount shall be divided
11 between the PAGA Payment and payment to Aggrieved Employees. The PAGA Payment to the LWDA
12 will be 75% of the Net Settlement Amount. *See Cal. Lab. Code § 2699(i).* 25% of the Net Settlement
13 Amount will be paid to Aggrieved Employees *See id.* Each Individual Settlement Amount shall be
14 determined by taking the Qualifying Pay Periods for the individual Aggrieved Employee and dividing
15 that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction by the
16 25% share of the Net Settlement Amount. *See Exhibit A, ¶¶ 1.24, 5.8.* The payment to Aggrieved
17 Employee's will be characterized as 1099 income for tax reporting purposes. *See id.* at ¶ 5.7.1.

18 **V. THE AGREEMENT SHOULD BE APPROVED AS PLAINTIFF MET ALL**
19 **STATUTORY REQUIREMENTS FOR PROCEEDING WITH THE PAGA CLAIM AND**
20 **THE AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE**

21 A PAGA settlement is not effective unless the statutory requirements for becoming an authorized
22 representative of the LWDA have been complied with and the Court has reviewed and approved the
23 terms of the PAGA settlement. *See Cal. Lab. Code §§ 2699(l)(2), 2699.3(a), (c).* The Court has broad
24 discretion in making the decision to approve or reject a settlement for civil penalties as the statutory
25 scheme authorizes the Court to determine whether, in certain circumstances, penalties should be
26 assessed and, if assessed, the appropriate amount of penalties based on the facts and circumstances of
27 the case. *See id.* at § 2699(e)(1)-(2). In evaluating a PAGA settlement, the Court must determine
28 "whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law
violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA*,

1 *Inc.*, 72 Cal.App.5th 56, 77 (2021). In setting this standard, the *Moniz* Court invoked the same
2 established framework Courts use to evaluate whether class action settlements are fair, reasonable, and
3 adequate. *See id.*; *see also Chamberlain v. Baker Hughes, a GE Co., LLC*, 2020 WL 4350207, *4 n.5
4 (E.D. Cal. 2020) (expressly incorporating the multi-factor test used in class cases); *O'Connor v. Uber*
5 *Technologies, Inc.*, 201 F.Supp.3d 1110, 1132-1134 (N.D. Cal. 2016) (evaluating the settlement by
6 comparing the amount paid in relation to the likely available damages and risks of litigation); *Jordan v.*
7 *NCI Group, Inc.*, 2018 WL 1409590, *2 (C.D. Cal. 2018) (same). This framework has been used many
8 times over by multiple Courts. *See, e.g., Kabasele v. Salon*, 2023 WL 4747691, *2 (E.D. Cal. 2023);
9 *Ramirez v. Benito Valley Farms, LLC*, 2017 WL 3670794, *3 (N.D. Cal. 2017); *Gutilla v. Aerotek, Inc.*,
10 2017 WL 2729864, *3, n.4 (E.D. Cal. 2017); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 WL
11 828104, *2 (S.D. Cal. 2018); *Patel v. Nike Retail Services, Inc.*, 2019 WL 2029061, *2 (N.D. Cal.
12 2019). An important difference in the analysis, however, is that the evaluation should focus on the
13 amount of the settlement as a whole rather than any individual aggrieved employee's share because a
14 PAGA lawsuit is fundamentally a law enforcement action where the "relief is designed to protect the
15 public[,] not to benefit private parties." *See Moniz*, 72 Cal.App.5th at 74 (internal quotation and
16 citations omitted).

17 **a. Plaintiff Has Met All Statutory Requirements For Proceeding With A PAGA Claim**

18 An aggrieved employee must give written notice of the facts, theories, and statutes supporting
19 the violations to the LWDA by online filing and by certified mail to the employer as well as pay a filing
20 fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B), (c)(1)(A)-(B). An "aggrieved employee"
21 means any person who was employed by the alleged violator and against whom one or more of the
22 alleged violations was committed." *Id.* at § 2699(c). If the LWDA does not provide notice of its intent
23 to investigate within 65 calendar days of the notice, the aggrieved employee may commence a civil
24 action. *See id.* at §§ 2699.3(a)(2)(A), 2699.5. For alleged violations of the Labor Code sections not
25 enumerated in section 2699.5, an aggrieved employee may commence a civil action if the employer has
26 not cured the alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A). An
27 aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the
28 same time the agreement is submitted to Court. *See id.* at § 2699(l)(2).

As set forth above, Plaintiff complied with all statutory requirements to commence a civil action. See Decl. Rodriguez ¶ 3; Exhibit C. The notice letter to the LWDA sets forth all claims and theories of liability stated in the Complaint as well as supporting facts. See Exhibit C. Plaintiff also paid the \$75.00 filing fee. See Decl. Rodriguez ¶ 3. As the LWDA did not provide any notice of its intent to investigate within the required time frame and no cure under the statute took place, Plaintiff is authorized resolve those claims contained in the notice letter(s) and the operative Complaint. See *id.*; Exhibit B; Exhibit C. Furthermore, Plaintiff has provided a copy of the Agreement *and* this entire motion for approval to the LWDA for its consideration at the same time this motion was filed. See Rodriguez ¶ 25; Exhibit F (Proof of Submission of Proposed Settlement Agreement to LWDA).

b. The Terms of The Settlement Are Fair, Reasonable, and Adequate

Factors to consider in determining whether the PAGA Settlement Agreement is fair, reasonable, and adequate include the strength of the case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, and the experience and views of counsel. See *Chamberlain*, 2020 WL 4350207, *4 n.5; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation . . .” *Dunk*, 48 Cal.App.4th at 1802. Indeed, the law favors settlement of lawsuits, particularly complex litigation cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. See *Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008).

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

Settlement of the PAGA claims was reached only after substantial investigation, litigation and extensive arm’s length negotiations lasting approximately eighteen (18) months, which included a full

1 day mediation. *See* Decl. Rodriguez, ¶¶ 3, 6-10. At all times, the negotiations were adversarial,
2 although still professional in nature. *See id.*

3 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
4 **Information to Enter into an Informed and Reasonable Settlement**

5 The Parties were in possession of all necessary information during the negotiations. The Parties
6 engaged in substantial informal discovery, which included all necessary components for evaluating the
7 PAGA claims and creating an accurate damages model. *See id.* at ¶¶ 6-12. Plaintiff was in possession
8 of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able
9 to make a reasonable estimation of Defendants’ potential liability. *See id.* For these reasons, the
10 settlement now before the Court was reached at a stage where the parties “have a clear view of the
11 strengths and weaknesses of their cases” sufficient to support the settlement. *See Kang v. Credit Bureau*
12 *Connection, Inc.*, 2023 WL 6811994, *5 (E.D. Cal. 2023); *Monterrubio v. Best Buy Stores, L.P.*, 291
13 F.R.D. 443, 454 (E.D. Cal. 2013).

14 **iii. Plaintiff’s Counsel are Experienced in Similar Litigation**

15 Plaintiff’s Counsel have considerable experience in complex litigation such as class and PAGA
16 actions. *See* Decl. Rodriguez, ¶¶ 14-20. Thus, Plaintiff’s Counsel are qualified to evaluate the PAGA
17 claims, the value of settlement versus moving forward with litigation, and viability of possible
18 affirmative defenses. Plaintiff’s Counsel believe that the Agreement is fair, reasonable, and adequate in
19 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
20 benefit to Aggrieved Employees and the LWDA that the Agreement provides. *See id.* at ¶¶ 6-12

21 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff’s Case**
22 **and the Risks and Costs of Further Litigation**

23 Plaintiff’s claims and the manageability of the litigation proceeding as a PAGA action were
24 heavily disputed by Defendants. *See* Decl. Rodriguez, ¶ 9. Based on the records and facts of this case,
25 Plaintiff has secured a gross recovery of approximately 7.3% of the maximum potential penalties at
26 issue in this matter (\$5,681,811.90), which equates to approximately \$48.92 per pay period. *See id.* at ¶
27 11. The Gross Settlement Amount represents approximately 20.4% to 34.2% of the more realistic range
28 of recovery after accounting for the risks facing the claims in establishing liability and damages. *See id.*

1 After accounting for the range of discretionary reductions the Court could apply to any potential civil
2 penalties, the value of the settlement further increases to approximately 29.1% to 189.97% of the more
3 realistic range of recovery. *See id.* The \$415,000 Gross Settlement Amount is a reasonable
4 compromise and exceeds approved settlement ranges in other PAGA cases whether comparing either
5 absolute numbers or as a percentage of total available damages. *See Nordstrom Com. Cases*, 186
6 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their
7 being disputed and being part of a class settlement which was evaluated based on the terms of the
8 agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022)
9 (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door*
10 *Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at
11 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL
12 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA
13 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
14 *Commc 'ns California, LLC*, 2017 WL 1496407, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000
15 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 WL 12571448, *5 (S.D.
16 Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to
17 \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 WL 4899942, *6 (S.D. Cal. 2011) (approving \$3,000
18 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, *2
19 (S.D. Cal. 2010); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, *1, *9 (N.D. Cal. 2009) (approving
20 \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 WL 714367, *13 (E.D.
21 Cal. 2017) (approving \$100,000 PAGA allocation in \$3,950,000 gross settlement amount allocated to
22 California class even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
23 potential value); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, *6-*7 (E.D. Cal. 2012)
24 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
25 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 PAGA allocation from \$2,500,000 settlement fund);
26 *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (\$10,000 PAGA
27 allocation from \$6,900,000 settlement fund).

1 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

2 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
3 information be presented in representative action settlements “to ensure that the recovery represents a
4 reasonable compromise, given the magnitude and apparent merit of the claims being released,
5 discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing
6 the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th
7 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
8 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
9 also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed
10 on all the claims, provided there is a record that allows “an understanding of the amount that is in
11 controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

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

22 **VI. THE AMOUNTS REQUESTED FOR ATTORNEY’S FEES AND COSTS, AN**
23 **ENHANCEMENT PAYMENT, AND SETTLEMENT ADMINISTRATOR COSTS ARE**
24 **REASONABLE AND SHOULD BE APPROVED**

25 California state and federal courts have recognized that when a litigant’s efforts create or
26 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
27 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
28 444 U.S. 472, 477-481 (1980) (“A lawyer who recovers a common fund for the benefit of persons other
than . . . his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*

1 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
2 (1970); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1
3 Cal.5th 480, 506 (2016); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir.
4 1977). Courts have approved using a percentage of the fund to calculate reasonable attorney fee awards
5 where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48
6 Cal.App.4th at 1808. The Ninth Circuit has also held that the common fund doctrine applies when: (1)
7 the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the
8 fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v.*
9 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a
10 represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum
11 settlement recovered on his behalf.” *Id.* at 271 (citations omitted).

12 Although this litigation is under the PAGA and not a class action, the basis for a common fund
13 applies with equal force. The three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this
14 case because there is a sufficiently identifiable class of beneficiaries (*e.g.* Aggrieved Employees and the
15 LWDA), the benefits can be accurately traced to the Agreement Plaintiff and Plaintiff’s Counsel were
16 able to negotiate on behalf of the LWDA and Aggrieved Employees, and the fee can be shifted with
17 exactitude to those benefiting as the fee request is a specific, lump-sum of the common fund. Awards
18 ranging between 30% and 40% of the fund are generally approved as reasonable in representative
19 litigation settlements below \$10 million. *See, e.g., Martin v. AmeriPride Servs., Inc.*, 2011 WL
20 2313604, *8 (S.D. Cal. 2011) (collecting cases and noting fee awards may range between 30%-40%
21 where the gross settlement amount is less than \$10 million); *Singer v. Becton Dickinson & Co.*, 2010
22 WL 2196104, *8 (S.D. Cal. 2010) (collecting cases wherein the fee awards ranged from 33.33% to 40%
23 of the gross settlement amount, including *Ingalls v. Hallmark Mktg. Corp.*, 08cv4342 VBF (Ex), Doc.
24 No. 77, ¶ 6 (C.D. Cal. Oct. 16, 2009) [awarding 33.33% fee on a \$5.6 million wage and hour class
25 action], *Birch v. Office Depot, Inc.*, Case No. 06cv1690 DMS (WMC), Doc. No. 48, ¶ 13 (S.D. Cal.
26 Sept. 28, 2007) [awarding a 40% fee on a \$16 million wage and hour class action], and *Rippee v. Boston*
27 *Mkt. Corp.*, Case No. 05cv1359 BTM (JMA), Doc. No. 70, at 7–8 (S.D. Cal. Oct. 10, 2006) [awarding a
28

40% fee on a \$3.75 million wage and hour class action]). Plaintiff's request of \$145,250 (35%) falls within these typical fee arrangements. *See* Decl. Rodriguez, ¶¶ 21-23.

A lodestar-multiplier cross check validates the proposed fee. *See Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 496, 504 (2016). Plaintiff's counsel will have spent a combined 283.2 hours litigating this action by the time the settlement is fully implemented and monitoring the settlement through the complete distribution of all funds and reporting at compliance hearing(s) is done. *See* Decl. Rodriguez, ¶ 22. Plaintiff's counsel reasonably spent a substantial amount of time pursuing the ultimate result obtained in this case. *See Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); Exhibit H (Plaintiff's Attorney's Fee Summary Chart); *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are not required under California law ..., there is no required level of detail that counsel must achieve.") (internal quotations omitted). At Plaintiff's counsel's hourly rates, this equates to a combined lodestar of approximately \$172,070. *See* Decl. Rodriguez, ¶ 22. The hourly rates used by Plaintiff's counsel to calculate the lodestar have been judicially approved since 2022. *See* Decl. Rodriguez, ¶ 23. Prior judicial determinations of an attorney's rates are satisfactory evidence that those rates are reasonable, prevailing market rates. *See United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990) ("rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate"); *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 783 (2002) (noting rates were reasonable where they were "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work").

An award of \$145,250 for attorney's fees would result in a negative multiplier, representing only 84.4% of the total lodestar. Although appropriate attorney's fee award should include a multiplier to account for the contingent nature and risk associated with fee, the fact that the attorney's fee award in this case would result in a negative multiplier is further evidence of the reasonableness of the requested fee. *See Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th Cir. 1994).

Plaintiff's Counsel seeks reimbursement of \$6,364.56 for the expenses they have and will continue to incur while prosecuting this litigation through any compliance hearing(s). This is less than

1 the \$12,500 provided for in the Agreement. An itemization for these costs is being filed with this
2 motion as Exhibit G. All expenses were necessarily incurred to properly litigate this case. *See id.* The
3 appropriate analysis in determining whether particular costs are compensable is whether they are of the
4 type typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16,
5 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees those out-of pocket
6 expenses that ‘would normally be charged to a fee paying client.’”); *Abrams v. Lightolier, Inc.*, 50 F.3d
7 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Bratcher v.*
8 *Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if
9 normally billed to client). The categories of expenses for which Plaintiff’s counsel seek reimbursement
10 here are categories normally charged to hourly clients and, therefore, should be reimbursed out of the
11 common fund. *See Decl. Rodriguez*, ¶ 23.

12 With respect to the requested Enhancement Payment, the amount sought is also within ranges
13 that have been approved in similar cases. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th
14 1380, 1393 (2010) (approving \$10,000 awards to each of the four (4) named plaintiffs); *West v. Circle*
15 *K Stores, Inc.*, 2006 WL 8458679, *2–3, *7-*8 (E.D. Cal. 2006) (awarding \$15,000 to each of the
16 named representatives who spent 100 hours and 80 hours, respectively, prosecuting the case on behalf
17 of class members)²; *Dent v. ITC Serv. Grp., Inc.*, 2013 WL 5437331, *4, *7, *9 (D. Nev. 2013)
18 (awarding a \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530
19 class members). Plaintiff has spent approximately 60-80 hours prosecuting the case for the benefit of
20 Aggrieved Employees and the LWDA. *See Decl. Gomez*, ¶ 8. Plaintiff has been subjected to burdens
21 no other Aggrieved Employee has had to endure as part of this litigation, including waiving all his
22 individual claims beyond the PAGA claims. *See Exhibit A*, ¶¶ 1.19, 6.2; *Decl. Gomez*, ¶ 9. An
23 Enhancement Payment of \$10,000 is appropriate compensation for Plaintiff’s efforts on behalf of
24 Aggrieved Employees and the LWDA in this case.

26 ² In *West*, information necessary to assess enhancement payments relative to average payments received by class members
27 was stated in connection with preliminary approval proceedings. There were 1,752 class members in the vacation subclass
28 and 14,000 class members in the meal period subclass, totaling 15,752 class members in all. Thus, in a \$5,000,000 gross
settlement, the *West* Court approved the \$15,000 enhancements where the average gross award for class members was
\$317.42. *Compare West v. Circle K Stores, Inc.*, 2006 WL 1652598, *3 (E.D. Cal. 2006) with *West v. Circle K Stores, Inc.*,
2006 WL 8458679, *2–3, *7-*8 (E.D. Cal. 2006).

1 The \$4,950.00 in Settlement Administrator Costs is also within ranges approved by Courts and
2 should be approved in this case. *See Patel*, 2019 WL 2029061, *2 (\$5,261 for settlement administrator's
3 fees was not excessive where PAGA group consisted of 40 employees); Exhibit D; Decl. Rodriguez, ¶
4 24.

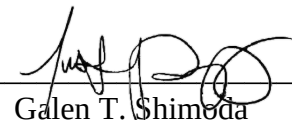
5 **VII. CONCLUSION**

6 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
7 has met all statutory requirements to commence a PAGA civil action; approve the Agreement, including
8 Plaintiff's Counsel's application for reasonable attorneys' fees and costs, an Enhancement Payment, and
9 Settlement Administrator Costs; approve the Notice of Settlement and payment distribution procedures;
10 and adopt the implementation schedule identified in the proposed order, which is being filed
11 concurrently herewith.

12 Dated: April 24, 2025

Shimoda & Rodriguez Law, PC

13
14 By: _____


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Attorneys for Plaintiff RICHARD GOMEZ
individually and on behalf of similarly situated employees

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

RICHARD GOMEZ, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

B&M BUILDERS, INC., an unknown
business entity; JONATHAN BROWN, an
individual; PATRICK MULLEN, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV005888

*Assigned for All Purposes to Hon. Jill H. Talley
Department 23*

**DECLARATION OF JUSTIN P. RODRIGUEZ
IN SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Reservation No. A-05888-001

Date: May 16, 2025

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: March 27, 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 Richard Gomez (“Plaintiff”) herein. I am making this
4 declaration on behalf of Plaintiff, and in support of Plaintiff’s Motion to Approve Private Attorneys
5 General Act Settlement. Pursuant to Rule 2.99.05 of the Local Rules for the Superior Court of
6 California, County of Sacramento, I have reviewed the Court’s class action and PAGA settlement
7 checklist and believe I have prepared the moving papers in compliance with the checklist as well as the
8 California Rules of Court. A true and correct copy of the Private Attorneys General Act Settlement is
9 being filed with this Motion as Exhibit A.

10 2. This case was brought asserting the individual wage and hour claims of Plaintiff and a
11 Private Attorneys General Act (“PAGA”) claim based on the same violations arising from Plaintiff’s
12 contention that Defendants B&M Builders, Inc., Jonathan Brown, and Patrick Mullen (“Defendants”),
13 violated California law by failing to pay overtime wages, failing to pay minimum wages, failing to
14 provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay premiums
15 in lieu thereof, failing to provide accurate wage statements, failing to pay final wages, failing to pay
16 reimbursements for expenses, violating Labor Code sections 558, 558.1 regarding provisions regulating
17 hours and days of work in any Industrial Welfare Commission Order, failing to maintain accurate
18 records, and failing to provide sick leave. These claims primarily stemmed from Plaintiff’s allegations
19 that Defendants 1) required employees to work off-the-clock before their shift, after their shift, and
20 during times they were clocked out for meal periods, 2) failed to accurately records employees’ hours
21 worked or meal periods taken, 3) failed to properly calculate the regular rate of pay for overtime on
22 non-prevailing wage jobs or for sick leave wage premiums, 4) failed to authorize and permit employees
23 to take all meal periods owed due to invalid and/or voided on-duty meal period agreements and due to
24 required travel to additional job sites during meal periods, 5) failed to authorize and permit employees
25 to take all rest periods owed due to a facially invalid rest period policy and due to requiring employees
26 to travel to additional job sites during rest periods, 6) failed to reimburse employees or the use of their
27 personal cell phones for work purposes.

1 3. Plaintiff is the only named representative in this matter. We began investigating the
2 claims November 2023, which included interviewing Plaintiff, reviewing their documents, and seeking
3 out potential witnesses to corroborate the claims. From our initial investigations of Plaintiff's claims
4 and documents, we believed these claims had merit and could be maintained as a PAGA action in
5 addition to asserting Plaintiff's individual claims based on the same wage and hour violations. Plaintiff
6 filed the original complaint on March 27, 2024. Plaintiff exhausted administrative remedies through
7 the Labor and Workforce Development Agency ("LWDA") prior to filing the Complaint in order to
8 pursue penalties under the PAGA. Plaintiff filed a notice with the LWDA on January 10, 2024, setting
9 forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is
10 being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendants via
11 certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response
12 by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65
13 days and Defendants did not utilize the cure procedures under the statute. As such, Plaintiff became
14 authorized to commence a civil action under the PAGA. A copy of the Complaint was uploaded to the
15 LWDA after we received a file stamped copy back from Court. A true and correct copy of Plaintiff's
16 operative Complaint is being filed with this Motion as Exhibit B. Currently, there is no trial date set in
17 this matter.

18 4. Because the settlement is a PAGA only settlement, no certification procedures need to
19 occur in the context of approving the Agreement pursuant to *Arias v. Superior Court*, 46 Cal.4th 969,
20 975 (2009) and California Labor Code section 2699(1)(2).¹ The settlement notice being provided to
21 employees within the PAGA settlement identifies the scope of the settlement and that no other claims,
22 class or otherwise, for the Aggrieved Employees are being compromised as part of the settlement.

23 5. Defendants are represented in this matter by Littler Mendelson, P.C. From the
24 beginning, Defendants have contested the merits of this case, the manageability of the case at trial, and
25 Plaintiff's ability to prove a violation in each pay period for each employee among other defenses and
26 contentions they made challenging the propriety of this action. Defendants further contended that, even

27 _____
28 ¹Although 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 in this case 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.

1 assuming there was a finding supporting the imposition of PAGA penalties, the Court would likely
2 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
3 attempts to comply with Labor Code obligations by Defendants. Notwithstanding the agreement to
4 settle this matter, Defendants believe the practices Plaintiff is contending are unlawful either do not
5 exist or, to the extent they do exist, fully comply with all state and federal employment laws with
6 respect to Plaintiff and Aggrieved Employees.

7 6. We have reviewed a substantial number of documents and informal discovery during our
8 investigation of the claims. Based on the expected testimony from Plaintiff and Aggrieved Employees,
9 a review of Defendants' policies and procedures and other documents relating to the alleged claims,
10 information on the number of Aggrieved Employees, their total pay periods within the PAGA Claim
11 Period, the number of Aggrieved Employees who separated employment within one (1) year of this case
12 being filed, and a representative sample of Aggrieved Employees' payroll data, the scope of the
13 potential penalties at issue in light of the claims alleged, the Court's statutorily authorized discretion to
14 reduce any penalties assessed, and the negotiations that have taken place, I am convinced that the
15 proposed settlement is in the best interest of Aggrieved Employees and the LWDA. The length and risk
16 of continued litigation and trial, as well as other normal perils of complex litigation that impact the value
17 of the claims, were also considered and weighed in reaching the Agreement. These risks were also
18 exacerbated in this case in that it would have been necessary for Plaintiff to litigate the existence of
19 violations for numerous individual Aggrieved Employees in each pay period that they worked. In
20 addition, I carefully considered the difficulties of complex litigation, and the lengthy process of
21 establishing specific damages and various possible delays and appeals in agreeing to the proposed
22 settlement. I further considered the fact that penalties under the PAGA could be substantially cut at the
23 discretion of the Court even if Plaintiff was successful on proving those claims and there was risk that a
24 Court could find no willfulness in the failure to pay wages at separation or the existence of a good faith
25 dispute, which would eliminate the value of several claims entirely. Overall, I believe it is more
26 beneficial to secure a guaranteed benefit to Aggrieved Employees and the LWDA now rather than to
27 proceed with litigation and potentially obtain zero funds due to legal or factual issues.

1 7. My office, including my partner, Galen T. Shimoda, our paralegals, and myself, along
2 with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for
3 such claims. The parties engaged in informal discovery and exchange of documents that included, but
4 was not limited to, a substantial sampling of employee data covering 230 Aggrieved Employees (92.4%
5 of all Aggrieved Employees), such as time records, paystubs, and payroll summaries, relevant
6 handbooks, bulletins, and memoranda containing Defendants' policies for the entirety of the statute of
7 limitations applicable to the alleged claims. Spreadsheets produced by Defendants included more than
8 80,000 rows of data with approximately 158 unique pay codes and job identification numbers that had to
9 be cross referenced to assess violation types and frequencies for each type. This data was further cross
10 referenced against Defendants' wage and hour policies to compare how, if at all, the actual practices
11 evolved over the course of the PAGA Claim Period. From this production we were able to determine
12 information critical to a reliable damages analysis such as the average hourly rate, average daily hours
13 worked, shifts eligible for meal and rest periods and the number of potential shifts that may correspond
14 to liability under our theories of liability, average number of pay periods that had potential violations
15 based on the asserted claims, the number of former employees, and the frequency of regular rate of pay
16 violations. This information allowed my office to assess both liability and damages and create an
17 accurate damages model. Plaintiff assisted in all aspects of this litigation including providing factual
18 information relating to Defendants' employment conditions, potential witness information, and
19 answered questions regarding Defendants' factual contentions in this matter. This was important
20 because it directly related to our ability to maintain this case as a PAGA action under potential
21 manageability concerns and our ability to obtain a favorable settlement for Aggrieved Employees and
22 the LWDA.

23 8. Throughout this litigation, our office had numerous communications with Defendants'
24 Counsel discussing our respective positions. The parties engaged in mediation on February 5, 2025,
25 using an experienced mediator, Russ J. Wunderli, Esq. It was only after approximately eighteen (18)
26 months of extensive investigations, litigation, and arm's length negotiations that the parties were able to
27 reach a final settlement, which only occurred after a full-day mediation. The negotiations were, at all
28 times, contentious, adversarial, and at arms-length, though still professional in nature.

1 9. Based on my office’s analysis of the informal discovery outlined above, there were
2 approximately 249 Aggrieved Employees who worked 8,483 pay periods during the PAGA Claim
3 Period, an average base hourly rate of approximately \$34.85, and an average overtime rate of
4 approximately \$52.28. We did not find any prior Labor Commissioner or Court decisions stating
5 Defendants’ practices and/or policies were improper. As such, a “subsequent violation” may not be
6 found for penalty calculation purposes, and the penalty exposure analysis herein is based on an “initial
7 violation” valuation being adopted by any fact finder if this matter went to trial. *See Amaral v. Cintas*
8 *Corp. No. 2*, 163 Cal.App.4th 1157, 1207-1209 (2008). We also interviewed other Aggrieved
9 Employees, covering their work experience in relation to the asserted claims and have incorporated that
10 information into the damages analysis. The following represents the maximum recovery as well as the
11 more realistic range of recovery for each of the PAGA violations alleged by Plaintiff:

- 12 a) Failure to Pay Minimum Wages: This portion of the PAGA claim is based on
13 allegations that Defendants failed to pay Plaintiff and Aggrieved Employees at least the
14 minimum wage for all hours worked due to Defendants requiring employees to work
15 off-the-clock while employees worked off-the-clock before their shift, after their shift,
16 and during times they were clocked out for meal periods, Defendants failing to
17 accurately record employees’ hours worked or meal periods taken when Plaintiff and
18 Aggrieved Employees started or ended their shifts, and when they started or ended meal
19 periods. Additionally, Plaintiff alleged that the timesheets were not filled out by
20 employees themselves, but by their supervisors, leading to inaccurate time records. The
21 maximum damages for this claim are approximately \$848,300 (8,483 pay periods x
22 default \$100 per pay period per Labor Code section 2699(f)). This amount does not take
23 into account any potential risks with respect to Plaintiff proving the merits or proving a
24 violation occurred in every pay period for every employee. Because we alleged there
25 was at least *some* form of unpaid minimum wages each pay period, this resulted in a
26 violation being calculated to occur every pay period for every employee. As noted
27 below, the maximum damages calculations for the overtime claim also include a
28 violation for every pay period for every employee. However, every unpaid hour

1 worked in a given week is either an overtime hour (*e.g.* over 8 hours a day and/or 40
2 hours a week) or it is a non-overtime hour subject to minimum wage requirements.
3 Thus, this will result in some overcounting of the number of violations to the extent the
4 same unpaid hour is used as a basis to support a minimum wage and overtime violation
5 in a given pay period. Furthermore, the substantial majority of violations for both the
6 minimum wage claim and the overtime claim result from the same, singular conduct
7 (*e.g.* working off the clock pre-shift, post shift, not being paid for travel time, and not
8 being paid when working during meal periods). Where the same, singular conduct
9 forms the basis for multiple violations in a given pay period, it is likely that a reduction
10 in the potential civil penalty will be applied to avoid their being deemed “unjust,
11 arbitrary and oppressive, or confiscatory.” *See* Cal Lab. Code § 2699(e)(2); *Hamilton v.*
12 *Juul Labs, Inc.*, 2021 WL 5331451, *9-*10 (N.D. Cal. 2021). Defendants heavily
13 disputed this theory of liability. First, Defendants contended that they had different
14 crews which performed concrete jobs, SMUD jobs, earth moving, and asphalt work. All
15 these crews had different foremen, where some foremen entered the hours of the
16 employees, and some foremen let the employees enter their own hours. Second,
17 Defendants argued that all the crews took their meal periods and the on-duty meal period
18 agreements were only as an additional assurance that employees could work during a
19 meal period only rarely if there was a need, but it was not the norm. Third, Defendants
20 argued it maintained, and strictly enforced, policies against working off-the-clock,
21 accurately recording hours worked, and that overtime was regularly paid, undermining
22 any contention that there was any practice or policy promoting off-the-clock work.
23 Fourth, Defendants’ policies required that employees sign the daily timecards, providing
24 employees with the opportunity to verify the accuracy of the hours worked, which
25 directly contradicted a factual basis for Plaintiff establishing liability, *i.e.* that foremen
26 entered in the hours worked without review or verification by employees of the hours
27 worked. Given the risks to proving the merits of the claims and the substantial
28 variability in whether the unpaid hours worked would be overtime hours or unpaid

regular hours, I believe that that could result in the number of potential pay periods wherein a violation occurred, I believe a more realistic range of recovery for this claim is approximately \$339,320 to \$508,980 (a 40% to 60% reduction based on risk);

b) Failure to Pay Overtime: This portion of the PAGA claim is based, in part, on the same factual allegations that formed the basis for the minimum wage claims, which are stated above. The maximum damages for this claim are \$424,150 (8,483 pay periods x \$50 per pay period per Labor Code section 558). This amount does not take into account any potential risks with respect to Plaintiff proving the merits or proving a violation occurred in every pay period for every employee. Because this theory of liability is based, in part, on the same facts supporting the minimum wage claim, it is subject to the same risks identified above. Another basis for liability for the failure to pay overtime was Plaintiff's allegations that Defendants failed to properly calculate the regular rate of pay for overtime on non-prevailing wage jobs worked in the same week that prevailing wages were earned. However, the regular rate theory of liability only affected approximately 7.4% of pay periods, resulting in substantially fewer potential penalties at issue than Plaintiff's maximum damages calculations (628 pay periods [7.4% of 8,483 total pay periods] x \$50 per pay period per Labor Code section 558 = \$31,387). Taking all these factors into account, I believe a more likely range of recovery for this claim is between \$31,387 to \$296,905 (the amount of penalties based on the regular rate of pay violations up to a 60% reduction for the off-the-clock basis of liability based on risk);

c) Failure to Provide Meal Periods: This portion of the PAGA claim is based on allegations that Defendants did not accurately record employees' meal periods taken, and that Defendants did not authorize and permit employees to take all meal periods owed due to invalid and/or voided on-duty meal period agreements and due to required travel to additional job sites during meal periods. The maximum damages for this claim are \$424,150 (8,483 pay periods x \$50 per pay period per Labor Code section 558). This amount does not take into account any potential risks with respect to Plaintiff proving the merits or proving a violation occurred in every pay period for every employee.

Defendants contended that they had different crews which performed concrete jobs, SMUD jobs, earth moving, and asphalt work. All these crews had different foremen, where some foremen entered the hours of the employees, and some foremen let the employees enter their own hours, including recording their own meal breaks. Second, Defendants argued that all the crews took their meal periods and the on-duty meal period agreements were only as an additional assurance that employees could work during a meal period only rarely if there was a need, but it was not the norm. Third, Defendants argued that crews would take meal breaks even when the concrete truck is at the job site waiting to pour over the concrete. Fourth, Defendants had a written policy that employees were entitled to meal periods and Defendant contends it communicated this policy to Aggrieved Employees and informed them that they should take legally compliant meal periods. Utilizing the rebuttable presumption of meal period violations based on the time records under *Donohue v. AMN Servs., LLC*, 11 Cal.5th 58, 78 (2021), Plaintiff contended that Defendants' time records showed a presumptive meal period violation in approximately 74% of all pay periods, much less than the 100% violation rate used to calculate the maximum potential damages. Assuming Plaintiff was able to prove every meal period violation consistent with the presumptive violations in the time records, the maximum civil penalties for this claim would be reduced to \$313,871 (6,277.42 pay periods [74% of 8,483 total pay periods] x \$50 per pay period per Labor Code section 558). Taking these factors into account, I believe a more realistic range of recovery for this claim is between \$219,709.70 to \$251,096.80 (reduction of 20% to 30% from the total civil penalties using the 74% presumptive violation rate to account for potential risk);

d) Failure to Provide Rest Breaks: This portion of the PAGA claim is based on the same allegations as the meal period claim. The maximum penalties for this claim are approximately \$848,300 (8,483 pay periods x default \$100 per pay period per Labor Code section 2699(f)). This amount does not take into account any potential risks with respect to Plaintiff proving the merits or proving a violation occurred in every pay

period for every employee. Because this claim is based on the same facts supporting the meal period claims, it is also subject to the same risks as detailed above. Plaintiff assumed that the circumstances that created an employee's inability to take a meal period on a particular day also would have interfered with their ability to take a rest period. Utilizing the same 74% presumptive violation rate that occurred for the meal period claim, the maximum civil penalties for this claim would be reduced to \$627,742 (6,277.42 pay periods [74% of 8,483 total pay periods] x \$100 per pay period per Labor Code section 2699(f)). However, there is no requirement that an employer keep records of rest periods, so this claim does not benefit from any presumptive violation based on time records under the law like meal period claims do. This presented an even greater risk for Plaintiff's rest period claims than is present for the meal period claims. Taking these factors into account, I believe a more realistic range of recovery for this claim is between \$156,935.50 to \$313,871 (reduction of 50% to 75% from the total civil penalties using the 74% presumptive violation rate to account for potential risk);

- e) Failure to Pay Sick Leave: This portion of the PAGA claim is based on allegations that Defendants failed to properly calculate the regular rate of pay for sick leave pay on non-prevailing wage jobs. The maximum damages for this claim are approximately (\$11,027.90 (per pay period violation rate of 1.3% x 8,483 pay periods x default \$100 per pay period per Labor Code section 2699(f)). This amount does not take into account any potential risks with respect to Plaintiff proving the merits or proving a violation occurred in each identified pay period. Based on the informal discovery, approximately 1.3% of all pay periods included a form of sick leave as well as additional prevailing wage payments earned over the same period. Because the total potential penalties for this claim was a nominal amount, they did not drive negotiation discussions. For purposes of the *Kullar* analysis, Plaintiff is utilizing the full value of this claim (\$11,027.90) irrespective of potential legal issues in establishing liability and/or damages;

- 1 f) Failure to Pay Reimbursement: This portion of the PAGA claim is based on Plaintiff's
2 contention that Aggrieved Employees were required to use their personal cell phones to
3 communicate with their supervisors, managers, and/or home office as well as document
4 safety issues and comply with injury prevention protocols. The maximum exposure for
5 this claim is \$848,000 (8,483 pay periods x default \$100 per pay period per Labor Code
6 section 2699(f)). This amount does not take into account any potential risks with respect
7 to Plaintiff proving the merits or proving a violation occurred in every pay period for
8 every employee. Defendants heavily disputed whether use of personal cell phones was
9 required given Defendants contended that the use of any applications on a personal
10 device or using cell phones to communicate with supervisory employees was, at most, a
11 personal choice of convenience by Aggrieved Employees. Similarly, Defendants
12 contended that, to the extent it may have been necessary on some jobs on some
13 occasions to communicate with crews in the field via cell phones, it generally provided
14 company cell phones to any foremen in need of the devices to communicate with the
15 office. Based on these risks, I believe a more realistic range of recovery for this claim
16 would be between \$424,150 to \$593,810 (30% to 50% reduction based on risk);
- 17 g) Wage Statement Violations: This portion of the PAGA claim is derivative of Plaintiff's
18 overtime, minimum wage, meal and rest period, and sick leave claims. The maximum
19 exposure for this claim is \$848,300 (8,483 pay periods x default \$100 per pay period per
20 Labor Code section 2699(f)). This amount does not take into account any potential risks
21 with respect to Plaintiff proving the merits or proving a violation occurred in every pay
22 period for every employee. Because this claim is derivative of Plaintiff's other claims,
23 the same risks identified above for the minimum wage, overtime, meal period, rest
24 period, and sick leave claims apply here as well, substantially affecting the potential
25 value of this claim. Furthermore, under the recent California Supreme Court case,
26 *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056 (2024), employers now have a
27 good faith dispute defense against wage statement claims. Given the factual and legal
28 disputes presented in this fact, I believe it is likely that a Court would find a good faith

dispute exists. Thus, I believe it is more realistic that there would be no recovery for this claim;

h) Waiting Time Penalties: This portion of the PAGA claim is derivative of the overtime, minimum wage, meal and rest period, and sick leave claims. The maximum damages for this claim are \$1,304,784 (156 former employees within the penalty statute of limitations. Calculated the same as waiting time penalties pursuant to Labor Code section 256 [$\$34.85$ average hourly rate x 8-hour day x 30 days = $\$8,364$. 156 former employees x $\$8,364$ = $\$1,304,784$). This amount does not take into account any potential risks with respect to Plaintiff proving the merits for every formerly employed Aggrieved Employee. Because it is derivative of Plaintiff's claims asserted above, it carries all the same risks as well a potential good faith dispute defense. *See Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). In addition to the risks identified above, Defendants disputed whether penalties under this provision should be calculated under the default PAGA penalty or the amount provided by Labor Code section 256 and 203. To the extent the Court agreed with Defendants on the correct penalty valuation, the available damages for this claim would be reduced substantially to \$15,600 (\$100 per former employee for the failure to pay wages in the final pay period). For the same reasons as stated above, it is likely that a good faith dispute would be found and the value associated with this claim would be eliminated entirely;

i) Failure to Maintain Accurate Records: This portion of the PAGA claims is entirely derivative and overlapping with the PAGA claims identified above, *e.g.* the failure to pay minimum wages, overtime wages, failure to provide meal and rest periods, failure to provide sick leave. The maximum damages for this claim are \$124,500 ($\500 x 249 employees within the penalty statute of limitations per Labor Code section 1174.5). Because this claim is derivative it carries all the same risks identified in the claims above. Additionally, it is unlikely that a Court would award the full value of the potential applicable penalty when the same conduct is being penalized through other

statutes. Based on these risks, I believe a more realistic range of recovery for this claim would be between \$31,125 to \$62,250 (50% to 75% reduction based on risk);

10. In total, the maximum exposure for PAGA penalties in this case is \$5,681,811.90. However, in addition to the risks on the merits and disputes regarding the proper valuation of the penalty amounts, I believe the Court may exercise its discretion to reduce PAGA penalties in this case because some of the asserted violations are due to technical non-compliance with the Labor Code rather than substantive wage loss, *e.g.* wage statement violations, several of the violations under different statutes arise from the same, singular conduct (*e.g.* working off the clock pre-shift, post shift, not being paid for travel time, not being paid when working during meal periods, working through rest periods), Defendants produced wage and hour policies and other documents related to attempts at complying with the California Labor Code that a Court may find demonstrates a good faith attempt at compliance, and there were several instances where the actual substantive loss experienced by Aggrieved Employees was substantially less per pay period than the potential maximum penalty that could be imposed. Courts are statutorily authorized to use discretion to reduce penalties and the range of discretion used varies substantially and I believe the Court is likely to exercise this discretion to reduce civil penalties in this case if it were to go to trial.

11. The range of civil penalty reductions applied by Courts under the PAGA varies substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien Inc.*, 2011 WL 7563047, *3–4 (C.D. Cal. 2011) (82% reduction); *Magadia v. Wal-Mart Associates, Inc.*, 384 F.Supp.3d 1058, 1104 (N.D. Cal. 2019) (80% reduction); *Hamilton v. Juul Labs, Inc.*, 2021 WL 5331451, *9-*10 (N.D. Cal. 2021). The 82% reduction equates to roughly \$9-\$18 worth of civil penalties per pay period per employee depending on the total potential value of the civil penalty (*i.e.* \$50-\$100), which is more in line with actual awards based on my experience and review of awards in other cases. Thus, even if using the maximum values and setting aside risks of proving the claims on the merits, the total exposure may be cut to approximately \$1,022,726.14 (82% reduction from \$5,681,811.90) to \$3,977,268.33 (30% reduction from \$5,681,811.90) or lower. Using the more realistic range of recovery (\$1,213,655.10 to \$2,037,940.70), a discretionary reduction of penalties could lower the potential exposure even further to \$218,457.92

(82% reduction from \$1,213,655.10) to \$1,426,558.49 (30% reduction from \$2,037,940.70). The Gross Settlement Amount represents approximately 7.3% (\$415,000 / \$5,681,811.90) of the maximum potential penalties in this matter, which equates to \$48.92 per pay period. The Gross Settlement Amount also represents approximately 20.4% (\$415,000 / \$1,213,655.10) to 34.2% (\$415,000 / \$2,037,940.70) of the more realistic range of recovery to before considering whether the Court may apply any discretionary reduction under the statute. Taking potential discretionary reductions by the Court into account, the value of the Gross Settlement Amount is substantially higher, representing approximately 29.1% (\$415,000 / \$1,426,558.49) to 189.97% (\$415,000 / \$218,457.92) of the more realistic range of recovery.

12. I believe the Settlement is fair, reasonable, and adequate based on the legal and factual disputes, and potential damages, at issue in this case. The Settlement is a reasonable compromise that I believe will also further the purpose of the Labor Code and LWDA, creating an effective, substantial deterrent to any potential future non-compliance. The reasonableness of the Settlement is also supported when considering amounts that Courts have approved as reasonable PAGA valuations in other cases. See *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on their being disputed and being part of a class settlement which was evaluated based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 WL 1496407, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 WL 12571448, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 WL 4899942, *6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 WL 2196104, *2 (S.D. Cal. 2010); *Hopson v. Hanesbrands Inc.*, 2009 WL

928133, *1, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 WL 714367, *13 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in \$3,950,000 gross settlement amount allocated to California class even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated potential value); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, *6-*7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 PAGA allocation from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (\$10,000 PAGA allocation from \$6,900,000 settlement fund).

13. In agreeing to represent Plaintiff and take on the case for all Aggrieved Employees, our office agreed to take this case on a contingency basis, meaning that we would take a percentage of any settlement or judgment should we recover a monetary amount. We took a risk that we would not recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary judgment ruling. However, we believe it is important to make sure employees are able to find affordable representation in order to ensure that employers are complying with all their legal obligations towards employees and paying employees all their hard-earned wages.

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

Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society and an officer for the Latino Law Students Association from 2009 to 2010.

15. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I have been recognized as a Super Lawyer (Rising Star). From 2024 to present, I have been recognized as a Super Lawyer. 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-Anguy 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.);
- *Barkhousen 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.);
- *Ferreya 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.

1 Ct.);

- 2 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 3 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 4 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 5 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 6 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 7 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 8 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 9 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 10 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 11 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 12 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 13 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 14 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 15 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 16 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 17 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB
- 18 (E.D. Cal.);
- 19 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 20 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 21 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 22 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201
- 23 (Sac Sup. Ct.);
- 24 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 25 • *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 26 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- 27 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 28 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);

- 1 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 2 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 3 Sup. Ct.);
- 4 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- 5 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

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

1 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
2 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
3 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
4 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
5 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
6 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
7 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
8 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
9 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
10 as a Super Lawyer from 2014 to present.

11 18. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
12 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
13 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
14 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
15 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
16 Federal Courts, including up to certification, settlement, preliminary and final approval, and
17 disbursement of monies, and has been found to satisfy the adequacy requirements for class counsel.
18 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
19 include the following:

- 20 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 21 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 22 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 23 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 24 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 25 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 26 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 27 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 28 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup.

1 Ct.);

- 2 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 3 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- 4 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 5 Ct.);
- 6 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 7 Sup. Ct.);
- 8 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 9 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- 10 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 11 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613
- 12 (Sac. Sup. Ct.);
- 13 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 14 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 15 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 16 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San
- 17 Joaquin Sup. Ct.);
- 18 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 19 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup.
- 20 Ct.);
- 21 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 22 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 23 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac. Sup.
- 24 Ct.);
- 25 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 26 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 27 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 28 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);

- 1 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 2 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 3 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 4 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 5 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 6 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 7 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 8 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 9 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup.
10 Ct.);
- 11 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 12 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 13 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 14 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 15 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 16 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201
17 (Sac Sup. Ct.);
- 18 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup.
19 Ct.);
- 20 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 21 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 22 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 23 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
24 Sup. Ct.);
- 25 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 26 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 27 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 28 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

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

1 *Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely
2 revolves around wage and hour matters, including PAGA claims.

3 21. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
4 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
5 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
6 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an
7 identifiable benefit on behalf of Aggrieved Employees and the LWDA and equity counsels that the cost
8 of the representation should be born equally amongst all who are receiving these benefits. The
9 settlement recovery provides an excellent result and is the product of substantial time and effort in
10 analyzing the facts and law applicable to this case. Our firm agreed to take this case on a contingency
11 basis and as a representative action with the possibility that we would not receive any compensation for
12 our time and efforts due to issues regarding the merits and have carried that risk over the course of this
13 case. In my experience, the attorney's fee request of thirty-five percent (35%) of the common fund is
14 within ranges typically approved in wage and hour class action litigation. This includes awards in
15 Sacramento County Superior Court. For example, in November 2022, this Court approved a fee
16 request of 35% and the same hourly rates for Mr. Shimoda and myself, in connection with a motion for
17 final approval of a wage and hour class action settlement in *Strawn v. Bridgestone Retail Operations,*
18 *LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.).

19 22. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this
20 case. The total lodestar is approximately \$172,070 based on approximately 283.2 hours, which
21 includes approximately 10 hours of time for myself working with the Settlement Administrator to
22 ensure that the settlement is fully implemented and reporting on the implementation through a
23 compliance hearing. I have reviewed our firm's billing records with Mr. Shimoda and Mr. Konini and
24 have created a summary chart showing the task categories and hours worked by each billing attorney in
25 each category. A true and correct copy of the summary chart is being filed with this Motion as Exhibit
26 H. In reviewing the entries, I believe the hours reported are accurate. To the extent we believe it
27 appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the
28 lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our

1 firm uses billing software, which tracks the entries by day and time. Our billing software also records
2 time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that
3 can be used to more accurately record how long a particular task takes. A summary of the entries in
4 Exhibit H by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	78.1	\$725	\$56,622.50
Justin P. Rodriguez	141.4	\$625	\$88,375.00
Renald Konini	63.7	\$425	\$27,072.50
Total:			\$172,070.00

11 23. I believe the requested rates are within the prevailing market rates for Sacramento
12 County and elsewhere. Mr. Konini, myself, and Mr. Shimoda have approximately 8 years, 13 years,
13 and 20 years of experience, respectively, litigating complex wage and hour class and PAGA actions.
14 Again, this Court approved these rates for myself and Mr. Shimoda, in November 2022. *See Strawn v.*
15 *Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). Mr. Konini was
16 approved at these rates in connection with a wage and hour class action in Sacramento County Superior
17 Court in January 2023. *See Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's*
18 *Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072. Awarding fees at the hourly rate in
19 effect at the time of the fee request is an appropriate and judicially approved method. *See Missouri v.*
20 *Jenkins by Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the request of
21 \$145,250 (approximately 35%) for attorneys' fees is justified given the results obtained on behalf of
22 Aggrieved Employees and the LWDA. Moreover, at this time, my firm has advanced all costs for
23 Plaintiff and Aggrieved Employees and has not received any compensation whatsoever for our time
24 expended in this case. The costs incurred to date and the expected costs through overseeing the
25 complete distribution of all settlement proceeds are \$6,364.56. Attached as Exhibit G is a true and
26 correct copy of an itemization of our firm's incurred costs and expected costs through the complete
27 distribution of all settlement proceeds.

1 24. I have used several settlement administrator companies in the wage and hour class
2 actions and PAGA actions I have resolved in the past and believe ILYM Group, Inc. will provide the
3 best service to administer the proposed class settlement. A true and correct copy of a cost estimate
4 provided by ILYM Group, Inc., is filed with this Motion as Exhibit D. Any difference in the actual
5 costs and the allocated amounts to cover costs will be redistributed to Aggrieved Employees pro rata per
6 the terms of the Agreement.

7 25. A copy of the proposed Agreement and the entire Motion to Approve the PAGA
8 Settlement was submitted to the LWDA at the same time the Motion was submitted to the Court
9 pursuant to California Labor Code section 2699(l)(2). A true and correct copy of documents
10 demonstrating the settlement documents were provided to the LWDA and that the LWDA has
11 confirmed receipt are being filed with this Motion as Exhibit F.

12 26. A true and correct copy of the proposed Notice of Settlement to be distributed to
13 Aggrieved Employees informing them of the settlement and all material terms is being filed with this
14 Motion as Exhibit E.

15 27. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. (“CPB”) and
16 The Center For Workers Rights (“CFWR”). Only those funds that remain from uncashed settlement
17 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.5 of the Agreement.

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

27 29. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
28 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to

1 their current or former employment. This assistance regularly includes, but is not limited to, free legal
2 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
3 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
4 forms, and direct representation in administrative hearings, including administrative hearings in front of
5 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
6 who provide assistance, along with experienced employment law attorney volunteers. These services
7 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
8 and continuing through today under CPB.

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

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

26 32. I believe the services provided by CPB and the CFWR promote the law consistent with
27 the objective of wage and hour class actions in general and in this case specifically.
28

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

34. 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.

35. 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. Mr. Konini has recently volunteered at the advice clinic of the Center For Workers' Rights, by helping students who staff the free advice clinic.

36. 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 April 24, 2025, in Sacramento, California.

Justin P. Rodriguez

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
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6 rkonini@shimodalaw.com

7 Attorneys for Plaintiff RICHARD GOMEZ
individually and on behalf of similarly situated employees
8
9

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 RICHARD GOMEZ, individually and on
13 behalf of all other similarly situated
employees,

14 Plaintiff,

15 vs.
16

17 B&M BUILDERS, INC., an unknown
business entity; JONATHAN BROWN, an
18 individual; PATRICK MULLEN, an
individual; and DOES 1 to 100, inclusive,
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20 Defendants.
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Case No. 24CV005888

*Assigned for All Purposes to Hon. Jill H. Talley
Department 23*

**DECLARATION OF RICHARD GOMEZ IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Reservation No. A-05888-001

Date: May 16, 2025

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: March 27, 2024

Trial Date: None Set

1 I, Richard Gomez, declare:

2 1. I am a competent adult and I have personal knowledge of the facts set forth in this
3 declaration. I am making this declaration on behalf of myself, as a named plaintiff, and in support of
4 Plaintiff's Motion To Approve Private Attorneys General Act Settlement.

5 2. I worked for Defendants B&M Builders, Inc., Jonathan Brown, and Patrick Mullen
6 ("Defendants") from approximately September 12, 2023, to November 7, 2023, as a non-exempt
7 employee. I was subject to all of Defendants' policies and practices that have been alleged as unlawful
8 in the complaint and the notice sent to the Labor and Workforce Development Agency ("LWDA"),
9 including the following: failure to pay overtime, failure to pay minimum wages, failure to provide
10 accurate wage statements, failure to timely pay final wages, failure to provide meal and rest periods or
11 pay premiums in lieu thereof, failure to pay reimbursement for expenses, and failure to pay sick leave.

12 3. I have actively participated in the litigation of this case for the benefit of Aggrieved
13 Employees and the LWDA. Prior to obtaining an attorney, I contacted several law offices and
14 researched potential attorneys to bring the claims to make sure the law firm chosen had attorneys with
15 experience and skill in bringing those types of claims. I also researched the typical issues raised when
16 litigating the potential claims to make sure I could have an informed discussion with an attorney about
17 the claims and have a better idea of what to expect moving forward in litigation and how to help the
18 case proceed. After securing Shimoda & Rodriguez Law, PC, I continued to be actively involved in the
19 case to help ensure a positive outcome. I began working with Shimoda & Rodriguez Law, PC, to
20 investigate the claims in November 2023, discussing the facts of the case, showing and explaining the
21 context behind the documents I had to support the claims, and discussing potential witnesses to
22 corroborate the information I was providing.

23 4. My attorneys explained to me the risks and benefits of bringing a claim under the
24 Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a PAGA action meant
25 that it would take substantially longer than pursuing individual claims and that the claims being
26 pursued were for civil penalties, not for individual claims. I understood that I risked getting nothing in
27 the end, but I believed it was important to make sure that Defendants followed the law for everyone. I
28 undertook a professional and financial risk in pursuing the case as a PAGA action because my name

1 would be on a publicly available document showing that I had sued a former employer at a time when I
2 was unemployed and searching for a new job and, if unsuccessful in bringing the claims, I would be
3 obligated to pay Defendants' costs incurred over the course of this complex litigation. My
4 understanding is that this is a substantial risk because the costs associated with litigation, in general, are
5 very high and this cost is multiplied many times over in complex litigation like PAGA actions.

6 5. During the course of this litigation, I have given detailed accounts of all the facts related
7 to my employment. I provided my attorneys with extensive documentation that I believe supported the
8 claims brought against Defendants. I met with and assisted my attorneys in understanding these
9 documents and providing context for Defendants' payroll process as it applied to me and how I
10 believed it applied to Defendants' other employees within the scope of the PAGA claim, *i.e.* Aggrieved
11 Employees. I was able to discuss the similarities of the wage and hour policies and practices among all
12 Aggrieved Employees.

13 6. The work I performed for this case included an extensive review of documents and
14 payroll practices to show and explain to my attorneys what was happening and why I thought it was
15 unlawful. For example, I explained to my attorneys my job duties and responsibilities, the type of tasks
16 and work performed in a typical day and any circumstances that would cause relevant differences to my
17 daily work that affected the PAGA claims. We reviewed payroll and personnel file documents to see
18 whether and how any of the documents corroborated the validity of the claims and listed potential
19 witnesses related to any issues raised by the documents. This addressed all the claims alleged and we
20 continued to discuss and review these items throughout the case as more information was provided by
21 Defendants. The review became even more detailed when reviewing and discussing the payroll data
22 sample that was produced as part of informal discovery for mediation. I also spent a substantial amount
23 of time working to identify potential witnesses and speaking to others who could be interviewed by my
24 attorneys and provide declarations.

25 7. I participated in the negotiations and settlement discussions in this case, including
26 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
27 additional information needed to assist the negotiations, and discussing the potential terms of the
28 Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions

1 when I needed clarification about various aspects of this case to make sure steps were continually taken
2 to advance the interests of Aggrieved Employees and the LWDA. I have reviewed the final Private
3 Attorneys General Act Settlement, discussed the terms with my attorneys, and asked my attorneys any
4 questions I had. I believe the terms of the Settlement and allocations are fair and reasonable given the
5 facts of the case.

6 8. To date, I estimate that I have spent approximately 60-80 hours assisting my attorneys in
7 litigating this case. I expect that the amount of time I spend on this case will increase if the Settlement
8 is approved because Aggrieved Employees will likely reach out to me about the Settlement and the
9 nature of the claims that were asserted.

10 9. I have not received any benefits as a result of filing this lawsuit. However, I believe I
11 have experienced several substantial burdens as a result of filing this lawsuit that other Aggrieved
12 Employees were not subject to. As noted above, I took on the professional risk of lengthening my
13 unemployment after working for Defendants because future employers were able to see, from publicly
14 available documents, that I sued my former employer. Additionally, I undertook the risk of having to
15 pay Defendants' litigation costs if the Court or jury ruled against us on the claims. I have spent a
16 substantial amount of time in this case, securing a monetary benefit for Aggrieved Employees and the
17 LWDA. After I eventually secured another job, the time I have spent on this case has had to occur
18 during my lunch and/or break times, after hours, and on my days off. Rather than spend this time with
19 friends and family, I have spent this time for the benefit of Aggrieved Employees and the LWDA.
20 Also, I experienced stress and anxiety from the litigation in this case, and I received treatment for stress
21 and anxiety. Finally, as part of the Settlement, I am the only individual providing a general release of
22 all my individual claims and waiving the protections of California Civil Code section 1542 for
23 unknown claims. No other Aggrieved Employee is subject to such a broad release and neither is the
24 LWDA. I believe awarding the full Enhancement Payment is warranted given the time I have spent on
25 the case, the benefit secured for Aggrieved Employees and the LWDA, my general waiver of all my
26 individual claims beyond the release for the PAGA claims, and the risks and burdens I have
27 experienced as a result of this litigation.

10. I understand that any Enhancement Payment I may receive is for my participation as a
PAGA Representative and it is not contingent on my support or approval of the Agreement.

11. I have no interest in the designated *cypres* beneficiaries, Capital Pro Bono, Inc., and the Center for Workers' Rights, whether financial, in their governance, or otherwise.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 04/18/2025 in Elk Grove, California.


Richard Gomez (Apr 18, 2025 08:40 PDT)

Richard Gomez

Galen T. Shimoda (Cal. State Bar No. 226752)
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Attorneys for Plaintiff RICHARD GOMEZ
individually and on behalf of similarly situated employees

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

RICHARD GOMEZ, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

B&M BUILDERS, INC., an unknown
business entity; JONATHAN BROWN, an
individual; PATRICK MULLEN, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV005888

*Assigned for All Purposes to Hon. Jill H. Talley
Department 23*

**EXHIBIT LIST AND EXHIBITS IN SUPPORT
OF PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. A-05888-001

Date: May 16, 2025

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: March 27, 2024

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed Private Attorneys General Act Settlement
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the Labor and Workforce Development Agency
D	ILYM Group, Inc., Bid
E	Proposed Notice of Settlement
F	Proof of Submission of Proposed Settlement Agreement to LWDA
G	Plaintiff's Itemized Costs
H	Plaintiff's Attorney's Fee Summary Chart

Dated: April 24, 2025

Shimoda & Rodriguez Law, PC

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

EXHIBIT A

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 **Shimoda & Rodriguez Law, PC**
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6 Telephone: (916) 525-0716
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8 Attorneys for Plaintiff RICHARD GOMEZ individually
9 and on behalf of similarly situated employees

10 John H. Adams, Jr.
11 Littler Mendelson, P.C.
12 500 Capitol Mall
13 Suite 2000
14 Sacramento, CA 95814
15 Telephone: 916-830-7200
16 Fax No.: 916-561-0828

17 Attorneys for B&M BUILDERS, INC., JONATHAN BROWN,
18 and PATRICK MULLEN

19 **SUPERIOR COURT OF CALIFORNIA**
20 **FOR THE COUNTY OF SACRAMENTO**

21 RICHARD GOMEZ, individually and on behalf
22 of all other similarly situated employees,

23 Plaintiff,

24 vs.

25 B&M BUILDERS, INC., an unknown business
26 entity; JONATHAN BROWN, an individual;
27 PATRICK MULLEN, an individual; DOES 1 to
28 100, inclusive,

Defendants.

Case No.: 24CV005888

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Filed: March 27, 2024

Trial Date: None Set

1 This Private Attorneys General Act Settlement is made and entered into between the Plaintiff
2 Richard Gomez (“Plaintiff”), on behalf of himself, the Labor and Workforce Development Agency, and
3 Aggrieved Employees, and Defendants B&M Builders, Inc., Jonathan Brown, and Patrick Mullen
4 (“Defendants”). This Agreement is subject to the terms and conditions set forth below and approval of the
5 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, *Gomez v. B&M Builders, Inc., et al.*, Sacramento
9 County Superior Court, Case No. 24CV005888, filed March 27, 2024.

10 1.2 “Aggrieved Employee(s)” means all non-exempt employees who worked or continue to
11 work for Defendants in California from January 10, 2023, up to either (1) April 8, 2025, or (2) the Final
12 Approval Date, whichever is earlier. The estimated number of Aggrieved Employees is 249.

13 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Private Attorneys
14 General Act Settlement.

15 1.4 “Complaint” means the operative Complaint on file in the Action with the Court.

16 1.5 “Court” means the Sacramento County Superior Court.

17 1.6 “Defendants” means B&M Builders, Inc., Jonathan Brown, and Patrick Mullen.

18 1.7 “Defendants’ Counsel” means Littler Mendelson, P.C.

19 1.8 “Enhancement Payment” means the amount approved by the Court to be paid to the PAGA
20 Representative in recognition of the time and effort expended on behalf of Aggrieved Employees for the
21 benefit of Aggrieved Employees, which is in addition to any Individual Settlement Amount paid to the
22 PAGA Representative as an Aggrieved Employee. This payment shall also be in exchange for a waiver of
23 individual claims by Plaintiff beyond the Private Attorneys General Act, including a waiver of the
24 protections Civil Code section 1542 for those individual claims.

25 1.9 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
26 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
27 after a signed order approving this settlement has been filed provided no appellate proceeding has been
28 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been

1 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
2 further remedies or relief, whichever is later.

3 1.10 “Final Approval Date” means the date the Court enters a signed order granting approval of
4 the Agreement.

5 1.11 “Gross Settlement Amount” is the sum of Four Hundred Fifteen Thousand (\$415,000).

6 1.12 “Individual Settlement Amount” means an individual Aggrieved Employee’s allocation of
7 the Net Settlement Amount, as defined in Section 1.14 and 5.8.

8 1.13 “LWDA” means the California Labor and Workforce Development Agency.

9 1.14 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
10 distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after
11 deduction of Plaintiff’s attorneys’ fees and litigation costs, the Enhancement Payment, and Settlement
12 Administrator Costs.

13 1.15 “Notice of Settlement” means the document substantially in the form attached hereto as
14 Exhibit 1.

15 1.16 “PAGA” means Private Attorneys General Act.

16 1.17 “PAGA Claim Period” means January 10, 2023, up to either (1) April 8, 2025, or (2) the
17 Final Approval Date, whichever is earlier.

18 1.18 “PAGA Payment” means the 75% share of the Net Settlement Amount paid to the LWDA
19 pursuant to Labor Code section 2699(i).

20 1.19 “PAGA Representative’s Released Claims” means any and all Plaintiff’s individual
21 claims arising from or that are related in any way to the Plaintiff’s employment with Defendant, or that
22 could have been asserted under federal, state, or local laws, and/or ordinances, or tort or contract
23 theories, whether known or unknown, and whether anticipated or unanticipated, including without
24 limitation statutory, constitutional, contractual or common law claims for lost wages, unpaid wages,
25 emotional distress, punitive damages, special damages, damages, unpaid costs, penalties, liquidated
26 damages, interest, attorneys’ fees, litigation costs, restitution, equitable relief or other similar relief or
27 claims. In addition, as to the claims of Plaintiff, the PAGA Representative’s Released Claims further
28 include, without limitation, any and all claims whatsoever regarding Plaintiff’s respective employment

1 and/or termination of employment including, but not limited to, any claims for wages, bonuses,
2 severance pay, vacation pay, penalties, employment benefits, stock options, violation of any personnel
3 policy, any claims based on discrimination, harassment, unlawful retaliation, violation of public policy,
4 or damages of any kind whatsoever, arising out of any common law torts, contracts, express or implied,
5 any covenant of good faith and fair dealing, any theory of wrongful discharge, any theory of negligence,
6 any theory of retaliation, any legal restriction on any Defendant's right to terminate the employment
7 relationship, or any federal, state, or other governmental statute, executive order, regulation or
8 ordinance, or common law, or any other basis whatsoever, to the fullest extent provided by law.
9 Plaintiff shall be deemed to have, and by operation of the Judgment shall have, expressly waived and
10 relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of
11 the California Civil Code, or any other similar provision under federal or state law that purports to limit
12 the scope of a general release. Plaintiff, for himself, has read Section 1542 of the Civil Code of the State
13 of California, which provides as follows:

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

18 Plaintiff understands that Section 1542 gives him the right not to release existing claims of which
19 he is not now aware unless he voluntarily chooses to waive this right. Having been so apprised, Plaintiff
20 nevertheless voluntarily waives the right described in Section 1542 and elects to assume all risks for claims
21 that now exist in his favor, whether known or unknown. The release of the claims of Plaintiff as set forth
22 in this paragraph is a condition precedent to enforcement of this Agreement. The PAGA Representative's
23 Released Claims exclude claims for workers' compensation, unemployment insurance benefits, or other
24 claims that cannot be released as a matter of law.

25 1.20 "Parties" mean Defendants and Plaintiff.

26 1.21 "Plaintiff" means Richard Gomez.

27 1.22 "Plaintiff's Counsel" means Galen T. Shimoda, Justin P. Rodriguez, and Renald Konini of
28 Shimoda & Rodriguez Law, PC.

1 1.23 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
2 benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made.
3 Any amounts Defendants have agreed to pay under this Agreement shall remain the property of
4 Defendants until the payments required under the Agreement are made.

5 1.24 “Qualifying Pay Periods” are pay periods worked by Aggrieved Employees during the
6 PAGA Claim Period in California. The calculation of an Aggrieved Employee’s pay periods and a
7 determination as to whether an Aggrieved Employee was actively employed in California in a particular
8 pay period shall be construed from Defendants’ records.

9 1.25 “Released PAGA Claims” means any and all claims for civil penalties that were brought
10 under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, that were asserted in Plaintiff’s
11 notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have
12 been brought based on the facts alleged therein during the PAGA Claim Period. Aggrieved Employees
13 cannot opt out of this waiver of claims.

14 1.26 “Released Parties” means Defendants, as well as Defendants’ officers, shareholders,
15 directors, agents, employees, attorneys, and insurers.

16 1.27 “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity
17 that will administer the Agreement as outlined in Section 7, or any other third-party administrator agreed
18 to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties
19 each represent that they do not have any financial interest in the Settlement Administrator.

20 1.28 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
21 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
22 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
23 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and
24 fees associated with preparing, issuing and mailing any and all notices and other correspondence to
25 Aggrieved Employees; all costs and fees associated with communicating with Aggrieved Employees,
26 Plaintiff’s Counsel, and Defendants’ Counsel; all costs and fees associated with computing, processing,
27 reviewing, and paying the Individual Settlement Amounts, and resolving disputes; all costs and fees
28 associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal

1 and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all
2 costs and fees associated with preparing any tax returns and any other filings required by any governmental
3 taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings
4 to be prepared in the course of administering Individual Settlement Amounts; and any other costs and fees
5 incurred and/or charged by the Settlement Administrator in connection with the execution of its duties
6 under this Agreement.

7 **2. DESCRIPTION OF THE LITIGATION**

8 2.1 On or about January 10, 2024, Plaintiff sent notice to the LWDA to exhaust administrative
9 remedies under the PAGA for 1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3)
10 Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or
11 Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage statements, (6) Failure to Pay Final
12 Wages, (7) Failure to Pay Reimbursement for Expenses, (8) Violation of Labor Code §§ 558, 558.1
13 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order), (9)
14 Failure to Maintain Accurate Records, and (10) Failure to Provide Paid Sick Leave. The LWDA did not
15 respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized
16 to act as a Private Attorney General on all alleged PAGA claims.

17 2.2 After exhausting administrative remedies, Plaintiff filed a Complaint on March 27, 2024,
18 in Sacramento County Superior Court on behalf of himself and Aggrieved Employees for claims alleged
19 in the January 10, 2024, notice to the LWDA.

20 2.3 Through informal discovery, Defendants and Defendants' Counsel provided Plaintiff's
21 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,
22 information on the number of Aggrieved Employees, including, but not limited to, Aggrieved Employees'
23 workweeks, dates of employment, total number of Aggrieved Employees, their rates of pay, and pay
24 periods as well as timecard data and payroll reports for a randomly selected sample of Aggrieved
25 Employees.

26 2.4 After Plaintiff's Counsel received the data, the Parties engaged in informal settlement
27 negotiations but were not able to come to a resolution. On February 5, 2025, the Parties participated in a
28 lengthy mediation with private mediator Russ J. Wunderli, Esq. At the conclusion of the mediation, the

1 Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-
2 collusive, adversarial, and at arm's length.

3 2.5 Discussions between Plaintiff and Plaintiff's Counsel, between counsel for the Parties, the
4 mediator, document productions, extensive legal analysis, the provision of information by Defendants to
5 Plaintiff and the detailed analysis of the sampled records have permitted each side to assess the relative
6 merits of the PAGA claims and the defenses to those claims.

7 2.6 In the Action, Plaintiff contends that Defendants violated California law by 1) requiring
8 employees to work off-the-clock before their shift, after their shift, and during times they were clocked
9 out for meal periods, 2) not accurately recording employees' hours worked or meal periods taken, 3)
10 failing to properly calculate the regular rate of pay for overtime on non-prevailing wage jobs or for sick
11 leave wage premiums, 4) not authorizing and permitting employees to take all meal periods owed due to
12 invalid and/or voided on-duty meal period agreements and due to required travel to additional job sites
13 during meal periods, 5) failing to authorize and permit employees to take all rest periods owed due to a
14 facially invalid rest period policy and due to requiring employees to travel to additional job sites during
15 rest periods, and 6) failing to reimburse employees or the use of their personal cell phones for work
16 purposes. Defendants have denied each of Plaintiff's claims. The agreed upon Gross Settlement Amount
17 was reached after evaluating the Parties' theories of potential exposure for the PAGA claims. The Parties,
18 with the assistance of the mediator, also assessed appropriate discounts to the potential liability based on
19 Defendants' factual and legal contentions and defenses.

20 2.7 The Parties agree that the above-described investigation and evaluation, as well as
21 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
22 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff,
23 Plaintiff's Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the
24 PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth
25 herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and
26 the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel,
27 Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and
28 terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

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

2 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
3 of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are
4 made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement
5 on a conditional basis in order for the Court to evaluate and approve the settlement. If the Effective Date
6 does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate
7 review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall
8 not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the
9 Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152,
10 Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

11 3.2 Defendants have denied all claims as to liability, damages, penalties, interest, fees,
12 injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve
13 the asserted PAGA claims in the Action via this Agreement, but, to the extent this Agreement is deemed
14 void or the Effective Date does not occur, Defendants do not waive, and are expressly reserving, all rights
15 to challenge all such claims and allegations in the Action upon all procedural and factual grounds,
16 including, without limitation, the ability to challenge representative or collective treatment on any
17 grounds, as well as to assert any and all other potential defenses or privileges.

18 **4. SCOPE OF THE AGGRIEVED EMPLOYEES**

19 4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits
20 as authorized under the Agreement and subject to all obligations and duties required under the Agreement,
21 shall include all Aggrieved Employees as defined in Section 1.2.

22 4.2 Aggrieved Employees entitled to recover under this Agreement will include only those
23 individuals who are identified in Defendants' records as having worked as an Aggrieved Employee.

24 **5. TERMS OF THE SETTLEMENT**

25 The Parties agree as follows:

26 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
27 Section 6, Defendants shall pay the Gross Settlement Amount (\$415,000). Funding of the Gross
28 Settlement Amount shall occur within twenty-eight (28) calendar days after the Effective Date to be held

1 in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount represents the maximum
2 amount payable under this Agreement by Defendants, and includes without limitation, the PAGA
3 Payment, all payments to the Aggrieved Employees, any Enhancement Payment to Plaintiff, all attorneys'
4 fees, costs and litigation expenses directly related to the Action incurred to date, as well as all such fees
5 and costs incurred in documenting the Agreement, administering the Agreement (including Settlement
6 Administrator Costs), and obtaining approval of the Agreement.

7 5.2 Attorneys' Fees and Costs: Plaintiff's Counsel will apply to the Court for attorney's fees
8 of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
9 Defendants have agreed to not oppose Plaintiff's Counsel's application for attorneys' fees so long as it
10 does not exceed the 35% threshold. Plaintiff's Counsel will also be entitled to reimbursement for
11 advanced litigation expenses not to exceed \$12,500, which shall be paid from the Gross Settlement
12 Amount. Defendants have agreed to not oppose Plaintiff's Counsel's request for reimbursement for
13 advanced litigation expenses so long as they do not exceed the \$12,500 threshold. The Settlement
14 Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this
15 Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the
16 portion of the requested amounts not awarded to Plaintiff's Counsel shall be added to the Net Settlement
17 Amount as defined in section 1.14.

18 5.3 Plaintiff's Counsel, on behalf of Plaintiff, shall apply to the Court for an Enhancement
19 Payment to Plaintiff in an amount not to exceed Ten Thousand Dollars (\$10,000) to compensate for the
20 risks, time, and expense of his involvement in the Action and securing the benefits of this Agreement for
21 Aggrieved Employees. The Enhancement Payment is in addition to the Individual Settlement Amount
22 Plaintiff would otherwise be due under the Agreement as an Aggrieved Employee. This payment is also
23 in exchange for a waiver of individual claims by Plaintiff beyond the Private Attorneys General Act,
24 including a waiver of Civil Code section 1542. Defendants have agreed to not oppose Plaintiff's Counsel's
25 request for an Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein.
26 The Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-
27 MISC. In the event that the Court awards less than the Enhancement Payment amount requested, then
28

any portion of the requested amount not awarded to the PAGA Representative shall be added to the Net Settlement Amount to be distributed to the Aggrieved Employees on a pro rata basis.

5.4 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the allocated \$10,000 shall be added to the Net Settlement Amount as defined in section 1.14.

5.5 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount allocated to Aggrieved Employees that was not claimed by Aggrieved Employees 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 Defendants for any reason.

5.6 No Additional Benefits Contributions: All Individual Settlement Amounts paid to Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were actually received by Aggrieved Employees. It is expressly understood and agreed that the receipt of such Individual Settlement Amounts will not entitle any 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 Aggrieved Employee to any increased retirement, 401(k) 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 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).

5.7 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Aggrieved Employees reflect settlement of a dispute over claimed penalties. The characterization of Individual Settlement Amounts to Aggrieved Employees are as follows:

5.7.1 One Hundred percent (100%) of each Aggrieved Employees' Individual Settlement Amount shall be allocated for payment of disputed civil penalties. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS form 1099-MISC.

1 5.7.2 Aggrieved Employees shall be solely responsible for the reporting and payment of
2 their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this
3 Agreement. No party has made any representation to any of the other Parties as to the taxability of any
4 payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to
5 Plaintiff's Counsel, or otherwise as to tax implications of any provision of this Agreement.

6 5.8 Pro Rata Distribution Formula: After Court approved attorneys' fees and costs, and
7 Settlement Administrator Costs and Enhancement Payment are determined and a Net Settlement Amount
8 has been established, that Net Settlement Amount shall be divided between the PAGA Payment and
9 payment to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement
10 Amount. 25% of the Net Settlement Amount will be paid to Aggrieved Employees. Each individual
11 Aggrieved Employee's Individual Settlement Amount shall be determined by taking the Qualifying Pay
12 Periods for the individual Aggrieved Employee and dividing that by the Qualifying Pay Periods for all
13 Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount.
14 Payment to Aggrieved Employees of their Individual Settlement Amount will not require the submission
15 of any claim form.

16 5.9 No Additional Contribution by Defendants: Defendants' monetary obligation under this
17 Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses
18 arising out of or in connection with the performance of this Agreement shall be paid from the Gross
19 Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is
20 deemed null and void as described in Section 3, then Defendants and Plaintiff shall be equally responsible
21 for the Settlement Administrator Costs incurred between the date the Agreement was executed and the
22 date of such event.

23 **6. RELEASE**

24 6.1 Release by Aggrieved Employees: Upon the Effective Date, Aggrieved Employees shall
25 be deemed to fully, finally, and forever release the Released Parties from all Released PAGA Claims.

26 6.2 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
27 forever release the Released PAGA Claims and the PAGA Representative's Released Claims as to all
28 Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest will be

1 permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims, and the
2 PAGA Representative's 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
5 for: 1) receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating
6 estimated Individual Settlement Amounts and any and all taxes associated with the Individual Settlement
7 Amount, including employer taxes, if any; 3) taking appropriate steps to trace and locate any individual
8 Aggrieved Employees whose address or contact information as provided to the Settlement Administrator
9 is inaccurate or outdated and mailing the Notice of Settlement to Aggrieved Employees; 4) providing
10 notification to the appropriate state officials of this Agreement as required; 5) maintaining the Gross
11 Settlement Amount in a QSF; 6) determining and paying the final amounts due to be paid under the
12 Agreement after resolution of awarded attorneys' fees and costs and Settlement Administrator Costs; 7)
13 paying any residual funds from uncashed checks to the *cy pres* beneficiaries; 8) reporting to Plaintiff's
14 Counsel and Defendants' Counsel regarding the statistics of the administration, including (a) the number
15 of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number
16 of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the
17 number of address traces performed for undeliverable Notice of Settlements; (g) the number of Notice of
18 Settlements undeliverable from traced addresses; 9) providing a declaration to the Court regarding the
19 final statistics of the administration and compliance with all payment obligations under the Agreement;
20 10) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts
21 to Aggrieved Employees; and 11) carrying out other related tasks as necessary to effectuate the terms of
22 this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability
23 and need to perform its duties shall be referred to the Court, if necessary, which will have continuing
24 jurisdiction over the terms and conditions of this Agreement, until all payments and obligations
25 contemplated by the Agreement have been fully executed.

26 7.2 Aggrieved Employee Data: Within fourteen (14) calendar days after the Effective Date,
27 Defendants shall provide the Settlement Administrator with the name, last known mailing address, last
28 known telephone number, Social Security Number, and Qualifying Pay Periods of each Aggrieved

Employee. The Settlement Administrator shall review the data to determine the number of Qualifying Pay Periods for each Aggrieved Employee. Defendants shall not provide any information for pay periods during which an Aggrieved Employee may have worked as an exempt employee, worked outside California, or worked outside the PAGA Claim Period. The Settlement Administrator shall maintain all information received from Defendants confidential to itself, and Defendants' Counsel. However, Plaintiff's Counsel shall be able to review the breakdown of Qualified Pay Periods and estimated Individual Settlement Amounts for Aggrieved Employees prior to mailing for quality assurance.

7.3 Determination of Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA:

Within seven (7) calendar days after Defendants have provided the Settlement Administrator with information regarding Aggrieved Employees, the Settlement Administrator shall calculate the final Net Settlement Amount, PAGA Payment, and the final Individual Settlement Amounts for Aggrieved Employees, and report the results of these calculations to Plaintiff's Counsel and Defendants' Counsel.

7.4 Settlement Administrator Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA: Defendants shall wire the Gross Settlement Amount as described in Section 5.1 to the Settlement Administrator within twenty-eight (28) calendar days after the Effective Date to be held in trust in a QSF. Within seven (7) calendar days after the Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator shall deliver payment of Plaintiff's Counsels' attorney's fees and costs, any Enhancement Payment, the PAGA Payment payable to the LWDA, Settlement Administrator Costs, and payment for Individual Settlement Amounts to Aggrieved Employees as required under this Agreement and approved by the Court. Plaintiff's Counsel shall provide the Settlement Administrator with the pertinent taxpayer identification number and payment instructions for the attorney's fees and costs after the Effective Date.

7.5 Notice to Aggrieved Employees: The Notice of Settlement will be sent to Aggrieved Employees in English and Spanish. The Settlement Administrator will provide a Notice of Settlement, substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently with providing payment for Individual Settlement Amounts as described in Sections 5.8 and 7.4. The Notice of Settlement will inform Aggrieved Employees of a summary of the terms and conditions of the Agreement. The Notice of Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net

Settlement Amount, attorneys' fees and costs allocations, Enhancement Payment, Settlement Administrator Cost allocations, PAGA Payment allocations, the scope of individuals covered by this Agreement, and the nature and extent of the Released PAGA Claims.

7.6 Aggrieved Employee Mailing: Within seven (7) calendar days after the Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search and will mail the respective Individual Settlement Amount, as determined in Sections 5.8 and 7.4, and Notice of Settlement, to each Aggrieved Employee by first-class mail, postage prepaid.

7.7 Returned and/or Re-mailed Notice Packets: In the event that a Notice of Settlement and Individual Settlement Amount payment is returned to the Settlement Administrator as undeliverable, the Notice of Settlement and Individual Settlement Amount payment shall be sent to the forwarding address affixed thereto within seven (7) calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within seven (7) calendar days. Following each search that does not result in a corrected address, for those Aggrieved Employees who appear to be current employees of Defendants at the time of the Effective Date, the Settlement Administrator shall contact Defendants' Counsel for assistance and Defendants shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain valid mailing addresses for Aggrieved Employees to the extent they were active employees of Defendants at the time of the Effective Date. In the event the procedures in this paragraph are followed and the intended recipient of a Notice of Settlement and Individual Settlement Amount payment still does not receive the Notice of Settlement and/or Individual Settlement Amount payment, the Aggrieved Employee shall still be bound by all terms of the Agreement, including the releases contained in Sections 1.25 and 6.1, and any final judgment entered by the Court.

7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.2 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties,

Plaintiff's Counsel, or Defendants' Counsel to provide notice of the Agreement except as expressly required by the Court.

7.9 Settlement Check Expiration and Cy Pres: The Settlement Administrator shall issue Individual Settlement Amounts to 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 undeposited checks shall be transmitted to the *cy pres* beneficiaries identified in Section 5.4. The Settlement Administrator shall deliver the *cy pres* funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Settlement Administrator Declaration Regarding Settlement Administration: Within twenty-one (21) calendar days after the last day for Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Plaintiff's Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration and that all the obligations of the Settlement Administrator have been completed.

8. SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. 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 schedule for notice and payment procedures carrying out the Agreement is as follows.

Last day for Defendants to provide Settlement Administrator with Aggrieved Employee information	Within 14 calendar days after the Effective Date
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information

Last day for Defendants to fund Gross Settlement Amount	Within 28 calendar days after the Effective Date
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendants have funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, Enhancement Payment, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to 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. MISCELLANEOUS TERMS

9.1 Dismissal and Retention of Jurisdiction to Enforce: Upon the Effective Date, the Released PAGA Claims will be dismissed with prejudice, with the Court to retain jurisdiction over the Parties to enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6. The prevailing party in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for attorney's fees and costs is filed.

9.2 Additional Pay Period Contingency: Defendants have represented that there are no more than 8,483 pay periods during the PAGA Claim Period. In the event the number of pay periods during the PAGA Claim Period is more than 9,331.3 (*i.e.*, greater than 10% more than 8,483), then the Gross Settlement Amount shall be increased proportionally by the pay periods in excess of 9,331.3. For example, if there were 11,000 pay periods represented to exist during the PAGA Claim Period, but there

are actually 12,500 pay periods in the PAGA Claim Period, then Defendants would have to increase the Gross Settlement Amount by 3.6% (12,500 - 11,000 pay periods = 1,500 excess pay periods. 1,500 divided by 11,000 = 13.6%. 13.6% - 10% = 3.6%).

9.3 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include modifying and/or resubmitting the Agreement for approval. Plaintiff's Counsel shall be responsible for drafting the court approval paperwork. All parties agree to act immediately and diligently to perform their obligations under this Agreement, including the review and approval of settlement documents, such that there are no substantial delays in seeking court approval or administration of this settlement. Plaintiff's Counsel shall endeavor to file a motion for approval of this settlement within sixty (60) calendar days of the date this Agreement is signed. Plaintiff's Counsel shall provide Defendants' Counsel with a draft approval motion within 1 week after this Agreement is fully executed. Defendants' Counsel will provide comments and/or proposed revisions within 1 week after receipt of the draft motion.

9.4 No Admission of Liability: Neither the acceptance nor the performance by Defendants of the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the Complaint, the representative character of the Action, the validity of any of the claims that were or could have been asserted by Plaintiff and/or Aggrieved Employees in the Action, or of any liability or guilt of Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person, and Defendants have specifically disclaimed any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

1 9.5 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
2 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
3 the third business day after mailing by United States certified mail, return receipt requested, addressed as
4 follows:

5 To the Plaintiff:

6 Galen T. Shimoda
7 Justin P. Rodriguez
8 Renald Konini
9 Shimoda & Rodriguez Law, PC
10 9401 East Stockton Blvd., Suite 120
11 Elk Grove, CA 95624

12 To Defendants:

13 John H. Adams, Jr.
14 Littler Mendelson, P.C.
15 500 Capitol Mall, Suite 2000
16 Sacramento, CA 95814

17 9.6 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
18 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
19 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
20 party or its counsel participated in the drafting of this Agreement.

21 9.7 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the
22 terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the
23 terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties
24 hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

25 9.8 Attorneys' Fees and Costs Limitations: Neither Plaintiff's Counsel nor any other attorneys
26 acting for, or purporting to act for, Aggrieved Employees, or Plaintiff, may recover or seek to recover any
27 amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount
28 except as expressly provided herein.

 9.9 No Modifications: This Agreement may not be changed, altered, or modified, except in
writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged
except by performance in accordance with its terms.

1 9.10 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
3 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
4 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
5 this Agreement

6 9.11 Counterparts: This Agreement shall become effective upon its execution by all of the
7 undersigned. Plaintiff, Plaintiff's Counsel, Defendants and Defendants' Counsel may execute this
8 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
9 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
10 same force and effect of originals.

11 9.12 Choice of Law: The Agreement and the exhibits hereto shall be considered to have been
12 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
13 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
14 with, and governed by, the substantive laws of the State of California without giving effect to that State's
15 choice of law principles.

16 9.13 Headings and Captions: Paragraph titles or captions contained in the Agreement are
17 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
18 scope of this Agreement, or any provision thereof.

19 9.14 No Retaliation or Discouragement: The Parties agree they will take no action that could be
20 construed as retaliation against any Aggrieved Employees for participating in this settlement.

21 9.15 Integrated Agreement: This Agreement sets forth the entire understanding between the
22 Parties with regard to any and all material terms or otherwise and supersedes any and all prior agreements,
23 oral or written, pertaining to the subject matter hereof. Each party acknowledges that there is no
24 representation, inducement, promise or agreement which has been made, orally or otherwise, by the other
25 party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this
26 Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are
27 fully understood and voluntarily accepted by the Parties.
28

1 9.16 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
2 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
3 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

4 9.17 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
5 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
6 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

7 9.18 Waiver of Compliance: No waiver of any condition or covenant contained in this
8 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
9 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy

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

12 **For Plaintiff:**

13 Date: 03/19/2025



Richard Gomez (Mar 19, 2025 09:24 PDT)

Richard Gomez

14 **For Defendants:**

15 Date: _____

Patrick Mullen

For B&M Builders, Inc.

16 Date: _____

Patrick Mullen

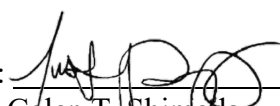
17 Date: _____

Jonathan Brown

18 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

19 Dated: 3/19/25

By: 

Galen T. Shimoda

Justin P. Rodriguez

Renald Konini

Attorneys for Plaintiff and Aggrieved
Employees

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

9.17 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.

9.18 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: _____

Richard Gomez

For Defendants:

Date: 4/5/25

Patrick Mullen
For B&M Builders, Inc.

Date: 4/5/25

Patrick Mullen

Date: 9/3/25

Jonathan Brown

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

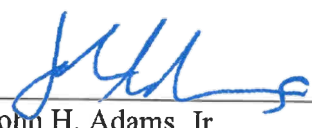
Dated: _____

By: _____
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff and Aggrieved
 Employees

1 APPROVED AS TO FORM

LITTLER MENDELSON, P.C.

2
3 Dated: April 4, 2025

By: 

John H. Adams, Jr.
Attorneys for Defendants

Exhibit 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

Case No. 24CV005888

RICHARD GOMEZ, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

B&M BUILDERS, INC., an unknown business
entity; JONATHAN BROWN, an individual;
PATRICK MULLEN, an individual; DOES 1 to 100,
inclusive,

Defendants.

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All non-exempt employees who worked or continue to work for Defendants in California from January 10, 2023, up to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Gomez v. B&M Builders, Inc., et al.*, Sacramento County Superior Court of California, Case No. 24CV005888, filed March 27, 2024 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Richard Gomez ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of himself and Aggrieved Employees. Plaintiff alleged claims under the PAGA against B&M Builders, Inc., Jonathan Brown, and Patrick Mullen ("Defendants") for (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage statements, (6) Failure to Pay Final Wages, (7) Failure to Pay Reimbursement for Expenses, (8) Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order), (9) Failure to Maintain Accurate Records, and (10) Failure to Provide Paid Sick Leave. Defendants have denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further dispute all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiff or to any other current or former employees, and Defendants do not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency (LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on the Failure to Pay Overtime Wages, Failure to Pay Minimum Wages, Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, Failure to Provide Accurate Wage statements, Failure to Pay Final Wages, Failure to Pay Reimbursement for Expenses, Violation of Labor Code §§ 558, 558.1, Failure to Maintain Accurate Records, and Failure to Provide Paid Sick Leave Labor Code and/or California Labor Code sections 201-203, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in Plaintiff's notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between January 10, 2023, and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver does not extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$415,000 ("Gross Settlement Amount") to resolve the PAGA claims as described above. Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$ [REDACTED], attorneys' costs in the amount of \$ [REDACTED], an Enhancement Payment to Plaintiff in the amount of \$ [REDACTED], and the fees and expenses of the Settlement Administrator in the amount of \$ [REDACTED], which will resulted in a "Net Settlement Amount" of \$ [REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency

("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$ [REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$ [REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between January 10, 2023, and [REDACTED], dividing that number by the number of pay periods worked for all Aggrieved Employees between January 10, 2023, and [REDACTED], and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

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
On behalf of Plaintiff

John H. Adams, Jr.
Littler Mendelson, P.C.
500 Capitol Mall, Suite 2000
Sacramento, CA 95814
Telephone: 916-830-7200
On behalf of Defendants

EXHIBIT B

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 RICHARD GOMEZ

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

RICHARD GOMEZ,

Plaintiff,

vs.

B&M BUILDERS, INC., an unknown
business entity; JONATHAN BROWN, an
individual; PATRICK MULLEN, an
individual; and DOES 1 to 100, inclusive,
Defendants.

Case No. 24CV005888

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

1 Plaintiff RICHARD GOMEZ (“Plaintiff”) hereby files this Complaint against Defendants
2 B&M BUILDERS, INC., an unknown business entity; JONATHAN BROWN, an individual;
3 PATRICK MULLEN, an individual; and DOES 1 to 100, inclusive (hereinafter all collectively
4 referred to as “Defendants”). On information and belief, Plaintiff allege the following:

5 **INTRODUCTION**

6 1. This is an individual and Private Attorneys General Act (“PAGA”) lawsuit brought by
7 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period
8 violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair
9 competition.

10 **JURISDICTION AND VENUE**

11 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
12 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
13 Labor Code and Wage Order No. 4.

14 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that some of
15 the wrongful acts and violations of law asserted herein occurred within Sacramento County, and
16 Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers*
17 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

18 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
19 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
20 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
21 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
22 (“LWDA”) on approximately January 10, 2024. Plaintiff provided facts and legal bases for his claims
23 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
24 of action. Plaintiff also submitted the \$75.00 filing fee. The January 10, 2024, notice was also sent via
25 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
26 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies
27 pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself
28 and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A),

(c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).

Aggrieved Employees include, but is not limited to, the following: all non-exempt employees who worked or continue to work for Defendants in California at any time between January 10, 2023, to the present.

PARTIES

5. RICHARD GOMEZ is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, B&M BUILDERS, INC., is now and/or at all times mentioned in this Complaint was an unknown business entity and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. On information and belief, Plaintiff alleges, JONATHAN BROWN, is now and/or at all times mentioned in this Complaint was an individual and the owner and operator of an industry, business and/or facility doing business in the State of California. Plaintiff further alleges that JONATHAN BROWN is an owner, director, officer, and/or managing agent of B&M BUILDERS, INC., responsible for causing the violations outlined in the first through seventh, and ninth causes of action. As such JONATHAN BROWN is individually liable pursuant to California Labor Code section 558.1. Pursuant to California Labor Code section 558.1, B&M BUILDERS, INC., are jointly and severally liable for each cause of action asserted herein. On information and belief, Plaintiff alleges that JONATHAN BROWN trained subordinate staff to implement and carry out the policies and practices identified herein. As a result, whether directly or indirectly, JONATHAN BROWN caused the violations identified herein. JONATHAN BROWN was responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead.

8. On information and belief, Plaintiff alleges, PATRICK MULLEN, is now and/or at all times mentioned in this Complaint was an individual and the owner and operator of an industry, business and/or facility doing business in the State of California. Plaintiff further alleges that PATRICK MULLEN is an owner, director, officer, and/or managing agent of B&M BUILDERS, INC., responsible for causing the violations outlined in the first through seventh, and ninth causes of

1 action. As such PATRICK MULLEN is individually liable pursuant to California Labor Code
2 section 558.1. Pursuant to California Labor Code section 558.1, B&M BUILDERS, INC., are jointly
3 and severally liable for each cause of action asserted herein. On information and belief, Plaintiff
4 alleges that PATRICK MULLEN trained subordinate staff to implement and carry out the policies
5 and practices identified herein. As a result, whether directly or indirectly, PATRICK MULLEN
6 caused the violations identified herein. PATRICK MULLEN was responsible for the violations
7 stated herein as he was in a position of authority with the power and responsibility to monitor,
8 institute, and/or modify the unlawful practices, but chose to ratify them instead.

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

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

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

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

22 13. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
23 wrongs, complaints, injuries and/or damages alleged in this Complaint.

24 **GENERAL ALLEGATIONS**

25 14. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 13 as though fully
26 set forth herein.

27 15. Plaintiff was employed by Defendants from September 12, 2023, to November 7, 2023,
28 as a non-exempt employee. Defendants provide general contractor construction services as well as

1 paving asphalt and performing concrete work for different construction projects. Plaintiff was paid \$30
2 per hour. Plaintiff and Aggrieved Employees worked for all Defendants.

3 16. Plaintiff and Aggrieved Employees worked over eight (8) hours a day and over forty (40)
4 hours per week. Plaintiff worked in a fast-paced environment which was very busy and that caused
5 Plaintiff to work off the clock. Plaintiff's schedule was from 7:00 a.m. to 3:30 p.m. However,
6 Defendants did not pay Plaintiff for off the clock work. Plaintiff estimates that he worked thirty (30) to
7 forty-five (45) minutes off the clock at the beginning of his shift about one (1) to two (2) times per
8 week. Also, Plaintiff received regularly text messages or calls regarding work issues after his shift.
9 Defendants required Plaintiff to respond to their texts and phone calls regarding work issues after his
10 shift. Plaintiff estimates that he spent approximately one (1) to two (2) hours per week working off the
11 clock because he had to read and respond to Defendants texts and phone calls after working hours.
12 Moreover, Plaintiff had to deliver bids to different customers weekly. These customers were located
13 approximately one (1) and one half (1/2) hours away from Defendants' office. The bids were due at 2:00
14 p.m. Plaintiff would wait until all the bids were open and until the winner was announced. Plaintiff
15 would then contact Defendants and inform them of the results. Then, he would have to drive back home.
16 Plaintiff would arrive home approximately at 4:00 or 4:30 p.m. However, Defendants did not pay
17 Plaintiff past 3:30 p.m. for the time that he spent driving back from the bids' locations. Plaintiff
18 estimates that he drove to deliver such bids approximately two (2) to three (3) times per week.
19 Defendants did not pay Plaintiff for off-the-clock work and for any time spent while being on call or
20 responding to calls after his shift. Plaintiff is informed and believes that Defendants did not pay
21 Aggrieved Employees for off-the-clock work either. Additionally, Defendants did not require Plaintiff to
22 clock in and out and Defendants did not have a system to clock in and out. Defendants did not have an
23 electronic system to track employee hours and meal periods. Defendants required Plaintiff to fill out
24 timesheets on Fridays, once per week. Plaintiff is informed and believes that Defendants did not require
25 Aggrieved Employees to clock in and out and Aggrieved Employees did not clock in and out. Plaintiff is
26 informed and believes that Aggrieved Employees filled out timesheets once per week.

27 17. As a result, Defendants also did not pay Plaintiff for overtime hours. Defendants did not
28 pay Plaintiff for off-the clock work as explained above and for the time that he spent driving back from

1 bids' locations and for the time responding to texts and calls after work hours. Since Plaintiff worked
2 over eight (8) hours per day and over forty (40) hours per week, the off-the-clock hours were overtime
3 hours. Plaintiff is informed and believes that Defendants did not pay Aggrieved Employees for all
4 overtime hours worked also. Additionally, Plaintiff is informed and believes that Defendants paid
5 Aggrieved Employees prevailing wages during the same week that Aggrieved Employees worked on
6 other non-prevailing wage projects. However, Plaintiff is informed and believes that Defendants did not
7 take into account prevailing wages earned when calculating the regular rate of pay for purposes of
8 calculating the value of the overtime premiums due when working on non-prevailing wage jobs, meal
9 and rest period premiums, and sick leave pay. As a result, Plaintiff is informed and believes that
10 Defendants owe wages to Aggrieved Employees for overtime premiums, meal and rest period
11 premiums, and sick leave pay for the weeks that Aggrieved Employees worked a mix of prevailing wage
12 projects and non-prevailing wage projects.

13 18. Defendants further did not authorize and permit Plaintiff to take all uninterrupted meal
14 and rest periods. Plaintiff had to eat while working. Plaintiff did not take thirty (30) minute
15 uninterrupted meal periods because of time sensitive job duties that typically required him to continue
16 working beyond the completion of the fifth hour of work without a meal period. Plaintiff did not take
17 uninterrupted ten (10) minute rest periods every four (4) hours or fraction of thereof. Plaintiff is
18 informed and believes that Defendants did not authorize and permit Aggrieved Employees to take
19 uninterrupted meal and rest periods. Plaintiff is informed and believes that Aggrieved Employees did not
20 take thirty (30) minute uninterrupted meal periods because of time sensitive job duties that prevented
21 them from taking their meal and rest periods in a timely fashion, if at all. Plaintiff is informed and
22 believes that Aggrieved Employees did not take uninterrupted ten (10) minute rest periods every four (4)
23 hours or fraction of thereof.

24 19. Defendants also did not have a policy to reimburse Plaintiff and Aggrieved Employees
25 for use of their personal cell phones for work purposes. Plaintiff used his personal cell phone to
26 communicate with managers, supervisors, and other Aggrieved Employees regarding work issues.
27 Defendants did not reimburse Plaintiff for using their cell phone for work purposes. Plaintiff is informed
28 and believes that Aggrieved Employees used their personal cell phones to communicate with managers,

supervisors, and other Aggrieved Employees regarding work issues. Plaintiff is informed and believes that Defendants did not reimburse Aggrieved Employees for using their cell phone for work purposes.

20. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime wages, minimum wages, and meal and rest period premiums owed, the wage statements Defendants issued were defective. Specifically, Defendants did not accurately list total hours worked, wages due, total missed meal and rest period premiums earned, accurate accrued sick hours, and the corresponding rates of pay. Moreover, Defendants failed to provide Plaintiff and Aggrieved Employees with the accurate accrual sick hours since accrual of sick hours is based on the number of hours worked.

21. As a further result of Defendants' failure to pay Plaintiff and Aggrieved Employees for all regular and overtime hours worked, failure to pay meal and rest period premiums, Defendants failed to provide all final wages owed to Plaintiff and Aggrieved Employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation.

22. Plaintiff is informed and believes that JONATHAN BROWN and PATRICK MULLEN were the Chief Executive Officer and President of B&M BUILDERS, INC., during the time that Plaintiff worked for Defendants. Mr. BROWN and Mr. MULLEN were responsible for creating, implementing, and overseeing the wage and hour policies and practices outlined herein that resulted in the violation of the California Labor Code.

CAUSES OF ACTION

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

23. Plaintiff incorporates by reference and re-allege paragraphs 1 through 22 as though fully set forth herein.

24. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiffs 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. 4, section (3)(A); Cal. Lab. Code §§ 510, 1194.

25. Plaintiff worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and for all overtime hours worked at their regular rate of pay.

26. Plaintiff was not exempt from overtime protections employees under the California Wage Orders and Labor Code.

27. As a proximate result of Defendants' conduct, Plaintiff has 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.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

28. Plaintiff incorporates by reference and re-allege paragraphs 1 through 27 as though fully set forth herein.

29. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff at least California’s applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code § 1194.

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

31. As a proximate result of Defendants' conduct, Plaintiff has 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.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

32. Plaintiff incorporates by reference and re-allege paragraphs 1 through 31 as though fully set forth herein.

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

1 34. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A)
2 require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each
3 work period of more than five (5) hours.

4 35. California Labor Code section 512 and Wage Order No. 4 section 11(B) further provide
5 that employers may not employ employees for a work period for more than ten (10) hours per day
6 without providing the employee with a second meal period of at least thirty (30) minutes. However, if
7 the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long
8 as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their
9 regular rate of compensation for each meal period not provided.

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

16 37. Defendants further failed to pay Plaintiff the applicable meal period premiums for any
17 such missed meal breaks.

18 38. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the
19 section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth
20 here in full.

21 **FOURTH CAUSE OF ACTION**
22 **REST PERIOD VIOLATIONS**
23 **(As to all Defendants)**

24 39. Plaintiff incorporates by reference and re-allege paragraphs 1 through 38 as though fully
25 set forth herein.

26 40. An employer must provide an employee a rest period in accordance with the
27 applicable Wage Order and California Labor Code section 226.7.
28

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

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

7 43. Defendants further failed to pay Plaintiff the applicable rest period premiums for any
8 such missed rest periods.

9 44. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in
10 the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set
11 forth here in full.

12 **FIFTH CAUSE OF ACTION**
13 **WAGE STATEMENT VIOLATIONS**
14 **(As to all Defendants)**

15 45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though fully
16 set forth herein.

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

19 *(1) gross wages earned, (2) total hours worked by the employee, except for*
20 *any employee whose compensation is solely based on a salary and who is*
21 *exempt from payment of overtime under subdivision (a) of Section 515 or*
22 *any applicable order of the Industrial Welfare Commission, (3) the*
23 *number of piece-rate units earned and any applicable piece rate if the*
24 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
25 *all deductions made on written orders of the employee may be aggregated*
26 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
27 *period for which the employee is paid, (7) the name of the employee and*
28 *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 47. 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 applicable hourly rates in effect during the pay period, all regular, overtime
7 and double time hours worked and corresponding rates of pay, and gross and net wages earned. The
8 paystubs also did not accurately itemize Plaintiff's total hours worked due to Defendants'
9 timekeeping practices, meal and rest period policies and practices that interrupted Plaintiff during his
10 meal and rest breaks, and Plaintiff's off-the-clock work. Plaintiff was not able to promptly and
11 easily determine her total hours worked from her paystubs alone. Additionally, Plaintiff suffered
12 confusion over whether she received all wages owed and was prevented from effectively challenging
13 information on her wage statements.

14 48. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in
15 the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set
16 forth here in full.

17 **SIXTH CAUSE OF ACTION**
18 **WAITING TIME PENALTIES**
19 **(As to all Defendants)**

20 49. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 48 as though fully
21 set forth herein.

22 50. An employer must pay an employee who is terminated all unpaid wages immediately
23 upon termination. *See* Cal. Lab. Code § 201.

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

26 52. Plaintiff did not receive all wages, including minimum and overtime wages, meal and rest
27 period premiums, or all sick leave pay owed at his termination or within the required time after his
28 separation from employment.

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

4 54. Defendants knew of their obligation to pay Plaintiff's his final wages when his
5 employment terminated. Indeed, Defendants had knowledge that Plaintiff worked off the clock and
6 worked through meal and rest periods and took late meal and rest periods because Defendants
7 interrupted Plaintiff during Plaintiff's meal period and rest period times and required Plaintiff to drive to
8 different customers to deliver bids that were located approximately one (1) and one half (1/2) hours
9 away from Defendants' office. Defendants knew that Plaintiff worked thirty (30) to forty-five (45)
10 minutes off the clock at the beginning of his shift about one (1) to two (2) times per week and that
11 Plaintiff was not paid for the time he spent responding to texts and phone calls after work hours. Such
12 conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet
13 Defendants still refused to pay the remaining wages owed.

14 55. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived
15 of his wages and thereby seeks her daily rate of pay multiplied by thirty (30) days for Defendants'
16 failure to pay all wages due.

17 **SEVENTH CAUSE OF ACTION**
18 **FAILURE TO REIMBURSE EXPENSES**
19 **(As to all Defendants)**

20 56. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 55 as though fully
21 set forth herein.

22 57. California Labor Code section 2802(a) states that "An employer shall indemnify his or
23 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
24 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
25 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
26 unlawful."

27 58. Defendants required Plaintiff to use his personal cell phone to communicate with
28 managers and supervisors for work purposes. Defendants did not reimburse Plaintiff for using his
personal cell phone for work purposes.

59. As a proximate result of Defendants' conduct, Plaintiff has 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.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to B&M BUILDERS, INC., and DOES 1 to 100)

60. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 59 as though fully set forth herein.

61. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

62. Plaintiff was not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during his employment or any time thereafter. Moreover, through Defendants conduct Plaintiff was denied statutory protections regarding meal and rest periods.

63. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

64. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff is entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 245 *et seq.*, 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)

65. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 64 as though fully set forth herein.

66. 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 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 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. 4, § 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 §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

67. 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).

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

69. 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);

- 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.

Shimoda & Rodriguez Law, PC

By:


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

EXHIBIT C



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January 10, 2024

For Online Filing:

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

Re: *Gomez v. B&M Builders, Inc.*

Dear Labor Commissioner,

As counsel for Richard Gomez (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

B&M Builders, Inc.
11330 Sunrise Park Drive, Ste C
Rancho Cordova, CA 95742

Jonathan Brown
11330 Sunrise Park Drive, Ste C
Rancho Cordova, CA 95742

Patrick Mullen
11330 Sunrise Park Drive, Ste C
Rancho Cordova, CA 95742

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 B&M Builders, Inc., Jonathan Brown, and Patrick Mullen (“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 non-exempt employees who worked or continue to work for Defendants in California at any time between one (1) year prior to the filing of this notice 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 by Defendants from September 12, 2023, to November 7, 2023, as a non-exempt employee. Defendants provide general contractor construction services as well as paving asphalt and performing concrete work for different construction projects. Plaintiff was paid \$30 per hour. Plaintiff and Aggrieved Employees worked for all Defendants.

Plaintiff and Aggrieved Employees worked over eight (8) hours a day and over forty (40) hours per week. Plaintiff worked in a fast-paced environment which was very busy and that caused Plaintiff to work off the clock. Plaintiff's schedule was from 7:00 a.m. to 3:30 p.m. However, Defendants did not pay Plaintiff for off the clock work. Plaintiff estimates that he worked thirty (30) to forty-five (45) minutes off the clock at the beginning of his shift about one (1) to two (2) times per week. Also, Plaintiff received regularly text messages or calls regarding work issues after his shift. Defendants required Plaintiff to respond to their texts and phone calls regarding work issues after his shift. Plaintiff estimates that he spent approximately one (1) to two (2) hours per week working off the clock because he had to read and respond to Defendants texts and phone calls after working hours. Moreover, Plaintiff had to deliver bids to different customers weekly. These customers were located approximately one (1) and one half (1/2) hours away from Defendants' office. The bids were due at 2:00 p.m. Plaintiff would wait until all the bids were open and until the winner was announced. Plaintiff would then contact Defendants and inform them of the results. Then, he would have to drive back home. Plaintiff would arrive home approximately at 4:00 or 4:30 p.m. However, Defendants did not pay Plaintiff past 3:30 p.m. for the time that he spent driving back from the bids' locations. Plaintiff estimates that he drove to deliver such bids approximately two (2) to three (3) times per week. Defendants did not pay Plaintiff for off-the-clock work and for any time spent while being on call or responding to calls after his shift. Plaintiff is informed and believes that Defendants did not pay Aggrieved Employees for off-the-clock work either. Additionally, Defendants did not require Plaintiff to clock in and out and Defendants did not have a system to clock in and out. Defendants did not have an electronic system to track employee hours and meal periods. Defendants required Plaintiff to fill out timesheets on Fridays, once per week. Plaintiff is informed and believes that Defendants did not require Aggrieved Employees to clock in and out and Aggrieved Employees did not clock in and out. Plaintiff is informed and believes that Aggrieved Employees filled out timesheets once per week.

As a result, Defendants also did not pay Plaintiff for overtime hours. Defendants did not pay Plaintiff for off-the clock work as explained above and for the time that he spent driving back from bids' locations and for the time responding to texts and calls after work hours. Since Plaintiff worked over eight (8) hours per day and over forty (40) hours per week, the off-the-clock hours were overtime hours. Plaintiff is informed and believes that Defendants did not pay Aggrieved Employees for all overtime hours worked also. Additionally, Plaintiff is informed and believes that Defendants paid Aggrieved Employees prevailing wages during the same week that



Aggrieved Employees worked on other non-prevailing wage projects. However, Plaintiff is informed and believes that Defendants did not take into account prevailing wages earned when calculating the regular rate of pay for purposes of calculating the value of the overtime premiums due when working on non-prevailing wage jobs, meal and rest period premiums, and sick leave pay. As a result, Plaintiff is informed and believes that Defendants owe wages to Aggrieved Employees for overtime premiums, meal and rest period premiums, and sick leave pay for the weeks that Aggrieved Employees worked a mix of prevailing wage projects and non-prevailing wage projects.

Defendants further did not authorize and permit Plaintiff to take all uninterrupted meal and rest periods. Plaintiff had to eat while working. Plaintiff did not take thirty (30) minute uninterrupted meal periods because of time sensitive job duties that typically required him to continue working beyond the completion of the fifth hour of work without a meal period. Plaintiff did not take uninterrupted ten (10) minute rest periods every four (4) hours or fraction of thereof. Plaintiff is informed and believes that Defendants did not authorize and permit Aggrieved Employees to take uninterrupted meal and rest periods. Plaintiff is informed and believes that Aggrieved Employees did not take thirty (30) minute uninterrupted meal periods because of time sensitive job duties that prevented them from taking their meal and rest periods in a timely fashion, if at all. Plaintiff is informed and believes that Aggrieved Employees did not take uninterrupted ten (10) minute rest periods every four (4) hours or fraction of thereof.

Defendants also did not have a policy to reimburse Plaintiff and Aggrieved Employees for use of their personal cell phones for work purposes. Plaintiff used his personal cell phone to communicate with managers, supervisors, and other Aggrieved Employees regarding work issues. Defendants did not reimburse Plaintiff for using their cell phone for work purposes. Plaintiff is informed and believes that Aggrieved Employees used their personal cell phones to communicate with managers, supervisors, and other Aggrieved Employees regarding work issues. Plaintiff is informed and believes that Defendants did not reimburse Aggrieved Employees for using their cell phone for work purposes.

As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime wages, minimum wages, and meal and rest period premiums owed, the wage statements Defendants issued were defective. Specifically, Defendants did not accurately list total hours worked, wages due, total missed meal and rest period premiums earned, accurate accrued sick hours, and the corresponding rates of pay. Moreover, Defendants failed to provide Plaintiff and Aggrieved Employees with the accurate accrual sick hours since accrual of sick hours is based on the number of hours worked.

As a further result of Defendants' failure to pay Plaintiff and Aggrieved Employees for all regular and overtime hours worked, failure to pay meal and rest period premiums, Defendants failed to provide all final wages owed to Plaintiff and Aggrieved Employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation.



Plaintiff is informed and believes that Jonathan Brown and Patrick Mullen were the Chief Executive Officer and President of B&M Builders, Inc. during the time that Plaintiff worked for Defendants. Mr. Brown and Mr. Mullen were responsible for creating, implementing, and overseeing the wage and hour policies and practices outlined herein that resulted in the violation of the California Labor Code.

B. ALLEGATIONS AND CHARGES

Count 1– Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 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 over eight (8) hours per day and 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 2 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 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. 4, § (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 3 – Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 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. 4, 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. 4, 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 4 – Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, 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 5 – 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 6 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime, minimum wages, meal and rest period premiums, and sick leave wages, 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 7 – 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 for cell phone expenses used for work purposes by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count 8 – 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 on 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. Jonathan Brown and Patrick Mullen were officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count 9 – 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 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.



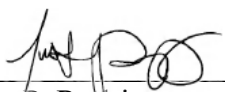
Count 10 – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

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 stated 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 because they failed to provide Plaintiff and Aggrieved Employees with the accurate accrual sick hours since accrual of sick hours is based on the number of hours worked. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

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

JPR:rk
cc: Client via e-mail

1 *Gomez v. B&M Builders, Inc.*

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

4 I, Elias Tapia, declare that:

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

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

- 8 • PRIVATE ATTORNEYS GENERAL ACT LETTER

9

10 B&M Builders, Inc. 11330 Sunrise Park Drive, Ste C Rancho Cordova, CA 95742	Jonathan Brown 11330 Sunrise Park Drive, Ste C Rancho Cordova, CA 95742
12 Patrick Mullen 11330 Sunrise Park Drive, Ste C 13 Rancho Cordova, CA 95742	

14

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
16 and processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. On the date set forth
19 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 Elk Grove, California, addressed as set forth above.

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

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

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct, and that this declaration was executed on January 10, 2024, at Elk Grove,
California.

25 
26 Elias Tapia
27
28

EXHIBIT D

DECLARATION OF LISA MULLINS

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3 1. I am a resident of the United States of America and am over the age of 21. I am the
4 President for ILYM Group, Inc., (herein after referred to as “ILYM Group”), a professional class action
5 services provider. I am preparing this declaration at the request of Plaintiff’s Counsel. I have personal
6 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently to such
7 facts.

8 2. ILYM Group has extensive experience in disseminating PAGA settlements and
9 administering class action settlements, including direct mail services, telephone, and web-based support,
10 database management, opt-out processing, and settlement fund distribution services for class actions
11 ranging in size from 26 to 4.5 million Class Members. Attached hereto, as **Exhibit A**, is a true and
12 correct copy of ILYM Group’s current CV, reflecting our primary competencies as they relate to class
13 action administration. Attached hereto, as **Exhibit B** is ILYM Group’s Security Summary and Protocol.
14 ILYM Group is insured with E&O and Cyber Insurance policies. ILYM Group is insured with E&O
15 Insurance policies up to \$2,000,000 per incident and Cyber Insurance policies up to \$5,000,000 per
16 incident.

17 3. ILYM Group has never had any financial interests in nor affiliation with the parties or
18 counsel in the *Gomez v. B&M Builders, Inc.* matter.

19 4. Upon appointment, ILYM Group will provide a mailing address and toll-free telephone
20 number to receive correspondence and inquiries from aggrieved employees. After receiving the data file
21 from Defendant, which should contain the aggrieved employees’ names, last known addresses, and
22 social security numbers, ILYM Group will upload the data into our database and check for duplicates
23 and other possible discrepancies.

24 5. As part of the preparation for notice and disbursement, ILYM Group will process
25 aggrieved employees’ names and addresses against the National Change of Address (“NCOA”) database,
26 maintained by the United States Postal Service (“USPS”), to update and confirm the mailing addresses of
27 the aggrieved employees before the mailing of the notice. To the extent an updated address is found in
28 the NCOA database, ILYM Group will use the updated address for mailing the notice. If ILYM Group

1 does not locate an updated address in the NCOA database, it will use the original address provided by
2 Defendant for mailing the notice.

3 6. ILYM Group's Disbursement Process will include but is not limited to; (a) applying for
4 case EIN; (b) establishing Qualified Settlement Fund ((QSF) Escrow Account), with administering tasks
5 including but not limited to overview and reconciliation of account; (c) calculating the individual
6 settlement amounts; (d) preparing, administering, and distributing settlement award checks to the
7 Participating Aggrieved Employees, including necessary tax forms (W2 and/or 1099); (e) calculating and
8 withholding all applicable state and federal taxes; (f) should any disbursements be returned to ILYM
9 Group's office as undeliverable, ILYM Group will attempt to locate an updated address using the NCOA
10 database and/or other skip trace efforts and will promptly remail the disbursement; (g) performing other
11 such duties as the Parties and/or the Courts direct. The above services are included in ILYM Group's
12 initial quote. Attached hereto, as **Exhibit C**, is a true and correct copy of ILYM Group's capped quote for
13 this matter.

14 7. ILYM Group's fees associated with the administration of this settlement are capped at:
15 **\$4,950.00.**

16 I declare, under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct. Executed this 18th day of February 2025, at Tustin, California.

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Lisa Mullins

EXHIBIT “A”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification, and direct media outlets firm. With over 20 years of combined experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and has become the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

AREAS OF EXPERTISE:

- Wage and Hour
- FLSA
- Insurance and Health Care
- Consumer
- Finance
- ERISA
- TCPA
- Antitrust
- Securities

Ramirez v JC Penney.

- ERISA Case with a class size of 26,000.

Kruger, et al. v. Novant Health

- ERISA Case with a class size of \$32 million.

Abbott, et al. v. Lockheed Martin Corp.

- ERISA Case with \$62 million.

Jacqueline Jones vs. I.Q. Data International, Inc.

- TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

Reza Barani vs. Wells Fargo Bank, N.A.

- TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

Robert Stone, et al. v. Universal Protection Services, LP, et al.

- Wage & Hour Case with a class size of 75,351.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

PRE-SETTLEMENT CONSULTATION

- **Administration Consultation:** Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

MAILING AND NOTIFICATION

- **Fulfillment and Correspondence:** All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.
- **Reverse Lookup:** A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.
- **Creating Class Database:** All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.
- **Claim Forms:** ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.
- **Translations:** When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.
- **Remails:** Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

MEDIA & INTERNET BANNER ADS

Notice Publication

- **Legal Notices:** ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.
- **Electronic Publication (Banner Ads):** ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.
- **Electronic Mail Notices:** ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always “White List” accepted with minimal returns.
- **Reach:** Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.
- **Services Included:** Analysis, Documentation, Research and Methodologies, Execution and Reporting.

PROJECT MANAGEMENT

- **Case Notification, Maintenance and Management:** ILYM Group, Inc.’s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing. Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.
- **Claims Processing:** All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID's. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.
- **Call Center:** ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages. All class members are given the options to best serve their needs and to receive case information.
- **Internet Support:** Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ's) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.
- **Objection and Request for Exclusion:** All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels' no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

DATA ADMINISTRATION AND NETWORK SECURITY

- **Network Security:** All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.
- **Database Administration:** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID's to ensure all collected member data coincides with all received claims.

DISTRIBUTION AND SETTLEMENT FUNDING

- **Distribution and Management:** Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.
- **Check Printing and Mailing:** Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.
- **Preparation, Filing and Reporting of Taxes:** ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

CASE CONCLUSION

- **Data Manager Final Report:** All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.
- **Project Manager Final Report:** All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.
- **Affidavits:** ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.
- **Document Retention:** Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.

EXHIBIT “B”

ILYM Group, Inc. (ILYM) in conjunction with our security and Information Technology (IT) vendor(s), maintains the highest level of confidentiality of class member data. The class data and all forms of communication received by ILYM, will be held in strict confidentiality and will not be disclosed. Data provided to the administrator for purposes of notice, settlement, or award administration will be used solely for settlement implementation and for no other purpose. ILYM will set up a login for Defense Counsel to transmit the class data through our encrypted secure portal. ILYM processes adhere to the Settlement Administration Data Protection Checklist in the Northern District of California and are summarized in the tables below.

Technical Controls

Firewalls and intrusion detection/prevention systems	Yes
Endpoint Detection and Response (EDR) Systems	Yes
Complex Password Requirements	Yes
MultiFactor Authentication for Access to Systems and Data	Yes
Malware Protection and AntiVirus	Yes
Vulnerability Scanning/Pen Testing	Yes
Data Encryption	Yes
Key Management for access to encrypted Data	Yes
Access only provided on need-to-know basis	Yes
Security Operations Center (SOC)	Yes
Managed Detection and Response (MDR)	Yes
Security Information and Event Management (SIEM)	Yes
Software Defined Global Network (SGN) with next gen firewall	Yes

Administrative Policies

Personnel and support staff risk assessment and management, including pre-hire background checks and screening processes	Yes
Personnel and support staff required to enter into non-disclosure and confidentiality agreements	Yes
Access controls to systems and data, including guidance for granting, modifying, and reviewing access rights	
Information security and privacy policy training, including policy review, best practices, and data security	Yes
No remote access to systems for Employees	No
Exit interviews/confirmation that terminated/departed employees are immediately cut off from access	Yes
Robust audits of data privacy policies by third-party vendors	Yes
Accreditation in accordance with ISO 27001 and SOC2 (among the industry standards listed below)	Compliant
Disclosure of external certifications and any notice of expiration	Yes

Crisis and Risk Management

Incident response/disaster plan for immediate response to security incidents such as data breach.	Yes
Process and timing for notification to attorneys, claimants, and other stakeholders of a data breach and consideration of resources and/or remedies to provide thereto	Yes
Vendor management program that determines and defines requirements to manage risk associated with outsourcing	Core Vendors are limited and have been vetted. New program being implemented as part of SOC 2

Physical Access Controls

Physical Access Security Security Guards Access Cards to facilities with assignment of identification card subject to approval and review Logs of Access	Logs and “codes” No cards – just codes No security guards Logs are kept
Alarm Systems	Yes
CCTV recording Systems	Yes

Data Collection and Retention

Minimization of collection of personally identifiable information, e.g., social security numbers and banking information	Yes
Data collection only required to extent necessary for settlement administration	Yes
Various methods for ensuring data protection and security of Data classification (including implementation of appropriate safeguards to protect from theft, loss, and/or unauthorized disclosure, use, access, destruction) Compliance with applicable laws and regulations (see below) Secure data transfer	Yes

Data Destruction

Preservation of data only for so long as required for administration of the settlement and any relevant reporting required following the payments or distributions	Yes
Secure data destruction (e.g., 6 months – 1 year or when no longer required)	Yes
Physical media (e.g., paper, CDs) shredded or destroyed to point where they cannot be reconstructed	Yes
Destruction of all derivative copies and/or back-ups	Yes

Applicable Laws, Standards, and Other Regulation

Industry standards: National Institute of Standards and Technology (NIST), HIPAA, FISMA, System and Organization Controls (SOC1 and SOC2) or more advanced assessment, ISO 27001	Yes
Local, national, international privacy regulations (including CCPA)	Yes

Ethical Rules

Administrative policies and/or employee handbook incorporating commitment to ethical rules (e.g., company, court ethical rules) setting forth standards of ethical and legal behavior	Yes
Enforcement clauses, violation resulting in disciplinary action including and up to termination of employment	Yes

Customer Service Measures

Description of settlement website and posting thereto of relevant privacy policies or statements (including portal for reporting suspected loss of confidential data submitted with claim)	Yes
--	-----

Explanation of role of claims administrator and how to prevent phishing (e.g., clear indication that administrator will not request confidential information by e-mail and how to identify a valid e-mail sent from the administrator)	Yes
--	-----

EXHIBIT “C”

Case Name: Gomez v. B&M Builders, Inc.

Monday, February 17, 2025

Requesting Attorney:

Renald Konini
Shimoda & Rodriguez Law, PC
rkonini@shimodalaw.com
916.525.0716

ILYM Group Contact:

Lisa Mullins
ILYM Group, Inc.
Lisa@ilymgroup.com
714.878.8836

Estimate For Administrative Solutions: PAGA

KEY ASSUMPTIONS	
Total Number of Aggreived Employees	275
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	No
NCOA	Yes
Case Duration (Years)	1

Summary of ILYM Group, Inc.'s Fees & Expenses

Case Startup:	\$1,195.25
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$3,184.75
Case Conclusion:	\$570.00

Capped ILYM Fees & Expenses: \$4,950.00

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Gomez v. B&M Builders, Inc.

Monday, February 17, 2025

Requesting Attorney's Name: Renald Konini

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	1	\$120.00
Certified Spanish Translation	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$75.25	1	\$75.25
Toll-Free Customer Service Representative	Flat Rate	\$100.00	1	\$100.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$1,195.25

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$1.50	275	\$412.50
USPS First Class 1oz Postage	Per Piece	\$0.65	275	\$178.75
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	47	\$93.50
Preparation of Taxes	Hourly	\$150.00	3	\$450.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$3,184.75

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Process Unclaimed Funds	Flat Fee	\$350.00	1	\$350.00
Declaration	Hourly	\$120.00	1	\$120.00

Subtotal \$570.00

Capped ILYM Fees & Expenses: \$4,950.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT E

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

Case No. 24CV005888

RICHARD GOMEZ, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

B&M BUILDERS, INC., an unknown business
entity; JONATHAN BROWN, an individual;
PATRICK MULLEN, an individual; DOES 1 to 100,
inclusive,

Defendants.

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All non-exempt employees who worked or continue to work for Defendants in California from January 10, 2023, up to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Gomez v. B&M Builders, Inc., et al.*, Sacramento County Superior Court of California, Case No. 24CV005888, filed March 27, 2024 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Richard Gomez ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of himself and Aggrieved Employees. Plaintiff alleged claims under the PAGA against B&M Builders, Inc., Jonathan Brown, and Patrick Mullen ("Defendants") for (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage statements, (6) Failure to Pay Final Wages, (7) Failure to Pay Reimbursement for Expenses, (8) Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order), (9) Failure to Maintain Accurate Records, and (10) Failure to Provide Paid Sick Leave. Defendants have denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further dispute all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiff or to any other current or former employees, and Defendants do not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency (LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on the Failure to Pay Overtime Wages, Failure to Pay Minimum Wages, Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, Failure to Provide Accurate Wage statements, Failure to Pay Final Wages, Failure to Pay Reimbursement for Expenses, Violation of Labor Code §§ 558, 558.1, Failure to Maintain Accurate Records, and Failure to Provide Paid Sick Leave Labor Code and/or California Labor Code sections 201-203, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in Plaintiff's notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between January 10, 2023, and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver does not extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$415,000 ("Gross Settlement Amount") to resolve the PAGA claims as described above. Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$ [REDACTED], attorneys' costs in the amount of \$ [REDACTED], an Enhancement Payment to Plaintiff in the amount of \$ [REDACTED], and the fees and expenses of the Settlement Administrator in the amount of \$ [REDACTED], which will resulted in a "Net Settlement Amount" of \$ [REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency

("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$ [REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$ [REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between January 10, 2023, and [REDACTED], dividing that number by the number of pay periods worked for all Aggrieved Employees between January 10, 2023, and [REDACTED], and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

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
On behalf of Plaintiff

John H. Adams, Jr.
Littler Mendelson, P.C.
500 Capitol Mall, Suite 2000
Sacramento, CA 95814
Telephone: 916-830-7200
On behalf of Defendants

EXHIBIT F

EXHIBIT G

Date	Description	Amount
1/10/2024	Payment to L WDA - PAGA Filing Fee	\$75.00
1/10/2024	Certified Mail - PAGA Letter to Employers	\$17.10
3/27/2024	One Legal Filing Fee - Complaint	\$1,494.22
4/10/2024	One Legal Filing Fee -Proof of Service	\$16.88
4/10/2024	Affordable Legal Service - Service of Summons & Complaint Re: B&M Builders	\$77.50
4/10/2024	Affordable Legal Service - Service of Summons & Complaint Re: Brown	\$36.00
4/10/2024	Affordable Legal Service - Service of Summons & Complaint Re: Mullen	\$36.00
9/12/2024	Mediation - Mediator Fee	\$4,200.00
10/31/2024	One Legal Filing Fee- Joint CMCS	\$17.50
3/25/2025	One Legal Filing Fee - Joint CMCS	\$19.36
Anticipated	One Legal Filing Fee- PAGA Approval Motion Filing	\$150.00
Anticipated	Capital Process Servers - Personal Service on Def. Re PAGA Approval Motion	\$150.00
Anticipated	One Legal Filing Fee - Proof of Service Re: PAGA Approval Motion	\$25.00
Anticipated	One Legal Filing Fee - Notice of Entry of Judgment or Order	\$25.00
Anticipated	One Legal Filing Fee - Compliance Declaration Filing	\$25.00

Total: \$6,364.56

EXHIBIT H

<u>TASK CATEGORY</u>				<u>GTS</u>	<u>JPR</u>	<u>RK</u>
Pre-filing investigation, Pleadings, Admin Exhaustion. Includes initial client meeting and review of claims and documents; Pre-filing investigation/research; Review of payroll records and prior filings against Defendant; Drafting pleadings, notices, administrative filings; Reviewing and responding to pleadings and court filings; Communications with opposing counsel regarding same, internal communications regarding same, and communications with client regarding same.				29.3	13.4	12.7
Case Review, Management, Strategy Meetings. Includes time spent discussing general plan of action updates and strategies in weekly meetings; Research and analysis regarding claim elements and issues affecting representative litigation; Preparing for case management conferences and related meet/confer, drafting of statements, and attendance for hearings; Reviewing minute orders and general correspondence from the Court regarding case management and assignments; Communications with opposing counsel regarding same, communications with client regarding same.				12.4	19.7	8.4
Discovery (Non-Mediation Related). Includes time spent preparing discovery requests, proposed Belaire Notices, Protective Orders, and meet and confer efforts regarding same. Includes legal research regarding same. Interviewing witnesses. Communicate with client regarding same, communicate with opposing counsel regarding same.				2.2	6.8	.8
Discovery / Investigation for Mediation. Includes time spent preparing informal/formal discovery specifically geared towards mediation, reviewing informal mediation productions, including data, analyses, and documents; Perform damages analysis; Review public records searches relating to prevailing wage determinations and prevailing wage certified payroll report database; Interviewing Aggrieved Employees; Communications with opposing counsel regarding same, internal communications regarding same, and communications with client regarding same.				5.9	38.7	2.8
Mediation / Settlement Conference. Includes time spent drafting mediation brief and accompanying exhibits, preparing for and attending mediation, drafting pocket brief for anticipated arguments, communications with client and mediator, communications with opposing counsel regarding same, solicit bids from settlement administrators, prepare MOU. Includes legal research relating to issues raised on day of mediation.				11.8	17.3	18.1
Drafting Settlement Agreements. Includes time spent preparing long form agreements and exhibits, revisions relating thereto, research regarding any approval procedures or issues regarding disputed terms. Communicating with client regarding same, communicating with opposing counsel regarding same.				4.9	12.4	4.6
Settlement Approval and Administration. Includes time spent drafting motion for approval of PACA settlement, supporting declarations, and order; Preparing for and attending approval hearing; Reviewing employee data, speaking with Settlement Administrator regarding calculations and distributions, and analyzing calculations and disbursements; Legal research regarding same, communicating with opposing counsel regarding same, internal communications regarding same, and communicating with client regarding same. Includes 10 hours for J. Rodriguez supervising final distributions, Aggrieved Employee response, and compliance with Court approval order, and preparing for and attending any compliance hearings.				11.6	33.1	16.3
Total Per Billing Party:				78.1	141.4	63.7

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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rkonini@shimodalaw.com

Attorneys for Plaintiff RICHARD GOMEZ
individually and on behalf of similarly situated employees

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

RICHARD GOMEZ, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

B&M BUILDERS, INC., an unknown
business entity; JONATHAN BROWN, an
individual; PATRICK MULLEN, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV005888

*Assigned for All Purposes to Hon. Jill H. Talley
Department 23*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. A-05888-001

Date: May 16, 2025

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: March 27, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on May 16, 2025, at 9:00 a.m., in Department 23 before the
4 Honorable Jill H. Talley, presiding. Plaintiff Richard Gomez (“Plaintiff”) filed this Private Attorneys
5 General Act (“PAGA”) action on March 27, 2024. The operative Complaint alleges that B&M Builders,
6 Inc., Jonathan Brown, Patrick Mullen (“Defendants”) violated California law by failing to pay overtime
7 wages, failing to pay minimum wages, failing to provide meal periods or pay premiums in lieu thereof,
8 failing to provide rest periods or pay premiums in lieu thereof, failing to provide accurate wage
9 statements, failing to pay final wages, failing to pay reimbursements for expenses, violating Labor Code
10 sections 558, 558.1 regarding provisions regulating hours and days of work in any Industrial Welfare
11 Commission Order, failing to maintain accurate records, and failing to provide sick leave. The
12 Complaint further alleges that Defendants are liable for civil penalties under the PAGA as a result of the
13 alleged violations. Defendants have denied all of Plaintiff’s allegations. Plaintiff sought attorneys’ fees
14 and costs as part of this Action.

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

21 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
22 **EMPLOYEES**

23 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
24 PAGA claims asserted in this litigation. Plaintiff is authorized to act on behalf of the Labor and
25 Workforce Development Agency (“LWDA”) with respect to the PAGA claims being released under the
26 Agreement. The Court finds the scope of individuals subject to the terms and conditions of the
27 Agreement, its releases, and all rights and obligations thereunder include the following:
28

1 All non-exempt employees who worked or continue to work for
2 Defendants in California from January 10, 2023, up to April 8, 2025

3 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
4 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
5 the Agreement.

6 **II. APPROVING THE AGREEMENT**

7 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
8 A. The Court finds the Settlement was agreed upon only after extensive investigation, litigation, and
9 arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and
10 measures to weigh the potential value of the disputed claims against the risks of continued litigation.
11 The Court finds that the Agreement is fair, reasonable, and adequate, and, therefore, is approved as
12 required under California Labor Code sections 2698 *et seq.* Based on the potential penalties at issue, the
13 risk of loss on the merits, the risk of being able to prove violations in each pay period as to each
14 individual as required by statute for damages purposes, and the Court's statutorily authorized discretion
15 to reduce penalties, the Agreement represents a substantial recovery for Aggrieved Employees and the
16 LWDA. The Court also finds that the Agreement provides a recovery that creates an effective,
17 substantial deterrent to any potential future non-compliance, furthering the purpose of the LWDA in
18 enforcing the California Labor Code. Thus, the Court approves the Agreement and terms stated therein,
19 which is incorporated by reference in its entirety, as if stated here in full, including the \$415,000 Gross
20 Settlement Amount.

21 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 25% of
22 the Net Settlement Amount will be paid to Aggrieved Employees and 75% of the Net Settlement
23 Amount will be paid to the LWDA as civil penalties pursuant to the statutory division applicable to this
24 case, which was filed before June 19, 2024, as set forth in California Labor Code section 2699(i).

25 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
26 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved Employees and the
27 LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's
28 Counsel were able to negotiate on behalf of Aggrieved Employees and the LWDA, and the fee can be
shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the

1 Gross Settlement Amount. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul,*
2 *Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444
3 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other than
4 . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”). The Court finds the
5 attorney’s fees request of Thirty Five Percent (35%) of the Gross Settlement Amount, *i.e.* \$145,250, to
6 be appropriate compensation for Plaintiff’s Counsel. The fees request is within the range of percentages
7 that have been approved by other Courts in similar cases and is reasonable in light of the circumstances
8 of this case, the substantial and beneficial results obtained on behalf of Aggrieved Employees and the
9 LWDA, and the contingent nature of the recovery over the course of this case, which included potential
10 loss at summary judgment and/or trial proceedings. Furthermore, the Court has performed a lodestar
11 cross check, which demonstrates the reasonableness of the percentage requested. Additionally, the
12 Court orders that \$6,364.56 of the Gross Settlement Amount will be paid to Plaintiff’s Counsel for
13 reasonable costs incurred in this case.

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

18 The Court orders that ILYM Group, Inc., will act as the Settlement Administrator in this case.
19 The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are not to
20 exceed \$4,950.00. Any difference between the actual Settlement Administrator Costs and the approved
21 amount will be added to the Net Settlement Amount for distribution between the LWDA and Aggrieved
22 Employees consistent with the allocations and formulas set forth in the Agreement.

23 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
24 Aggrieved Employees that are not cashed by the deadline to do so shall be donated equally, *i.e.* 50/50, to
25 Capital Pro Bono, Inc., and the Center for Workers’ Rights. *See In re Microsoft I-V Cases*, 135
26 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to Defendants for
27 any reason.
28

1 The releases and waivers for Aggrieved Employees and Plaintiff are also approved by the Court
2 as set forth in the Agreement.

3 **III. APPROVAL OF THE NOTICE OF SETTLEMENT AND METHOD FOR**
4 **DISTRIBUTING THE NOTICE OF SETTLEMENT**

5 The Court finds that the proposed Notice of Settlement, attached to this Order as Exhibit 1 and
6 incorporated by reference, fairly and adequately advises Aggrieved Employees about the Agreement and
7 its effect. The Court further finds that the Notice of Settlement and distribution of such notice by first
8 class mail to each identified Aggrieved Employees at his or her most recent address based on a National
9 Change of Address database search from the Aggrieved Employees' last known address and a skip trace
10 on any Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address"
11 comport with all constitutional requirements, including those of due process.

12 The Court also finds that because there is a strong interest in providing Aggrieved Employees the
13 opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion on
14 privacy rights, the sharing of employment information as set forth in the Agreement is not a serious
15 intrusion on their privacy rights. Hence, the Court orders Defendants to provide Aggrieved Employee
16 information to the Settlement Administrator as set forth in the Agreement and any other information the
17 Settlement Administrator needs to effectuate notice to Aggrieved Employees. The Aggrieved Employee
18 information will be provided to the Settlement Administrator only, and not to Plaintiff or Plaintiff's
19 Counsel, as contemplated within the Agreement and approved by this Order. The Settlement
20 Administrator shall only use this information for the purposes identified in the Agreement and shall keep
21 this information confidential consistent with the terms of the Agreement.

22 **IV. IMPLEMENTATION SCHEDULE**

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

25 Last day for Defendants to provide Settlement 26 Administrator with Aggrieved Employee 27 information	Within 14 calendar days after the Effective Date
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Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendants to fund Gross Settlement Amount	Within 28 calendar days after the Effective Date
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendants have funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to 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

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

The Court Sets a further compliance hearing for February 20, 2026, at 10:30 a.m. At least 15 calendar days prior to the hearing, Plaintiff's Counsel shall file a declaration from the Settlement

1 Administrator regarding the status of the distribution of settlement funds. If the Court is satisfied that
2 the settlement funds have been fully distributed, no appearance will be required.

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4 IT IS SO ORDERED.

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6 Date: _____

By: _____

7 Judge of the Superior Court
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EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

Case No. 24CV005888

RICHARD GOMEZ, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

B&M BUILDERS, INC., an unknown business
entity; JONATHAN BROWN, an individual;
PATRICK MULLEN, an individual; DOES 1 to 100,
inclusive,

Defendants.

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All non-exempt employees who worked or continue to work for Defendants in California from January 10, 2023, up to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Gomez v. B&M Builders, Inc., et al.*, Sacramento County Superior Court of California, Case No. 24CV005888, filed March 27, 2024 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Richard Gomez ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of himself and Aggrieved Employees. Plaintiff alleged claims under the PAGA against B&M Builders, Inc., Jonathan Brown, and Patrick Mullen ("Defendants") for (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage statements, (6) Failure to Pay Final Wages, (7) Failure to Pay Reimbursement for Expenses, (8) Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order), (9) Failure to Maintain Accurate Records, and (10) Failure to Provide Paid Sick Leave. Defendants have denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further dispute all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiff or to any other current or former employees, and Defendants do not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency (LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on the Failure to Pay Overtime Wages, Failure to Pay Minimum Wages, Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, Failure to Provide Accurate Wage statements, Failure to Pay Final Wages, Failure to Pay Reimbursement for Expenses, Violation of Labor Code §§ 558, 558.1, Failure to Maintain Accurate Records, and Failure to Provide Paid Sick Leave Labor Code and/or California Labor Code sections 201-203, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in Plaintiff's notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between January 10, 2023, and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver does not extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$415,000 ("Gross Settlement Amount") to resolve the PAGA claims as described above. Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$ [REDACTED], attorneys' costs in the amount of \$ [REDACTED], an Enhancement Payment to Plaintiff in the amount of \$ [REDACTED], and the fees and expenses of the Settlement Administrator in the amount of \$ [REDACTED], which will resulted in a "Net Settlement Amount" of \$ [REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency

("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$ [REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$ [REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between January 10, 2023, and [REDACTED], dividing that number by the number of pay periods worked for all Aggrieved Employees between January 10, 2023, and [REDACTED], and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendants.

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On behalf of Plaintiff

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On behalf of Defendants