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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF TULARE**

FIDEL GOMEZ, an individual, on behalf of  
himself, and on behalf of all persons similarly  
situated,

Plaintiffs,

v.

KIRBY MANUFACTURING, INC., a  
California corporation; and DOES 1-50,  
Inclusive,

Defendants.

Case No. C23-02468

**DECLARATION OF JACKLAND K HOM,  
ESQ. IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS AND PAGA ACTION  
SETTLEMENT**

Date: June 16, 2025

Time: 8:30 a.m.

Judge: Hon. Gary Johnson

Dept.: 7

1 I, Jackland K. Hom, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently  
3 testify to the following facts from my own personal knowledge. I am an associate attorney at Zakay  
4 Law Group, APLC (hereinafter "Class Counsel"). I am co-counsel of record for Plaintiff FIDEL  
5 GOMEZ (hereafter "Plaintiff") in this wage and hour class action filed against KIRBY  
6 MANUFACTURING, INC. (hereinafter "Defendant").

7 2. This declaration is being submitted in support of Plaintiff's motion for Preliminary  
8 Approval of Class and PAGA Action Settlement.

9 **I. EXHIBITS**

10 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the final Stipulation of Class  
11 and PAGA Action Claims and Release of Claims ("Agreement" or "Settlement Agreement"). Attached  
12 as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed Class Notice. At the time  
13 of filing this Motion, the parties have circulated the final Settlement Agreement for signatures. Plaintiff  
14 will submit a fully executed Settlement Agreement prior to the June 16, 2025 hearing.

15 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the  
16 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement  
17 and Motion for Preliminary Approval of Class and PAGA Action Settlement evidencing Class  
18 Counsel's compliance with California Labor Code Section 2699(l)(2).

19 5. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for settlement  
20 administration submitted by Apex Class Action Administration, in the amount of \$4,950.00.

21 **II. INTRODUCTION**

22 6. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of  
23 the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.  
24 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement  
25 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage  
26 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Settlement Class  
27 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class  
28 certification being denied or of Defendant prevailing at trial.

1           7. As discussed below, the proposed Settlement satisfies all criteria for preliminary  
2 settlement approval and falls within the range of reasonableness. The average Individual Class Payment  
3 to the Class Members meets or exceeds awards in similar wage and hour class actions. Moreover, the  
4 proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests  
5 the Court grant preliminary approval of the Settlement.

### 6 **III. FACTS AND PROCEDURE**

#### 7 **A. Overview of the Litigation**

8           8. Defendant owns and operates a farming equipment and machinery manufacturing  
9 business in the state of California, including Tulare County, where Plaintiff worked. This action asserts  
10 claims on behalf of all current and former non-exempt employees who worked for Defendant in  
11 California at any time during the Class Period. Plaintiff worked for Defendant as a non-exempt  
12 employee in California from March of 2023 to May of 2023. At all times during his employment,  
13 Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and  
14 minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was  
15 subject to Defendant's policies and procedures contained in, among other documents, the "Kirby  
16 Manufacturing, Inc. Employee Handbook."

17           9. Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to  
18 provide compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to  
19 furnish accurate itemized wage statements, failed to accurately calculate the regular rate of pay for  
20 purposes overtime, meal period premiums, and redeemed sick pay, and failed to pay all wages upon  
21 separation. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant  
22 asserts that it fully complied with all applicable employment laws and raised several other significant  
23 defenses to Plaintiff's claims, including but not limited to, asserting that it paid employees for all hours  
24 worked, maintained facially compliant meal and rest period policies, reimbursed employees for  
25 expenses, issued compliant wage statements, and timely paid all wages due upon separation of  
26 employment.

27           10. On April 25, 2024, Plaintiff served Defendant, and the Labor and Workforce  
28 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA

1 Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions  
2 of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and  
3 of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab.  
4 Code Sections 2698 *et seq.* (“PAGA”).

5 11. On April 25, 2024, Plaintiff filed a class action complaint in the Tulare Superior Court,  
6 Case Number VCU308341 (“Action”). The Action alleged eight causes of action against Defendant  
7 for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) Failure to Pay  
8 Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime  
9 Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in  
10 Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to  
11 Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7 & 512 and the Applicable IWC  
12 Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code  
13 § 2802; (7) Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226; and  
14 (8) Failure to Pay Wages When Due in Violation Of Cal. Labor Code §§ 201, 202 and 203.

15 12. On July 25, 2024, Plaintiff filed a First Amended Complaint (the “Operative Complaint”)  
16 alleging an additional cause of action for violations of PAGA.

17 13. Plaintiff commenced written discovery in October of 2024. Subsequently, the Parties  
18 agreed to mediate the Action. To prepare for mediation, the Parties agreed that Defendant would  
19 informally produce additional documents and data points subject to the mediation privilege, including  
20 but not limited to, a sample of the Class Members’ time and payroll data, certain payroll data points,  
21 and pertinent wage and hour policies. As discussed *infra*, Plaintiff’s counsel retained the forensic  
22 consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data.

23 14. On February 26, 2025, the Parties participated in a full day mediation with Steven Mehta,  
24 Esq., an experienced mediator of wage and hour class and PAGA actions. Although the mediation was  
25 unsuccessful, the Parties ultimately accepted a mediator’s proposal, which was subsequently  
26 memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and  
27 negotiated a long-form settlement agreement, which is the subject of the instant motion.

28 ///

1           **B.       Class Counsel Thoroughly Investigated the Factual and Legal Issues**

2           15.     Months before filing the Action, Class Counsel began their pre-filing investigation into  
3 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with  
4 Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment,  
5 including, but not limited to, his wage statements. At the conclusion of the interviews and review of  
6 documents, Class Counsel determined that each Plaintiff's complaints justified further inquiry.

7           16.     Class Counsel subsequently requested Plaintiff's employee file from Defendant. In  
8 response, Defendant produced various documents, including but not limited to, copies of Plaintiff's  
9 time and payroll records. Class Counsel reviewed and analyzed the documents and determined the  
10 documents appeared to substantiate Plaintiff's claim that Defendant failed to, among other things,  
11 accurately record time worked, pay for all time worked, issue accurate itemized wage statements, and  
12 provide compliant meal and rest periods or else pay premium wages in lieu thereof.

13          17.     Class Counsel then retained the statisticians and economists at Berger Consulting Group  
14 ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and  
15 damage modeling consulting services, specializing in wage and hour class actions. BCG's team of  
16 financial and data analysts are credentialed and experienced experts in their fields and have provided  
17 their expertise on thousands of cases. Stated differently, the BCG is well-qualified to analyze  
18 Defendant's time and payroll data.

19          18.     BCG analyzed Defendant's time and payroll data to assist in the development of various  
20 damage models. Among other things, BCG determined the approximate number of work shifts,  
21 workweeks, pay periods, average length of shift, and average number of hours worked per workweek  
22 and pay periods during the Class Period. BCG also estimated the number of meal and rest period  
23 violations, the amount of unpaid wages, the amount of unreimbursed business expenses, and the amount  
24 of off-the-clock work performed by the Class Members during the Class Period.

25          19.     In advance of mediation, Class Counsel created several damage models predicated on the  
26 BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while  
27 accounting for the uncertainties of continued litigation. These damage models informed and guided  
28 Class Counsel during the mediated settlement discussions.

1           20.     During the mediation, Defendant raised the possibility that it would be unable to satisfy  
2 a larger class-wide settlement due to its financial condition. Class Counsel retained Certified Public  
3 Accountant, Kenneth L. Creal, to review and analyze Defendant's financial records. Based on Mr.  
4 Creal's review, he determined that Defendant could not afford a larger settlement than the one  
5 contemplated here. Moreover, the installment plan contemplated by the Agreement is appropriate  
6 because it allows Defendant to work toward accumulating the settlement funds.

7           21.     Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)  
8 determining Plaintiff's suitability as a putative class representative through interviews, background  
9 investigations, and analysis of his employment file; (2) evaluating all of Plaintiff's potential claims; (3)  
10 researching similar wage and hour class actions as to the claims brought, the nature of the positions,  
11 and the type of employer; (4) analyzing the Class Members' time and payroll records; (5) analyzing  
12 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as  
13 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and  
14 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)  
15 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and  
16 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an  
17 independent assessment of the reasonableness of the terms to which the Parties have agreed.

18           22.     Class Counsel only agreed to enter the Settlement following this thorough investigation  
19 and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and  
20 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated  
21 with litigation, Defendant's financial condition, and the various defenses asserted by Defendant, Class  
22 Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the  
23 Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the  
24 Settlement.

25           **C.     The Parties Settled with the Assistance of the Mediator**

26           23.     On February 26, 2025, the Parties conducted a full day of mediation with Steven Mehta,  
27 Esq., a mediator of wage and hour class and representative actions. Mediator Mehta helped manage the  
28 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The

1 Parties made substantial progress with Mediator Mehta's assistance. Namely, the Parties exchanged  
2 information regarding their respective claims and defense, including their respective evaluation of the  
3 damages. The mediation did not conclude with a settlement. During the mediation, Defendant raised  
4 the possibility that it would be unable to satisfy a larger class-wide settlement due to its financial  
5 condition. Class Counsel retained Certified Public Accountant, Kenneth L. Creal, to review and analyze  
6 Defendants' financial records. Following Mr. Creal's financial analysis, the Parties continued  
7 settlement discussions, with Mediator Mehta's assistance. The Parties subsequently reached a  
8 settlement via a Mediator's Proposal, the complete and final terms of which are now set forth in the  
9 Agreement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable  
10 compromise of the claims at issue.

#### 11 **IV. ARGUMENT**

##### 12 **A. The Court Should Preliminarily Approve the Settlement**

13 24. The entire Net Settlement Amount will be paid to all Settlement Class Members who do  
14 not opt out of the Settlement. Given that there are approximately 88 Class Members, the average gross  
15 recovery is approximately \$1,174.81 (Net Settlement Amount divided by Settlement Class Members).  
16 As of the date of the Agreement, there were approximately 57 Aggrieved Employees.

17 25. The Parties participated in mediation with the highly respected mediator Steven Mehta,  
18 Esq. Mediator Mehta managed the Parties' expectations and provided a useful, neutral analysis of the  
19 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL),  
20 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably  
21 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d  
22 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the  
23 proceedings were free of collusion and undue pressure.").) At all times, the Parties' negotiations were  
24 at an arm's length, adversarial, and non-collusive. Mediator Mehta only arrived at his proposal after  
25 hearing arguments, reviewing evidence, and evaluating the Parties' respective claims and defenses.

26 26. Once the Parties agreed to the Mediator's proposal, the parties subsequently executed a  
27 binding and enforceable Memorandum of Understanding. The Agreement is the final product of these  
28

1 mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable  
2 compromise of the claims at issue.

3 27. As set forth in greater detail above, Class Counsel conducted a very thorough  
4 investigation into the factual and legal issues in dispute. In addition to informal discovery, document  
5 review, data analysis and legal research, Class Counsel also researched similar wage and hour actions.  
6 Although no two cases are identical, this research provided Class Counsel with a marker to inform  
7 settlement discussions and, ultimately, to measure this settlement against. The investigation allowed  
8 Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in  
9 settlement discussions that culminated in the proposed settlement now before the Court.

10 28. Class Counsel only agreed to enter the Settlement following their thorough investigation  
11 and evaluation of Plaintiff's claims. Based on an investigation of the facts, applicable law, and  
12 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated  
13 with litigation, Defendant's financial condition, and the various defenses asserted by Defendant, Class  
14 Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the  
15 Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the  
16 Settlement.

17 29. The Gross Settlement Amount of \$230,000.00 is fair and reasonable considering the  
18 nature and magnitude of the claims being settled and the various potential impediments to recovery.  
19 Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring  
20 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The  
21 various models were informed by Class Counsel's investigation, including the analysis of a significant  
22 sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims*  
23 (excluding penalties) to be approximately \$1,684,531 and Defendant's *maximum* exposure (including  
24 waiting time and wage statement penalties) at \$2,238,401. This projection reflects the uncertainty  
25 regarding several of the claims, together with the uncertainty surrounding derivative liability for  
26 inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount of  
27 \$230,000.00 represents approximately 13.6% of Defendant's *class-wide* liability exposure and 10.2%  
28 of Defendant's *maximum* exposure. The following summarizes Defendant's estimated exposure.

1           30. Plaintiff's primary claim in this Action alleges that Defendant failed to pay its employees  
2 for all hours worked. Specifically, Plaintiff alleges that throughout the Class Period, Defendant rounded  
3 Plaintiff and Class Members' time cards to avoid paying their employees for all time worked. As a  
4 result, Plaintiff, Class Members, and Aggrieved Employees forfeited compensation, including overtime  
5 wages, for all the time they spent working under Defendant's control. Plaintiff's expert estimated that  
6 Defendant underpaid its employees, due to its unlawful rounding, in around 86% of pay periods during  
7 the Class Period. Further, Plaintiff alleges that Defendant regularly required Plaintiff and other Class  
8 Members to perform work while off-the-clock. Specifically, Plaintiff alleges that Defendant required  
9 Plaintiff to perform post-shift work, such as moving trucks inside the workplace, putting away tools,  
10 and performing various work-related tasks after their shifts. Plaintiff conservatively assumed that Class  
11 Members spent ten (10) minutes of off-the-clock work per shift.

12           31. Defendant vigorously denied liability for this claim. As a preliminary matter, Defendant  
13 argued that the practice of rounding start and end times is lawful under *See's Candy Shops, Inc. v. Super.*  
14 *Ct.* (2012) 210 Cal. App. 4th 889, 907 and any rounding was, as a matter of practice, done in favor of  
15 the employees. Defendant also maintained that employees did not, and would have no reason to,  
16 perform work off-the-clock.

17           32. Further, Defendant argued that this claim was not suitable for class treatment because  
18 individualized issues predominated. Defendant argued that there is no common policy or practice of  
19 requiring employees to perform work off-the-clock. Accordingly, proof of liability would necessarily  
20 require individualized evidence as to whether any time was spent working off-the-clock, and whether  
21 Defendant knew or should have known that such work was allegedly being performed. Liability cannot,  
22 according to Defendant, be established by common proof. As a result, Plaintiff estimated Defendant's  
23 exposure for unpaid wages at \$234,039.

24           33. Plaintiff also alleges that Defendant failed to provide compliant meal periods.  
25 Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members,  
26 and Aggrieved Employees were not able to take timely and duty-free meal periods. Further, Plaintiff  
27 alleges that Defendant failed to record the actual time that Class Members worked. As a result, many  
28

1 of the meal periods were allegedly rounded to exactly thirty (30) minutes, which Plaintiff argued creates  
2 a presumption of a meal period violation.

3 34. Defendant denies liability for this claim. Defendant argued that the work schedules were  
4 not so “rigorous” that employees were unable to stop working. Defendant also argued that it did not  
5 engage in rounding of meal period start and end times and provided all its employees, i.e., Class  
6 Members and Aggrieved Employees, with the opportunity to take compliant meal periods. Further,  
7 Defendant argued that it maintained facially complaint meal period policies. Thus, Defendant argued  
8 that there was no potential liability for Plaintiff’s alleged meal period violations and any claimed  
9 violations required a highly individualized inquiry not suitable to class treatment. Finally, Defendant  
10 argued that Plaintiff, along with other Class Members, signed a valid meal period waiver. Consequently,  
11 Plaintiff applied a 50% discount to this claim and estimated Defendant’s exposure for this claim at  
12 \$665,855.50.

13 35. Plaintiff also alleged that Defendant failed to provide compliant rest periods.  
14 Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff, Class Members,  
15 and Aggrieved Employees were not able to take timely and duty-free rest periods. Specifically, Plaintiff  
16 argued that he was required to work through his rest periods in order to finish work-related tasks.  
17 Further, Plaintiff argued that Defendant maintained a facially unlawful rest period policy that required  
18 its employees to remain on the premises during their rest periods.

19 36. Again, Defendant denied liability and asserted that the workload is not such that it  
20 prevented employees from taking a break. Defendant argued that it maintained legally compliant  
21 written policies and actual practices concerning rest periods throughout the Class Period. Moreover,  
22 Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff’s rest period  
23 claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class  
24 certification and liability stages. Certification likely would have required depositions of Class Members  
25 who provided declarations, and Defendant argued that they obtained opposing declarations stating  
26 either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack,*  
27 *Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at \*11 (“Because of the competing testimony before  
28 the Court, plaintiff’s evidence that Defendant may have an illegal, written rest break policy is

1 insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of*  
2 *California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at \*8 (“Indeed, Plaintiff’s own evidence  
3 confirms that the written policy does not generate uniform practices”). Since rest breaks were not  
4 recorded, Plaintiff estimated that the violation rate for this claim is similar to Plaintiff’s meal break  
5 claim. Thus, Plaintiff estimated Defendant’s exposure for this claim to be \$665,855.50.

6 37. Plaintiff alleged that Defendant required Class Members to incur personal expenses for  
7 the use of their own personal cell phones without any reimbursement. Specifically, Plaintiff alleged that  
8 Plaintiff’s supervisor would call him on his personal cell phone for work purposes. California employers  
9 who require employees to incur personal business expenses for work purposes must reimburse the  
10 employee for the cost incurred. (See Cal. Lab. Code § 2802(a), providing that “[a]n employer shall  
11 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in  
12 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
13 the employer....”). Conservatively assuming \$25 a month in unreimbursed cell phone costs, Plaintiff  
14 estimated Defendant’s exposure for this claim to be \$92,875.

15 38. Plaintiff also alleged that Defendant miscalculated the regular rate of pay for purposes of  
16 overtime, meal period premiums, and redeemed sick pay. Specifically, Plaintiff alleges that Class  
17 Members received flat-sum bonus, similar to those in *Alvarado v. Dart Container Corp. of America*  
18 (2018) 4 Cal.5<sup>th</sup> 542, labeled on wage statements as “OC Hours” and “On Call.” Plaintiff argues that  
19 these flat-sum bonuses should have been treated as non-discretionary incentive compensation for  
20 purposes of calculating the overtime rate, meal period premiums, and redeemed sick pay rate for Class  
21 Members. However, Plaintiff alleges that Defendant failed to do so.

22 39. Defendant argued that all “OC Hours” and “On Call” payments operated more as  
23 discretionary bonuses, and, thus, were properly excluded from the regular rate of pay. Further,  
24 Defendant argued that even assuming these items of compensation were non-discretionary – which  
25 Defendant denied – Plaintiff never received such a payment. Thus, Defendant argued Plaintiff lacked  
26 standing to pursue the claim. Finally, Defendant argued that less than 1/3 of the Class Members ever  
27 received any of these payments. Consequently, Defendant argued any resulting liability was minimal.  
28 Given these defenses, Plaintiff estimated Defendant’s exposure for this claim to be \$25,906.

1           40. Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized  
2 wage statements. Specifically, Plaintiff alleges that Defendant failed to list the inclusive pay period  
3 dates, as required by California Labor Code section 226(a)(6), and Plaintiff alleges that Defendant failed  
4 to include all applicable hourly rates in effect, as required by California Labor Code section 226(a)(9).  
5 Further, as a result of Defendant's failure to provide meal and rest periods as required by the California  
6 Labor Code, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (See  
7 *Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are  
8 "wages" entitling employees to derivative wage statement penalties).

9           41. Defendant argued that even if it failed to furnish accurate wage statements, Plaintiff could  
10 not establish the injury requirement on a class-wide basis. As a result, Plaintiff discounted this claim  
11 75% to account for this risk. Plaintiff estimated that Defendant's exposure on this claim to be \$340,000.

12           42. Plaintiff also alleged that the Defendant's labor code violations resulted in derivative  
13 liability for waiting time penalties. Defendant argued that Plaintiff could not prove the "willful" prong  
14 needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain  
15 nature of the claims, Plaintiff estimated Defendant's exposure for this claim to be \$213,870.

16           43. In all, Class Counsel projected Defendant's liability exposure for PAGA claims to be  
17 \$1,759,125 if successful at trial.

18           44. Here, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000 which  
19 is 4.34% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA  
20 Payment. The LWDA Payment of \$7,500 represents seventy-five percent (75%) of the PAGA Payment  
21 and will be paid to the LWDA. The Aggrieved Employee Payment of \$2,500 represents the remaining  
22 twenty-five percent (25%) of the PAGA Payment, which shall be distributed to the Aggrieved  
23 Employees and is within the range of PAGA Payment approved by courts and should be approved.

#### 24           **B. Litigation Risks**

25           45. With respect to the most immediate challenge, i.e., class certification, the risks attendant  
26 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*  
27 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded  
28 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed

1 the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies,*  
2 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*  
3 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor  
4 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th  
5 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly  
6 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176  
7 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to  
8 having taken meal and rest breaks demonstrated that individualized inquiries were required to show  
9 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following  
10 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack  
11 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying  
12 certification of driver meal and rest period claims based on the predominance of individual issues).  
13 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,  
14 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring  
15 settlement.

16 46. “The Settlement eliminates these and other risks of continued litigation, including the  
17 very real risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal.  
18 2008) 2008 WL 5382544, at \*3.) Indeed, potential appeals aside, litigating a complex case through trial  
19 is inherently perilous regardless of the strengths of merits of the claims:

20 [N]othing is assured when litigating against commercial giants with vast  
21 litigative resources, particular in such complex litigation as this, which  
22 would strain the cognitive capacities of any jury. Defense judgments were  
23 hardly beyond the realm of possibility. Accordingly, this factor weighs in  
24 favor of preliminary approval.

25 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990).)  
26 Defendant’s financial condition was one key factor in reaching this Settlement.

27 47. Finally, continuing to litigate this action would require continued and extensive resources  
28 coupled with significant Court time to proceed through trial and post-trial motions; which can often

1 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates  
2 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at  
3 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that  
4 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,  
5 the risk of an appeal and subsequent reversal is real.

6 48. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$230,000.00 that  
7 is roughly between 5.38% (“Aggressive Model”) and 16.14% (“Conservative Model”) of Defendant’s  
8 maximum class wide liability exposure for damages and statutory penalties. Given the amount of the  
9 settlement here, as compared to potential value of the claims, offset by the various inherent risks to  
10 continued litigation, the settlement is fair and reasonable.

11 **C. Proposed Notice Informs the Class About the Case and Settlement**

12 49. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class  
13 Members of their rights and remedies. The Administrator will first verify addresses, then mail the  
14 proposed Class Notice in English and Spanish to all Class Members. The Notice will include  
15 information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms,  
16 the procedure, and time period within which to requests for exclusions or objections to the Settlement,  
17 the date for the final approval hearing, the formula used to calculate settlement payments, and the terms  
18 and scope of the Released Class Claims. Agreement at § III(M)(2). The Parties negotiated this method  
19 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost  
20 effective administration of the Settlement.

21 **D. The Court Should Preliminarily Approve the Enhancement Award**

22 50. The Settlement provides for a Class Representative Service Award of \$10,000.00 for  
23 Plaintiff. The Class Representative Service Award is fair and reasonable compensation for the  
24 Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement,  
25 regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the  
26 claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief  
27 for the Class Members, and agreeing to provide Defendants a general release of all claims arising out  
28 of his employment.

1           51.     Class Counsel, on behalf of Plaintiff, will file a formal motion for the negotiated Class  
2 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff  
3 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated  
4 Class Representative Service Award.

5           **E.     The Court Should Preliminary Approve the Class Counsel Award**

6           52.     Class Counsel took this matter on a contingency fee basis and invested significant time  
7 and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average  
8 Individual Class Payment illustrates the demonstrably positive outcome for the Settlement Class  
9 Members. Considering the positive outcome for the Class Members, and in light of the supporting  
10 authority, the proposed Class Counsel Award payment is fair and reasonable.

11          53.     Plaintiff will file a formal motion for the negotiated Class Counsel Award, including  
12 arguments and lodestar information in support of the request, once preliminary approval of the  
13 Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary  
14 approval of the negotiated attorneys' fees.

15           **F.     The Court Should Provisionally Certify the Settlement Class**

16          54.     For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional  
17 certification of the Class is appropriate.

18          55.     Because all Class Members are Defendant's current and former employees, the class is  
19 readily ascertainable from Defendant's regular business records, i.e., payroll records.

20          56.     The statutes relating to each of Plaintiff's claims apply with equal force and effect to the  
21 entire Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability  
22 can be determined by facts common to all members of the Class. The wage and hour issues are both  
23 numerous and substantial, and a class action is the most advantageous method of dealing with the claims  
24 of the Class Members.

25          57.     Plaintiff's wage and hour claims are typical of the proposed Class because they arise from  
26 the same factual basis and are based on the same legal theories applicable to the other Class Members.  
27 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class Members. Plaintiff  
28 alleges that he was injured by the same company-wide practices to which the proposed Class Members

1 were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for  
2 the interests of the Class Member by initiating this litigation, undertaking extensive class discovery,  
3 and evaluating the proposed settlement to assure that it is fair.

4 58. A class action is superior to a multitude of individual lawsuits. Given the size and amount  
5 of each individual claim, the Class Members likely have little incentive to litigate their claims on an  
6 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each  
7 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case  
8 adjudication.

9 59. Finally, Class Counsel is not aware of any other pending matters or actions asserting  
10 claims that will be extinguished or adversely affected by the Settlement.

11 **G. Class Counsel's Experience**

12 60. Plaintiff, the Settlement Class Members and the Aggrieved Employees are represented  
13 by competent and experienced counsel to pursue their claims. The Firm is a boutique plaintiff firm  
14 exclusively representing California employees in complex wage and hour class actions and  
15 representative actions arising under the California Labor Code Private Attorney General Act. The Firm  
16 currently consists of myself, Jackland K. Hom, Esq. (Associate Attorney), Shani O. Zakay, Esq.  
17 (Partner/Owner), Rachel Newman, Esq. (Associate Attorney), Jennifer Gerstenzang, Esq. (Associate  
18 Attorney), Eden Zakay, Esq. (Associate Attorney), Nicole Noursamadi, Esq. (Associate Attorney),  
19 Jaclyn Joyce, Esq. (Associate Attorney), and Liana Rios (Legal Assistant).

20 61. I am qualified to represent the Plaintiff, the State of California and the Aggrieved  
21 Employees. I have extensive experience with wage and hour class and representative actions litigation  
22 like this matter, and employment matters in general. I can, will and have adequately represented the  
23 interests of the Plaintiff, the State of California and the Aggrieved Employees throughout this action.

24 62. I have represented consumers and employees in California class actions exclusively for  
25 more than 5 years. I have been in practice as a plaintiffs' civil litigation attorney since November 2019.

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64. Additionally, Class Counsel has incurred a total of \$20,968.99 (JCL Law Firm, APC - \$9,534.66 and Zakay Law Group, APLC - \$11,434.33) in litigation costs prosecuting this action to date.

**ZAKAY LAW GROUP, APLC**

By:  \_\_\_\_\_

Jackland K. Hom, Esq.  
Attorney for Plaintiff

By: Jeff Gillan

Jackland K. Hom, Esq.  
Attorney for Plaintiff

# **EXHIBIT 1**

**ZAKAY LAW GROUP, APLC**

Shani O. Zakay (State Bar #277924)  
Jackland K. Hom (State Bar #327243)  
Rachel N. Newman (State Bar #350826)  
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**JCL LAW FIRM, APC**

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Attorneys for Plaintiff FIDEL GOMEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF TULARE**

FIDEL GOMEZ, an individual, on behalf of  
himself, and on behalf of all persons similarly  
situated,

Plaintiff,

v.

KIRBY MANUFACTURING, INC., a  
California corporation; and DOES 1-50,  
Inclusive,

Defendants.

Case No. VCU308341

[Complaint Filed: April 25, 2024]

**STIPULATION OF SETTLEMENT OF  
CLASS AND PAGA ACTION CLAIMS  
AND RELEASE OF CLAIMS**

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is  
2 entered into by and between Plaintiff FIDEL GOMEZ (hereinafter “Plaintiff”), an individual, on  
3 behalf of himself, and on behalf of all persons similarly situated, and in his representative capacity  
4 on behalf of the State of California and the Aggrieved Employees, and Defendant KIRBY  
5 MANUFACTURING, INC. (“Defendant”) (together, the “Parties”):

6 **I. DEFINITIONS**

- 7 A. “Action” shall mean the putative class and representative action lawsuit designated  
8 *Fidel Gomez v. Kirby Manufacturing, Inc.*, Tulare County Superior Court, Case No.  
9 VCU308341, filed April 25, 2024.
- 10 B. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of  
11 Class and PAGA Action Claims and Release of Claims.
- 12 C. “Aggrieved Employees” means all current and former non-exempt employees who  
13 worked for Defendant in California at any time during the PAGA Period.
- 14 D. “Aggrieved Employee Payment” shall mean the twenty-five percent (25%) of the  
15 PAGA Payment (\$2,500.00) that will be distributed to the Aggrieved Employees as  
16 described in this Agreement.
- 17 E. “Class” or the “Class Members” means all current and former non-exempt  
18 employees who worked for Defendant in California at any time during the Class  
19 Period.
- 20 F. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC,  
21 and Shani O. Zakay, Esq. of Zakay Law Group, APLC.
- 22 G. “Class Counsel Award” means the award of fees and expenses that the Court  
23 authorizes to be paid to Class Counsel for the services they have rendered to  
24 Plaintiff, the Class Members, and the Aggrieved Employees in the Action,  
25 consisting of attorneys’ fees currently not to exceed one-third of the Gross  
26 Settlement Amount currently estimated to be \$76,666.66 out of \$230,000.00 plus  
27 costs of up to \$25,000.00. Attorneys’ fees will be divided between Class Counsel  
28

in the following percentages (50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC).

H. “Class Data” means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member’s full name; last known address; Social Security Number; start dates and end dates of employment.

I. “Class Period” means the period beginning April 25, 2020 to February 26, 2025.

J. “Class Representative” shall mean plaintiff Fidel Gomez.

K. “Court” means the Superior Court for the State of California, County of Tulare, currently presiding over the Action.

L. “Defendant” shall mean Kirby Manufacturing, Inc.

M. “Effective Date” means the date upon which: (a) the Court grants Final Approval; or (b) if there are objections to the Settlement, and if an appeal, review, or writ is not sought from the Final Approval, the day after the time period to appeal the Settlement has expired *ie.*, sixty (60) days from the date the Court enters an order granting final approval of the Settlement; or (c) if there are objections to the Settlement, and an appeal, review, or writ is timely sought from the Final Approval, the day after the Final Approval is affirmed or the appeal, review, or writ is dismissed or denied, and the Final Approval Order is no longer subject to further judicial review.

N. “Funding Date” shall be the date by which Defendant fully funds the Gross Settlement Amount by transmitting the final installment payment, in accordance with this Agreement. Defendant will pay the Gross Settlement Amount to the Settlement Administrator in ten (10) equal installment payments of \$23,000.00, on the first of each month, beginning on April 1, 2026, and ending on January 1, 2027.

O. “Gross Settlement Amount” means Two Hundred Thirty Thousand Dollars and Zero Cents (\$230,000.00) that Defendant must pay into the QSF in connection with this

Settlement, inclusive of the sum of Settlement Administration Costs, Class Counsel Award, Service Award, and the PAGA Payment. The Gross Settlement Amount is all-in with no reversion and *exclusive* of the employer's share of payroll tax, if any, triggered by any payment under this Settlement.

P. "Individual Settlement Payments" means the amount payable from the Net Settlement Amount to each Settlement Class Member and excludes any amounts distributed to Aggrieved Employees pursuant to PAGA.

Q. "LWDA" shall mean the Labor and Workforce Development Agency.

R. "LWDA Payment" shall mean the seventy-five percent (75%) of the PAGA Payment (\$7,500.00) payable to the to the LWDA.

S. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class Counsel Award, Service Award, PAGA Payment, and Settlement Administration Costs.

T. "Notice Packet" means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

U. "Operative Complaint" shall mean the First Amended Complaint filed by Plaintiff on July 25, 2024, in the Tulare County Superior Court.

V. "PAGA" means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

W. "PAGA Payment Ratio" means the respective Pay Periods during the PAGA Period for each Aggrieved Employee divided by the total Pay Periods for all Aggrieved Employees during the PAGA Period.

X. "PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means the number of pay periods of employment during the PAGA Period that each Aggrieved Employee worked in California.

- 1 Y. "PAGA Period" means the period beginning April 25, 2023 to February 26, 2025.
- 2 Z. "PAGA Payment" shall mean Ten Thousand Dollars and Zero Cents (\$10,000.00)
- 3 to be allocated from the Gross Settlement Amount for settlement of PAGA Claims
- 4 asserted in the Action.
- 5 AA. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
- 6 Plaintiff or Defendant, individually.
- 7 BB. "Payment Ratio" means the respective Workweeks for each Class Member divided
- 8 by the total Workweeks for all Class Members.
- 9 CC. "Plaintiff" shall mean Fidel Gomez.
- 10 DD. "QSF" means the Qualified Settlement Fund established, designated, and
- 11 maintained by the Settlement Administrator to fund the Gross Settlement Amount.
- 12 EE. "Released Class Claims" shall mean all class claims alleged or reasonably could
- 13 have been alleged based on the facts alleged, in the Operative Complaint in the
- 14 Action, which occurred during the Class Period, and expressly excluding all other,
- 15 including claims for vested benefits, wrongful termination, unemployment
- 16 insurance, disability, social security, workers' compensation, and class claims
- 17 outside of the Class Period.
- 18 FF. "Released PAGA Claims" shall mean all PAGA claims alleged in the Operative
- 19 Complaint in the Action and Plaintiff's PAGA Notice to the LWDA, which
- 20 occurred during the PAGA Period, and expressly excluding all other claims,
- 21 including claims for vested benefits, wrongful termination, unemployment
- 22 insurance, disability, social security, workers' compensation, and PAGA claims
- 23 outside of the PAGA Period.
- 24 GG. "Released Parties" shall mean Kirby Manufacturing Inc., its affiliates, subsidiaries,
- 25 or parents, and their respective current and former members, shareholders, partners,
- 26 owners, managers, directors, officers, employees, agents, attorneys, insurers, heirs,
- 27 successors and assigns.
- 28

- 1 HH. "Response Deadline" means the date forty-five (45) calendar days after the  
2 Settlement Administrator mails Notice Packets to Class Members and the last date  
3 on which Class Members may submit requests for exclusion or objections to the  
4 Settlement.-Neither side shall encourage any Class Member to opt out.
- 5 II. "Service Award" means an award in the amount of \$10,000 or in an amount that the  
6 Court authorizes to be paid to the Class Representative, in addition to his Individual  
7 Settlement Payment and his individual Aggrieved Employee Payment, in  
8 recognition of his efforts and risks in assisting with the prosecution of the Action.
- 9 JJ. "Settlement" means the disposition of the Action pursuant to this Agreement.
- 10 KK. "Settlement Administration Costs" shall mean the amount paid to the Settlement  
11 Administrator from the Gross Settlement Amount for administering the Settlement  
12 pursuant to this Agreement currently estimated not to exceed \$4,950.00
- 13 LL. "Settlement Administrator" means Apex Class Action LLC, located at 18  
14 Technology Drive, Suite 154, Irvine, CA 92618 Tel: (800) 355-0700. The  
15 Settlement Administrator establishes, designates, and maintains, as a QSF under  
16 Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1,  
17 into which the amount of the Gross Settlement Amount is deposited for the purpose  
18 of resolving the claims of Settlement Class Members. The Settlement Administrator  
19 shall maintain the funds until distribution in an account(s) segregated from the  
20 assets of Defendant and any person related to Defendant. ***All accrued interest shall***  
21 ***be paid and distributed to the Settlement Class Members as part of their respective***  
22 ***Individual Settlement Payment.***
- 23 MM. "Settlement Class Members" or "Settlement Class" means all Class Members who  
24 have not submitted a timely and valid request for exclusion as provided in this  
25 Agreement.
- 26 NN. "Workweeks," shall mean any seven (7) consecutive days beginning on Sunday and  
27 ending on Saturday, in which a Class Member is employed by Defendant during the  
28 Class Period in California.

1 **II. RECITALS**

2 A. On April 25, 2024, Plaintiff filed a Class Action complaint in the Tulare Superior  
3 Court, Case No. VCU308341 (“Class Action”), alleging claims for:

- 4 1. Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq*;
- 5 2. Failure To Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194,  
6 1197 & 1197.1;
- 7 3. Failure To Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et*  
8 *seq*;
- 9 4. Failure To Provide Required Meal Periods in Violation of Cal. Lab. Code §§  
10 226.7 & 512 and the Applicable IWC Wage Order;
- 11 5. Failure To Provide Required Rest Periods in Violation of Cal. Lab. Code §§  
12 226.7 & 512 and the Applicable IWC Wage Order;
- 13 6. Failure To Reimburse Employees For Required Expenses in Violation of  
14 Cal. Lab. Code § 2802;
- 15 7. Failure To Provide Accurate Itemized Statements in Violation of Cal. Lab.  
16 Code § 226;
- 17 8. Failure To Provide Wages When Due in Violation of Cal. Lab. Code §§ 201,  
18 202 And 203.

19 B. On April 25, 2024, Plaintiff filed a Notice of Violations with the Labor and  
20 Workforce Development Agency (LWDA) and served the same on Defendant.

21 C. On July 25, 2024, Plaintiff filed the operative First Amended Complaint, adding a  
22 ninth cause of action for violations of PAGA.

23 D. The Class Representative believes he has claims based on alleged violations of the  
24 California Labor Code, and the Industrial Welfare Commission Wage Orders, and  
25 that class certification is appropriate because the prerequisites for class certification  
26 can be satisfied in the Action, and this action is manageable as a PAGA  
27 representative action.  
28

1 E. Defendant denies any liability or wrongdoing of any kind associated with the claims  
2 alleged in the Action, disputes any wages, damages and penalties claimed by the  
3 Class Representative, alleged in the Operative Complaint, and/or alleged in the  
4 Class Representative's PAGA notices to the LWDA are owed, and further contend  
5 that, for any purpose other than settlement, the Action is not appropriate for class or  
6 representative action treatment. Defendant contends, among other things, that at all  
7 times it complied with the California Labor Code and the Industrial Welfare  
8 Commission Wage Orders.

9 F. The Class Representative is represented by Class Counsel. Class Counsel  
10 investigated the facts relevant to the Action, including conducting an independent  
11 investigation as to the allegations, reviewing documents and information exchanged  
12 through informal discovery, and reviewing documents and information provided by  
13 Defendant pursuant to informal requests for information to prepare for mediation.  
14 Defendant produced for the purpose of settlement negotiations certain employment  
15 data concerning the Class, which Class Counsel reviewed and analyzed with the  
16 assistance of an expert. Based on their own independent investigation and  
17 evaluation, Class Counsel are of the opinion that the Settlement with Defendant is  
18 fair, reasonable, and adequate, and is in the best interest of the Class considering all  
19 known facts and circumstances, including the risks of significant delay, defenses  
20 asserted by Defendant, uncertainties regarding class certification, and numerous  
21 potential appellate issues. Although it denies any liability, Defendant agrees to this  
22 Settlement solely to avoid the inconveniences and cost of further litigation. The  
23 Parties and their counsel have agreed to settle the claims on the terms set forth in  
24 this Agreement.

25 G. On February 26, 2025, the Parties participated in mediation presided over by Steve  
26 Mehta, Esq., an experienced mediator of wage and hour class and PAGA actions.  
27 The Parties accepted a Mediator's settlement proposal, which was subsequently  
28 memorialized in the form of a Memorandum of Understanding.

1 H. This Agreement replaces and supersedes the Memorandum of Understanding and  
2 any other agreements, understandings, or representations between the Parties. This  
3 Agreement represents a compromise and settlement of highly disputed claims.  
4 Nothing in this Agreement is intended or will be construed as an admission by  
5 Defendant that the claims in the Action of Plaintiff or the Class Members have merit  
6 or that Defendant bears any liability to Plaintiff or the Class on those claims or any  
7 other claims, or as an admission by Plaintiff that Defendant's defenses in the Action  
8 have merit.

9 I. The Parties believe that the Settlement is fair, reasonable, and adequate. The  
10 Settlement was arrived at through arm's-length negotiations, considering all relevant  
11 factors. The Parties recognize the uncertainty, risk, expense, and delay attendant to  
12 continuing the Action through trial and any appeal. Accordingly, the Parties desire  
13 to settle, compromise and discharge all disputes and claims arising from or relating  
14 to the Action fully, finally, and forever.

15 J. The Parties agree to certification of the Class for purposes of this Settlement only.  
16 If for any reason the settlement does not become effective, Defendant reserves the  
17 right to contest certification of any class for any reason and reserve all available  
18 defenses to the claims in the Action. The Settlement, this Agreement, and the  
19 Parties' willingness to settle the Action will have no bearing on and will not be  
20 admissible in connection with any litigation.

21 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

22 **III. TERMS OF AGREEMENT**

23 A. Settlement Consideration and Settlement Payments by Defendant.

- 24 1. Settlement Consideration. In full and complete settlement of the Action, and  
25 in exchange for the releases set forth below, Defendant will pay the sum of  
26 the Individual Settlement Payments, the Service Award, the Class Counsel  
27 Award, PAGA Payment, and the Settlement Administration Costs, as  
28 specified in this Agreement, equal to the Gross Settlement Amount of Two

1 Hundred Thirty Thousand Dollars and Zero Cents (\$230,000.00). The  
2 Parties agree that this is a non-reversionary Settlement and that no portion of  
3 the Gross Settlement Amount shall revert to Defendant. Other than the  
4 Defendant's share of employer payroll taxes and as provided in Section  
5 III.A.2 below, Defendant shall not be required to pay more than the Gross  
6 Settlement Amount.

7 2. Class Size. Defendant represents that the Class was comprised of  
8 approximately 88 individuals who collectively worked approximately 11,954  
9 Workweeks during the Class Period. As of the date of execution of this  
10 Agreement, Defendant has provided the Settlement Administrator with the  
11 Class Data. Prior to Plaintiff filing the Motion for Preliminary Approval, the  
12 Settlement Administrator will review the Class Data and provide a  
13 declaration detailing the total number of Class Members and Workweeks  
14 during the Class Period. Should the Workweeks increase beyond 10% of the  
15 estimated 11,954 Workweeks (*i.e.*, more than 13,149.4 Workweeks), the  
16 Gross Settlement Amount will increase by the percentage over 110% of the  
17 increased Workweeks. For example, if the total Workweeks in the Class  
18 Period are 115% of 11,954, the Gross Settlement Amount will increase by  
19 5%.

20 3. Settlement Payment. Defendant shall deposit the Gross Settlement Amount  
21 into the QSF, through the Settlement Administrator by the Funding Date.  
22 Defendant will pay the Gross Settlement Amount in ten (10) equal  
23 installment payments of \$23,000.00, on the first of each month, beginning  
24 on April 1, 2026, and ending on January 1, 2027 ("Installment Payments").  
25 Once sufficient Installment Payments have been made to fully fund the Net  
26 Settlement Amount and PAGA Payment, Defendant will pay to the  
27 Settlement Administrator the payroll taxes associated with the wage  
28 payments to the Class Members. The estimated date in which Defendant will

1 pay the employer-side payroll taxes is August 1, 2026. Once sufficient  
2 Installment Payments have been made to fully fund the Net Settlement  
3 Amount and PAGA Payment, along with the employer-side payroll taxes,  
4 the Class Members will be paid in one lump sum. Any interest accrued will  
5 be added to the NSA and distributed to the Settlement Class Members except  
6 that if final approval is reversed on appeal, then Defendant is entitled to  
7 prompt return of the principal and all interest accrued.

8 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side  
9 payroll taxes is in addition to the Gross Settlement Amount and shall be paid  
10 immediately once the Net Settlement Amount is fully funded.

11 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the  
12 consideration set forth in this Agreement, Plaintiff and the Settlement Class  
13 Members release the Released Parties from the Released Class Claims for the Class  
14 Period.

15 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the  
16 consideration set forth in this Agreement, the Plaintiff, the LWDA, and the State of  
17 California release the Released Parties from the Released PAGA Claims for the  
18 PAGA Period. As a result of this release, the Aggrieved Employees shall be  
19 precluded from bringing claims against Defendant for the Released PAGA Claims.

20 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth  
21 in this Agreement, Plaintiff waives, releases, acquits and forever discharges the  
22 Released Parties from any and all claims, whether known or unknown, which exist or  
23 may exist on either Plaintiff's behalf as of the date of this Agreement, including but  
24 not limited to any and all tort claims, contract claims, wage claims, wrongful  
25 termination claims, disability claims, benefit claims, public policy claims, retaliation  
26 claims, statutory claims, personal injury claims, emotional distress claims, invasion  
27 of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any  
28 and all claims arising under any federal, state or other governmental statute, law,

1 regulation or ordinance, including, but not limited to claims for violation of the Fair  
2 Labor Standards Act, the California Labor Code, the Wage Orders of California's  
3 Industrial Welfare Commission, other state wage and hour laws, the Americans with  
4 Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee  
5 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the  
6 California Fair Employment and Housing Act, the California Family Rights Act, the  
7 Family Medical Leave Act, California's Whistleblower Protection Act, California  
8 Business & Professions Code Section 17200 et seq., and any and all claims arising  
9 under any federal, state or other governmental statute, law, regulation or ordinance.  
10 Plaintiff also waives and relinquishes any and all claims, rights or benefits that he  
11 may have under California Civil Code § 1542, which provides as follows:

12  
13 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***  
14 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***  
15 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***  
16 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***  
17 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***  
18 ***DEBTOR OR RELEASED PARTY.***

19  
20 Thus, notwithstanding the provisions of section 1542, and to implement a full and  
21 complete release and discharge of the Released Parties, Plaintiff expressly  
22 acknowledges this Settlement Agreement is intended to include in its effect, without  
23 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at  
24 the time of signing this Settlement Agreement, and that this Settlement Agreement  
25 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff  
26 has read this Settlement Agreement, including this waiver of California Civil Code  
27 section 1542, and that Plaintiff has consulted with or had the opportunity to consult  
28 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically

1 about the waiver of section 1542, and that Plaintiff understands this Settlement  
2 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters  
3 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later  
4 may discover facts different from or in addition to those Plaintiff now knows or  
5 believes to be true regarding the matters released or described in this Settlement  
6 Agreement, and even so Plaintiff agrees that the releases and agreements contained  
7 in this Settlement Agreement shall remain effective in all respects notwithstanding  
8 any later discovery of any different or additional facts. Plaintiff expressly assumes  
9 any and all risk of any mistake in connection with the true facts involved in the  
10 matters, disputes, or controversies released or described in this Settlement Agreement  
11 or with regard to any facts now unknown to Plaintiff relating thereto.

12 E. Conditions Precedent: This Settlement will become final and effective only upon the  
13 occurrence of all of the following events:

- 14 1. The Court enters an order granting preliminary approval of the Settlement;
- 15 2. The Court enters an order granting final approval of the Settlement and a  
16 Final Judgment;
- 17 3. If an objector appears at the final approval hearing, the time for appeal of the  
18 Final Judgment and Order Granting Final Approval of Class Action  
19 Settlement expires; or, if an appeal is timely filed, there is a final resolution  
20 of any appeal from the Judgment and Order Granting Final Approval of  
21 Class Action Settlement; and
- 22 4. Defendant fully funds the Gross Settlement Amount.

23 F. Nullification of Settlement Agreement. If the Court does not preliminarily or finally  
24 approve this Settlement Agreement, fails to become effective, or is reversed,  
25 withdrawn, or modified by the Court, or in any way prevents or prohibits Defendant  
26 from obtaining a complete resolution of the Released Class Claims and Released  
27 PAGA Claims, or if Defendant fails to fully fund the Gross Settlement Amount:  
28

- 1           1.       This Settlement Agreement shall be void *ab initio* and of no force or effect,  
2                       and shall not be admissible in any judicial, administrative, or arbitral  
3                       proceeding for any purpose or with respect to any issue, substantive or  
4                       procedural;
- 5           2.       The conditional class certification (obtained for any purpose) shall be void  
6                       *ab initio* and of no force or effect, and shall not be admissible in any judicial,  
7                       administrative, or arbitral proceeding for any purpose or with respect to any  
8                       issue, substantive or procedural; and
- 9           3.       None of the Parties to this Settlement will be deemed to have waived any  
10                      claims, objections, defenses, or arguments in the Action, including with  
11                      respect to the issue of class certification.

12       G.       In the event that Defendant fails to fund the Gross Settlement Amount, Defendant  
13                      shall bear the sole responsibility for any cost to issue or reissue any curative notice to  
14                      the Settlement Class Members and all Settlement Administration Costs incurred to  
15                      the date of nullification.

16       H.       Certification of the Class. The Parties stipulate to conditional class certification of  
17                      the Class for the Class Period for purposes of settlement only. In the event that this  
18                      Settlement is not approved by the Court, fails to become effective, or is reversed,  
19                      withdrawn or modified by the Court, or in any way prevents or prohibits Defendant  
20                      from obtaining a complete resolution of the Released Class Claims and Released  
21                      PAGA Claims, the conditional class certification (obtained for any purpose) shall be  
22                      void *ab initio* and of no force or effect, and shall not be admissible in any judicial,  
23                      administrative or arbitral proceeding for any purpose or with respect to any issue,  
24                      substantive or procedural.

25       I.       Tax Liability. The Parties make no representations as to the tax treatment or legal  
26                      effect of the payments called for, and Class Members and/or Aggrieved Employees  
27                      are not relying on any statement or representation by the Parties in this regard. Class  
28                      Members and/or Aggrieved Employees understand and agree that they will be

1 responsible for the payment of any taxes and penalties assessed on the Individual  
2 Settlement Payments and/or Aggrieved Employees' individual shares of the  
3 Aggrieved Employee Payment described and will be solely responsible for any  
4 penalties or other obligations resulting from their personal tax reporting of Individual  
5 Settlement Payments and/or Aggrieved Employees' individual shares of the  
6 Aggrieved Employee Payment.

7 J. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,  
8 the "acknowledging party" and each Party to this Agreement other than the  
9 acknowledging party, an "other party") acknowledges and agrees that: (1) no  
10 provision of this Agreement, and no written communication or disclosure between or  
11 among the Parties or their attorneys and other advisers, is or was intended to be, nor  
12 shall any such communication or disclosure constitute or be construed or be relied  
13 upon as, tax advice within the meaning of United States Treasury Department  
14 circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has  
15 relied exclusively upon his, her or its own, independent legal and tax counsel for  
16 advice (including tax advice) in connection with this Agreement, (b) has not entered  
17 into this Agreement based upon the recommendation of any other Party or any  
18 attorney or advisor to any other Party, and (c) is not entitled to rely upon any  
19 communication or disclosure by any attorney or adviser to any other party to avoid  
20 any tax penalty that may be imposed on the acknowledging party, and (3) no attorney  
21 or adviser to any other Party has imposed any limitation that protects the  
22 confidentiality of any such attorney's or adviser's tax strategies (regardless of  
23 whether such limitation is legally binding) upon disclosure by the acknowledging  
24 party of the tax treatment or tax structure of any transaction, including any  
25 transaction contemplated by this Agreement.

26 K. Preliminary Approval Motion. As soon thereafter as practicable after the execution of  
27 this Agreement, Plaintiff shall file with the Court a Motion for Order Granting  
28 Preliminary Approval and supporting papers, which shall include this Settlement

1 Agreement. Plaintiff will provide Defendant with a draft of the Motion at least three  
2 (3) business days prior to the filing of the Motion to give Defendant an opportunity  
3 to review and comment upon the Motion.

4 L. Settlement Administrator. The Settlement Administrator shall be responsible for:  
5 establishing and administering the QSF; calculating, processing and mailing  
6 payments to the Class Representative, Class Counsel, LWDA and Class Members;  
7 printing and mailing the Notice Packets to the Class Members as directed by the  
8 Court; receiving and reporting the objections and requests for exclusion; calculating,  
9 deducting and remitting all legally required taxes from Individual Settlement  
10 Payments and distributing tax forms for the Wage Portion, the Penalties Portion and  
11 the Interest Portion of the Individual Settlement Payments and/or Aggrieved  
12 Employees' individual shares of the Aggrieved Employee Payment; processing and  
13 mailing tax payments to the appropriate state and federal taxing authorities;  
14 providing declaration(s) as necessary in support of preliminary and/or final approval  
15 of this Settlement; and other tasks as the Parties mutually agree or the Court orders  
16 the Settlement Administrator to perform. The Settlement Administrator shall keep  
17 the Parties timely apprised of the performance of all Settlement Administrator  
18 responsibilities by among other things, sending a weekly status report to the Parties'  
19 counsel stating the date of the mailing, the of number of opt outs from the Settlement  
20 it receives (including the numbers of valid and deficient), and number of objections  
21 received.

22 M. Notice Procedure.

23 1. Class Data. No later than ten (10) calendar days after the Preliminary  
24 Approval Date, Defendant shall provide the Settlement Administrator with  
25 the Class Data for purposes of preparing and mailing Notice Packets to the  
26 Class Members.

27 2. Notice Packets.

1 a) The Notice Packet shall contain the Notice of Class Action  
2 Settlement in a form substantially similar to the form attached as  
3 **Exhibit A**. The Notice of Class Action Settlement shall inform Class  
4 Members and Aggrieved Employees that they need not do anything  
5 in order to receive an Individual Settlement Payment and/or  
6 Aggrieved Employees' individual shares of the Aggrieved Employee  
7 Payment and to keep the Settlement Administrator apprised of their  
8 current mailing address, to which the Individual Settlement Payments  
9 and/or Aggrieved Employees' individual shares of the Aggrieved  
10 Employee Payment will be mailed following the date that the Net  
11 Settlement Amount is fully funded. The Notice of Class Action  
12 Settlement shall set forth the release to be given by all members of  
13 the Class who do not request to be excluded from the Settlement  
14 Class and/or Aggrieved Employees in exchange for an Individual  
15 Settlement Payment and/or Aggrieved Employees' individual shares  
16 of the Aggrieved Employee Payment, the number of Workweeks  
17 worked by each Class Member during the Class Period, and number  
18 of PAGA Periods worked by each Aggrieved Employee during the  
19 PAGA Period, if any, and the estimated amount of their Individual  
20 Settlement Payment if they do not request to be excluded from the  
21 Settlement and each Aggrieved Employees' share of the Aggrieved  
22 Employee Payment, if any. The Settlement Administrator shall use  
23 the Class Data to determine Class Members' Workweeks and PAGA  
24 Pay Periods. The Notice will also advise the Aggrieved Employees  
25 that they will release the Released PAGA Claims and will receive  
26 their share of the Aggrieved Employee Payment regardless of  
27 whether they request to be excluded from the Settlement.  
28

1                   b)     The Notice Packet's mailing envelope shall include the following  
2                             language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE  
3                             ENTITLED TO PARTICIPATE IN A CLASS ACTION  
4                             SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR  
5                             ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED  
6                             NOTICE."

7                   3.     Notice by First Class U.S. Mail. Upon receipt of the Class Data, the  
8                             Settlement Administrator will perform a search based on the National  
9                             Change of Address Database to update and correct any known or identifiable  
10                            address changes. No later than twenty-one (21) calendar days after  
11                            preliminary approval of the Settlement, the Settlement Administrator shall  
12                            mail copies of the Notice Packet to all Class Members via regular First-Class  
13                            U.S. Mail and electronic mail. The Settlement Administrator shall exercise  
14                            its best judgment to determine the current mailing address for each Class  
15                            Member. The address identified by the Settlement Administrator as the  
16                            current mailing address shall be presumed to be the best mailing address for  
17                            each Class Member.

18                   4.     Undeliverable Notices. Any Notice Packets returned to the Settlement  
19                            Administrator as non-delivered on or before the Response Deadline shall be  
20                            re-mailed to any forwarding address provided within seven (7) days of  
21                            receiving the returned notice. If no forwarding address is provided, the  
22                            Settlement Administrator shall promptly attempt to determine a correct  
23                            address by lawful use of skip-tracing, or other search using the name,  
24                            address and/or Social Security number of the Class Member involved, and  
25                            shall then perform a re-mailing, if another mailing address is identified by  
26                            the Settlement Administrator. In addition, if any Class Member who is  
27                            currently employed by Defendant, is returned to the Settlement  
28                            Administrator, as non-delivered and no forwarding address is provided, the

1 Settlement Administrator shall notify Defendant. Defendant will request  
2 that the currently employed Class Member provide a corrected address and  
3 transmit to the Settlement Administrator any corrected address provided by  
4 the Class Member. Class Members who received a re-mailed Notice Packet  
5 shall have their Response Deadline extended fifteen (15) days from the  
6 original Response Deadline.

7 5. Disputes Regarding Individual Settlement Payments. Class Members will  
8 have the opportunity, should they disagree with Defendant's records  
9 regarding the start and end dates of employment, to provide documentation  
10 and/or an explanation to show contrary dates. If there is a dispute, the  
11 Settlement Administrator will consult with the Parties to determine whether  
12 an adjustment is warranted. The Settlement Administrator shall determine  
13 the eligibility for, and the amounts of, any Individual Settlement Payments  
14 under the terms of this Agreement. The Settlement Administrator's  
15 determination of the eligibility for and amount of any Individual Settlement  
16 Payment shall be binding upon the Class Member and the Parties.

17 6. Disputes Regarding Administration of Settlement. Any disputes not  
18 resolved by the Settlement Administrator concerning the administration of  
19 the Settlement will be resolved by the Court under the laws of the State of  
20 California. Before any such involvement of the Court, counsel for the  
21 Parties will confer in good faith to resolve the disputes without the necessity  
22 of involving the Court.

23 7. Exclusions. The Notice of Class Action Settlement contained in the Notice  
24 Packet shall state that Class Members who wish to exclude themselves from  
25 the Settlement must submit a signed copy of the Request for Exclusion form  
26 to the Settlement Administrator by the Response Deadline. A Request for  
27 Exclusion form will be mailed together with the Notice Packet to all Class  
28 Members. The Request for Exclusion will not be valid if it is not timely

submitted, if it is not signed by the Class Member, or if it does not contain the name and address and last four digits of the Social Security number of the Class Member. The date of the postmark on the mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Class Member who submits a timely Request for Exclusion shall be excluded from the Settlement Class will not be entitled to an Individual Settlement Payment and will not be otherwise bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. However, any Class Member that submits a timely Request for Exclusion that is also an Aggrieved Employee will still receive his/her pro rata share of the Aggrieved Employee Payment, as specified below, and in consideration, will be bound by the Release by the PAGA Class as set forth herein. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Court approves the Settlement. No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted timely Requests for Exclusion.

8. Objections. The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to object to the Settlement may submit to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely. The Notice of Objection, if in writing, must be signed by the Settlement Class Member and state: (1) the case name and number; (2) the name of the Settlement Class Member; (3) the address of the

1 Settlement Class Member; (4) the last four digits of the Settlement Class  
2 Member's Social Security number; (5) the basis for the objection; and (6) if  
3 the Settlement Class Member intends to appear at the Final  
4 Approval/Settlement Fairness Hearing. Settlement Class Members who fail  
5 to make objections in writing in the manner specified above may still make  
6 their objections orally at the Final Approval/Settlement Fairness Hearing  
7 with the Court's permission. Settlement Class Members will have a right to  
8 appear at the Final Approval/Settlement Fairness Hearing to have their  
9 objections heard by the Court regardless of whether they submitted a written  
10 objection. At no time shall any of the Parties or their counsel seek to solicit  
11 or otherwise encourage Class Members to file or serve written objections to  
12 the Settlement or appeal from the Order and Final Judgment. Class  
13 Members who submit a written request for exclusion may not object to the  
14 Settlement. Class Members may not object to the PAGA Payment.

15 N. Allocation of the Gross Settlement Amount.

- 16 1. Calculation of Individual Settlement Payments. Individual Settlement  
17 Payments shall be paid from the Net Settlement Amount and shall be paid  
18 pursuant to the formula set forth herein. Using the Class Data, the Settlement  
19 Administrator shall add up the total number of Workweeks for all Class  
20 Members. The respective Workweeks for each Class Member will be  
21 divided by the total Workweeks for all Class Members, resulting in the  
22 Payment Ratio for each Class Member. Each Class Member's Payment  
23 Ratio will then be multiplied by the Net Settlement Amount to calculate each  
24 Class Member's estimated Individual Settlement Payments. Each Individual  
25 Settlement Payment will be reduced by any legally mandated employee tax  
26 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement  
27 Payments for Class Members who submit valid and timely requests for  
28 exclusion will be redistributed to Settlement Class Members who do not

submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios.

2. Calculation of Individual Payments to the Aggrieved Employees. Using the Class Data, the Settlement Administrator shall add up the total number of PAGA Pay Periods for all Aggrieved Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employees will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the “PAGA Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee’s estimated share of the Aggrieved Employee Payment.

3. Allocation of Individual Settlement Payments. For tax purposes, Individual Settlement Payments shall be allocated and treated as 30% wages (“Wage Portion”) and 70% penalties and pre-judgment interest (“Penalties and Interest Portion”). The Wage Portion of the Individual Settlement Payments shall be reported on IRS Form W-2 and the Penalty Portion and Interest Portion of the Individual Settlement Payments shall be reported on IRS Form 1099 issued by the Settlement Agreement.

4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

5. No Credit Toward Benefit Plans. The Individual Settlement Payments and individual shares of the PAGA Payment made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation

1 plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is  
2 the Parties' intention that this Settlement Agreement will not affect any  
3 rights, contributions, or amounts to which any Class Members may be  
4 entitled under any benefit plans.

5 6. All monies received by Settlement Class Members under the Settlement which  
6 are attributable to wages shall constitute income to such Settlement Class  
7 Members solely in the year in which such monies are received by the  
8 Settlement Class Members. It is the intent of the Parties that Individual  
9 Settlement Payments and individual shares of the PAGA Payment provided for  
10 in this Settlement agreement are the sole payments to be made by Defendant to  
11 Settlement Class Members and/or Aggrieved Employees in connection with  
12 this Settlement Agreement, with the exception of Plaintiff, and that the  
13 Settlement Class Members and/or Aggrieved Employees are not entitled to any  
14 new or additional compensation or benefits as a result of having received the  
15 Individual Settlement Payments and/or their shares of the Aggrieved Employee  
16 Payment.

17 7. Mailing. Individual Settlement Payments and Aggrieved Employee  
18 Payments shall be mailed by regular First-Class U.S. Mail to Settlement  
19 Class Members' and/or Aggrieved Employees' last known mailing address  
20 no later than ten (10) calendar days after the Net Settlement Amount and  
21 PAGA Payment are fully funded, which is subject to the Court granting  
22 Final Approval by the time the Net Settlement Amount and PAGA Payment  
23 are expected to be fully funded by August 1, 2026.

24 8. Expiration. Any checks issued to Settlement Class Members and Aggrieved  
25 Employees shall remain valid and negotiable for one hundred and eighty  
26 (180) days from the date of their issuance. If a Settlement Class Member  
27 and/or Aggrieved Employees does not cash his or her settlement check  
28 within ninety (90) days, the Settlement Administrator will send a letter to

1 such persons, advising that the check will expire after the 180<sup>th</sup> day, and  
2 invite that Settlement Class Member and/or Aggrieved Employees to request  
3 reissuance in the event the check was destroyed, lost, or misplaced. In the  
4 event an Individual Settlement Payment and/or Aggrieved Employees'  
5 individual share of the PAGA Payment check has not been cashed within  
6 one hundred and eighty (180) days, all funds represented by such uncashed  
7 checks, plus any interest accrued thereon, shall be transmitted to the State  
8 Controller's Unclaimed Property Fund in the name of the Class Member  
9 who did not claim the funds.

- 10 9. Service Award. In addition to the Individual Settlement Payment as a  
11 Settlement Class Member and his individual share of the Aggrieved  
12 Employee Payment, Plaintiff will apply to the Court for an award of not  
13 more than \$10,000.00 as the Service Award. Defendant will not oppose a  
14 Service Award of not more than \$10,000.00 for Plaintiff. The Settlement  
15 Administrator shall pay the Service Award, either in the amount stated  
16 herein if approved by the Court or some other amount as approved by the  
17 Court, to Plaintiff from the Gross Settlement Amount no later than fifteen  
18 (15) calendar days after the Gross Settlement Amount is fully funded. Any  
19 portion of the requested Service Award that is not awarded to the Class  
20 Representative shall be part of the Net Settlement Amount and shall be  
21 distributed to Settlement Class Members as provided in this Agreement. The  
22 Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff  
23 for his Service Award. Plaintiff shall be solely and legally responsible to  
24 pay any and all applicable taxes on his Service Award and shall hold  
25 harmless the Released Parties from any claim or liability for taxes, penalties,  
26 or interest arising as a result of the Service Award. Approval of this  
27 Settlement shall not be conditioned on Court approval of the requested  
28 amount of the Service Award. If the Court reduces or does not approve the

1 requested Service Award, Plaintiff shall not have the right to revoke the  
2 Settlement, and it will remain binding.

3 10. Class Counsel Award. Defendant understands, and will not oppose, a  
4 motion for Attorneys' Fees not to exceed one-third of the Gross Settlement  
5 Amount currently estimated to be Seventy-six Thousand Six Hundred Sixty-  
6 Six Dollars and Sixty-Six Cents (\$76,666.66) **and** Attorneys' Expenses  
7 supported by declaration not to exceed Twenty-Five Thousand Dollars and  
8 Zero Cents (\$25,000.00). Any awarded Class Counsel Award shall be paid  
9 from the Gross Settlement Amount. Any portion of the requested Attorneys'  
10 Fees and/or Attorneys' Expenses that are not awarded to Class Counsel shall  
11 be part of the Net Settlement Amount and shall be distributed to Settlement  
12 Class Members as provided in this Agreement. The Settlement  
13 Administrator shall allocate and pay the Attorneys' Fees to Class Counsel  
14 from the Gross Settlement Amount no later than fifteen (15) calendar days  
15 after the Gross Settlement Amount is fully funded. Class Counsel shall be  
16 solely and legally responsible to pay all applicable taxes on the payment  
17 made pursuant to this paragraph. The Settlement Administrator shall issue  
18 an IRS Form 1099 — MISC to Class Counsel for the payments made  
19 pursuant to this paragraph. If the Court reduces or does not approve the  
20 requested Attorneys' Fees, Plaintiff and Class Counsel shall not have the  
21 right to revoke the Settlement, or to appeal such order, and the Settlement  
22 will remain binding.

23 11. PAGA Payment. Ten Thousand Dollars and Zero Cents (\$10,000.00) shall  
24 be allocated from the Gross Settlement Amount for settlement of claims for  
25 civil penalties under the Private Attorneys General Act of 2004 ("PAGA  
26 Payment"). The Settlement Administrator shall pay seventy-five percent  
27 (75%) of the PAGA Payment (\$7,500.00) to the California Labor and  
28 Workforce Development Agency no later than ten (10) calendar days after

Defendant has made enough Installment Payments to sufficiently fund the Settlement to pay the Net Settlement Amount and PAGA Payment (hereinafter "LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment (\$2,500.00) will be distributed to the Aggrieved Employees as described in this Agreement (hereinafter "Aggrieved Employee Payment"). For purposes of distributing the PAGA Payment to the Aggrieved Employees, each Aggrieved Employee shall receive their pro-rata share of the Aggrieved Employee Payment using the PAGA Payment Ratio as defined above.

12. Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Gross Settlement Amount. The estimate of the Settlement Administration Costs is \$4,950.00. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after the Gross Settlement Amount is fully funded.

O. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Service Award, the Class Counsel Award, the PAGA Payment, and the Settlement Administration Costs. Plaintiff will provide Defendant with a draft of the Motion at least three (3) business days prior to the filing of the Motion to give Defendant an opportunity to propose changes or additions to the Motion.

1. Declaration by Settlement Administrator. No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to

1 Class Members, the number of undeliverable Notice Packets, the number of  
2 timely requests for exclusion, the full names of any Class Members who opt  
3 out of the Settlement, the number of objections received, the amount of the  
4 average, lowest, and highest Individual Settlement Payments, the amount of  
5 the average, lowest, and highest Aggrieved Employee Payments, the  
6 Settlement Administration Costs, and any other information as the Parties  
7 mutually agree or the Court orders the Settlement Administrator to provide.

8 2. Final Approval Order and Judgment. Class Counsel shall present an Order  
9 Granting Final Approval of Class Action Settlement to the Court for its  
10 approval, and Judgment thereon, at the time Class Counsel files the Motion  
11 for Final Approval.

12 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide  
13 an opportunity for Counsel for Defendant to review the Motions for Preliminary and  
14 Final Approval, including the Order Granting Final Approval of Class Action  
15 Settlement, and Judgment at least three (3) business days in advance of filing with  
16 the Court. The Parties and their counsel will cooperate with each other and use their  
17 best efforts to affect the Court's approval of the Motions for Preliminary and Final  
18 Approval of the Settlement, and entry of Judgment.

19 O. Cooperation. The Parties and their counsel will cooperate with each other and use  
20 their best efforts to implement the Settlement.

21 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,  
22 except such proceedings necessary to implement and complete the Settlement,  
23 pending the Final Approval/Settlement Fairness Hearing to be conducted by the  
24 Court.

25 Q. Amendment or Modification. This Agreement may be amended or modified only by  
26 a written instrument signed by counsel for all Parties or their successors-in-interest.

27 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire  
28 Agreement among these Parties, and no oral or written representations, warranties or

1 inducements have been made to any Party concerning this Agreement or its Exhibit  
2 other than the representations, warranties and covenants contained and memorialized  
3 in this Agreement and its Exhibit.

4 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant  
5 and represent they are expressly authorized by the Parties whom they represent to  
6 negotiate this Agreement and to take all appropriate Action required or permitted to  
7 be taken by such Parties pursuant to this Agreement to effectuate its terms, and to  
8 execute any other documents required to effectuate the terms of this Agreement. The  
9 persons signing this Agreement on behalf of Defendant represents and warrants that  
10 he/she is authorized to sign this Agreement on behalf of Defendant. Plaintiff  
11 represents and warrants that he is authorized to sign this Agreement and that he has  
12 not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

13 T. Binding on Successors and Assigns. This Agreement shall be binding upon, and  
14 inure to the benefit of, the successors or assigns of the Parties, as previously defined.

15 U. California Law Governs. All terms of this Agreement and the Exhibit and any  
16 disputes shall be governed by and interpreted according to the laws of the State of  
17 California.

18 V. Counterparts. This Agreement may be executed in one or more counterparts. All  
19 executed counterparts and each of them shall be deemed to be one and the same  
20 instrument provided that counsel for the Parties to this Agreement shall exchange  
21 among themselves copies or originals of the signed counterparts.

22 W. This Settlement Is Fair, Adequate, and Reasonable. The Parties believe this  
23 Settlement is a fair, adequate, and reasonable settlement of this Action and have  
24 arrived at this Settlement after extensive arms-length negotiations, taking into  
25 account all relevant factors, present and potential.

26 X. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction  
27 with respect to the interpretation, implementation, and enforcement of the terms of  
28 this Agreement and all orders and judgments entered in connection therewith, and the

1 Parties and their counsel submit to the jurisdiction of the Court for purposes of  
2 interpreting, implementing and enforcing the settlement and all orders and judgments  
3 entered in connection with this Agreement.

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

8 Z. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to  
9 class certification for purposes of this settlement only.

10 AA. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the  
11 Released Class Claims and Released PAGA Claims have merit and give rise to  
12 liability on the part of Defendant. Defendant claims that the Released Class Claims  
13 and Released PAGA Claims have no merit and do not give rise to liability. This  
14 Agreement is a compromise of disputed claims. Nothing contained in this  
15 Agreement and no documents referred to and no action taken to carry out this  
16 Agreement may be construed or used as an admission by or against the Defendant or  
17 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted.  
18 Other than as may be specifically set forth herein, each Party shall be responsible for  
19 and shall bear its/his own attorney's fees and costs.

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IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: \_\_\_\_\_

FIDEL GOMEZ

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: \_\_\_\_\_

KIRBY MANUFACTURING, INC.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

1 IT IS SO AGREED AS TO FORM BY COUNSEL:  
2

3 DATED: \_\_\_\_\_

JCL LAW FIRM, A.P.C.

4 By: \_\_\_\_\_

5 Attorneys for Plaintiff and the Settlement Class  
6 Members  
7  
8

9 DATED: \_\_\_\_\_

ZAKAY LAW GROUP, APLC

10 By: \_\_\_\_\_

11 Attorneys for Plaintiff and the Settlement Class  
12 Members  
13

14 DATED: \_\_\_\_\_

BERLINER COHEN, LLP

15 By: \_\_\_\_\_

16 Kim Flores, Esq.  
17 Lindsay Irene Walczak, Esq.  
18 Attorneys for Defendant  
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# **EXHIBIT A**

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT  
AND FINAL HEARING DATE**

**(Fidel Gomez v. Kirby Manufacturing, Inc., Tulare County Superior Court Case No. VCU308341)**

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE  
READ THIS NOTICE CAREFULLY.**

| <b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Do Nothing and Receive a Payment</b>                             | To receive a cash payment from the Settlement, you do <b>not</b> have to do anything.<br><b>Your estimated Individual Settlement Payment is: \$&lt;&lt;[REDACTED]&gt;&gt;.</b> See the explanation below.<br>After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below. |
| <b>Exclude Yourself</b>                                             | If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive <b>no money from the Settlement</b> .<br>Instructions are set forth below.                                                                                                                                                                                                                                                |
| <b>Object</b>                                                       | You may write to the Court about why you believe the settlement should not be approved.<br>Directions are provided below.                                                                                                                                                                                                                                                                                                                                                                                                  |

**1. Why did I get this Notice?**

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Tulare (the “Court”) has been reached between Plaintiff Fidel Gomez (“Plaintiff”) and Defendant Kirby Manufacturing, Inc. The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

**You have received this Class Notice because you have been identified as a member of the Class, which is defined as:**

All current and former non-exempt employees who worked for Kirby Manufacturing, Inc. in California, at any time during the period beginning April 25, 2020 to February 26, 2025 (“Class Period”).

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

**2. What is this class action lawsuit about?**

On April 25, 2024, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Tulare. Plaintiff asserted claims that Defendant: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512

and the applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation Of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; and (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203. On April 25, 2024, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. On July 25, 2025, Plaintiff filed a First Amended Complaint adding a ninth cause of action for violations of the Private Attorneys General Act (the “Action”).

Defendant expressly denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times it complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.

On February 26, 2025, the Parties participated in an all-day mediation with Steven Mehta, Esq., an experienced mediator of wage and hour class and PAGA actions. The Parties accepted a Mediator’s settlement proposal and reached an agreement for settlement. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

### **3. What are the terms of the Settlement?**

Gross Settlement Amount. Defendant agreed to pay an “all in” amount of Two Hundred Thirty Thousand Dollars and Zero Cents (\$230,000.00) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments, Settlement Administration Costs, Class Counsel Award, Service Award, and the PAGA Payment.

Defendant will pay to the Settlement Administrator the Gross Settlement Amount in ten (10) equal installment payments of \$23,000, on the first of each month, beginning on April 1, 2026, and ending on January 1, 2027.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$4,950.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Class Counsel Award. Payment to Class Counsel of an award of attorneys’ fees of no more than 1/3 of the Gross Settlement Amount (currently \$76,666.66) and actually incurred litigation expenses of not more than \$25,000 for all expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Service Award. A Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for his services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of \$10,000.00 relating to Plaintiff’s claim under the Private Attorneys General Act (“PAGA”), \$7,500.00 of which will be paid to the State of California’s Labor and

Workforce Development Agency (“LWDA”) and the remaining \$2,500.00 will be distributed to Aggrieved Employees as part of the PAGA Payment.

- Calculation of Payments to Settlement Class Members. After all the above payments of the court-approved Class Counsel Award, the Service Award, the PAGA Payment, and the Settlement Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the “Net Settlement Amount,” shall be distributed to class members who do **not** request exclusion (“Settlement Class Members”). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member’s workweeks that occurred during the Class Period. A “workweek” is defined as any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed by Defendant during the Class Period in California.
- Calculation of Aggrieved Employees Payments to Aggrieved Employees. The PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The PAGA Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. “Aggrieved Employee” means all current and former non-exempt employees who worked for Kirby Manufacturing, Inc. in California, at any time during the period beginning April 25, 2023 to February 26, 2025 (“PAGA Period”).

**If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Settlement Payment to the same address as this Class Notice. You do not have to do anything to receive a payment.** If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Thirty percent (30%) of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Seventy percent (70%) of each Individual Settlement Payment is allocated to penalties and pre-judgment interest (“Penalty and Interest Portion”). Each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for Penalty and Interest Portion of the Individual Settlement Payments. In addition, no taxes will be withheld from the PAGA Payment paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant’s counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

No Credit Toward Benefit Plans. The Individual Settlement Payments and Aggrieved Employee Payments made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

#### 4. What Do I Release Under the Settlement?

**Released Claims.** Upon payment of the Gross Settlement Amount in full, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged or reasonably could have been alleged based on the facts alleged, in the Operative Complaint in the Action, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Upon payment of the Gross Settlement Amount in full, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement and will be bound by this PAGA Release (the "PAGA Release"). "Released PAGA Claims" means all PAGA claims alleged in the Operative Complaint in the Action and Plaintiff's PAGA Notice to the LWDA, which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

#### 5. How much will my payment be?

**Defendant's records reflect that you have <<\_\_\_\_>> Workweeks worked during the Class Period (April 25, 2020 through February 26, 2025).**

**Based on this information, your estimated Individual Settlement Payment is <<\_\_\_\_>>.**

**Defendant's records reflect that you have <<\_\_\_\_>> pay periods worked during the PAGA Period (April 25, 2023 through February 26, 2025).**

**Based on this information, your estimated Aggrieved Employee Payment is <<\_\_\_\_>>.**

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than \_\_\_\_\_ [forty-five (45) days after the Notice or fifteen (15) days after the re-mailed Notice].

#### 6. How can I get a payment?

**To get money from the settlement, you do not have to do anything.** A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC.

The Court will hold a hearing on \_\_\_\_\_ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://apexclassaction.com/>

## 7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt out.” **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or “opt out,” you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the PAGA Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than \_\_\_\_\_. The address for the Settlement Administrator is 18 Technology Drive, Suite 154, Irvine, CA 92618; Tel: (800) 355-0700. The request for exclusion must state in substance that the Class Member has read the Class Notice and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled *Fidel Gomez v. Kirby Manufacturing, Inc.*, currently pending in Superior Court of Tulare Case No. VCU308341. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after \_\_\_\_\_, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

## 8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is ***Fidel Gomez v. Kirby Manufacturing, Inc., Tulare County Superior Court, Case No. VCU308341***. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

**Written objections must be delivered or mailed to the Settlement Administrator no later than \_\_\_\_\_.** The address for the Settlement Administrator is 18 Technology Drive, Suite 154, Irvine, CA 92618; Tel: (800) 355-0700.

The addresses for the Parties' counsel are as follows:

### **Class Counsel:**

Jean-Claude Lapuyade, Esq.  
JCL Law Firm, APC  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Tel.: (619) 599-8292  
Fax: (619) 599-2891  
E-Mail: [jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)

### **Class Counsel:**

Shani O. Zakay, Esq.  
Zakay Law Group, APLC  
5440 Morehouse Drive, Suite 3600  
San Diego, CA 92121  
Tel: (619) 599-8292  
Fax: (619) 599-8291  
Email: [shani@zakaylaw.com](mailto:shani@zakaylaw.com)

**Counsel for Defendant:**

Kim Flores, Esq.  
Lindsay Irene Walczak, Esq.  
Berliner Cohen, LLP  
548 West 21st St.  
Merced, California 95340  
Tel.: 209-385-0700  
Fax: 209-385-3789  
[kim.flores@berliner.com](mailto:kim.flores@berliner.com)  
[lindsay.walczak@berliner.com](mailto:lindsay.walczak@berliner.com)

#### 9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on** \_\_\_\_\_, at the Tulare County Superior Court, Department 7 located at 221 S Mooney Blvd, Room 124, Visalia, CA 93291, before Judge Gary Johnson. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

#### 10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-800-355-0700 or write to ***Fidel Gomez v. Kirby Manufacturing, Inc., Tulare County Superior Court, Case No. VCU308341***, Settlement Administrator, 18 Technology Drive, Suite 154, Irvine, CA 92618 c/o Apex Class Action.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the administrator's website at <https://apexclassaction.com/>.

**PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.**

#### IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to the State Controller's Unclaimed Property Fund. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

# **EXHIBIT 2**

# **EXHIBIT 3**



**Quotation Request:**  
Rachel Newman  
Zakay Law Group, APC  
rachel@zakaylaw.com  
619.255.9047

**Case Name:** Gomez v. Kirby Manufacturing, Inc.  
**Date:** Tuesday, April 1, 2025  
**RFP Number:** 11780016

**Prepared By:**  
Sean Hartranft  
Apex Class Action LLC  
Sean@apexclassaction.com  
949.878.3676

| Settlement Specifications        |     |
|----------------------------------|-----|
| Estimated Class Size:            | 88  |
| Certified Language Translation:  | Yes |
| Static Settlement Website        | No  |
| Percentage of Undeliverable Mail | 20% |

| Professional Services | Fee Calculation | Rate(s) | Quantity | Estimated Cost |
|-----------------------|-----------------|---------|----------|----------------|
|-----------------------|-----------------|---------|----------|----------------|

| Data Analytics and Standardization                                                                                 |          |          |            |          |
|--------------------------------------------------------------------------------------------------------------------|----------|----------|------------|----------|
| Import and Standardize Data*                                                                                       | Per Hour | \$125.00 | 1          | \$125.00 |
| Data Analyst                                                                                                       | Per Hour | \$150.00 | 1          | \$150.00 |
| *Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr. |          |          |            |          |
|                                                                                                                    |          |          | Sub Total: | \$275.00 |

| Mailing of Class Notice                                    |             |            |            |            |
|------------------------------------------------------------|-------------|------------|------------|------------|
| Form Set Up                                                | Per Hour    | \$120.00   | 1          | \$120.00   |
| Print & Mail Class Notice                                  | Per Piece   | \$1.70     | 88         | \$149.60   |
| USPS First Class Postage                                   | Per Piece   | \$0.73     | 88         | \$64.24    |
| Remail Undeliverable Mail (Skip-Trace)                     | Per Piece   | \$2.00     | 18         | \$35.20    |
| Receive and Process Undeliverable Mail                     | Per Hour    | \$75.00    | 0          | \$0.00     |
| Process Class Member Correspondence via mail, e-mail & fax | Per Piece   | \$75.00    | 1          | \$75.00    |
| NCOA Address Update (USPS)                                 | Static Rate | \$20.00    | 1          | \$20.00    |
| Certified Language Translation: Spanish                    | Static Rate | \$1,200.00 | 1          | \$1,200.00 |
|                                                            |             |            | Sub Total: | \$1,664.04 |

| Project Management         |          |          |            |          |
|----------------------------|----------|----------|------------|----------|
| Project Management         | Per Hour | \$150.00 | 2          | \$300.00 |
| Project Coordinator        | Per Hour | \$90.00  | 1          | \$90.00  |
| Data Analyst and Reporting | Per Hour | \$140.00 | 1          | \$140.00 |
|                            |          |          | Sub Total: | \$530.00 |



| Professional Services | Fee Calculation | Rate(s) | Quantity | Estimated Cost |
|-----------------------|-----------------|---------|----------|----------------|
|-----------------------|-----------------|---------|----------|----------------|

| Toll-Free Contact Center, Website & Reporting |             |          |   |         |
|-----------------------------------------------|-------------|----------|---|---------|
| Bilingual Toll-Free Contact Center            | Static Rate | \$22.12  | 1 | \$22.12 |
| Settlement Status Reports                     | Static Rate | \$750.00 | 1 | Waived  |
| Sub Total:                                    |             |          |   | \$22.12 |

| Distribution & Settlement Fund Management                   |             |          |    |            |
|-------------------------------------------------------------|-------------|----------|----|------------|
| Settlement Calculations (Preliminary and Final)             | Per Hour    | \$120.00 | 2  | \$240.00   |
| Account Management and Reconciliation                       | Per Hour    | \$140.00 | 2  | \$280.00   |
| Print & Mail Distribution Settlement Check (W-2/1099)       | Per Piece   | \$1.50   | 88 | \$132.00   |
| USPS First Class Postage                                    | Per Piece   | \$0.73   | 88 | \$64.24    |
| Remail Distribution to Updated Address (Skip Trace)         | Per Piece   | \$2.00   | 9  | \$17.60    |
| Individual Income Tax Preparation & Reporting               | Per Hour    | \$100.00 | 4  | \$400.00   |
| QSF Income Tax Reporting (per calendar year)                | Per Year    | \$750.00 | 1  | \$750.00   |
| Unclaimed Funds: State Controller's Unclaimed Property Fund | Static Rate | \$100.00 | 1  | \$100.00   |
| Sub Total:                                                  |             |          |    | \$1,983.84 |

| Post Distribution Reconciliation  |          |          |   |          |
|-----------------------------------|----------|----------|---|----------|
| Bank Account Reconciliation       | Per Hour | \$135.00 | 1 | \$135.00 |
| Project Management Reconciliation | Per Hour | \$100.00 | 1 | \$100.00 |
| Declarations                      | Per Hour | \$120.00 | 2 | \$240.00 |
| Sub Total:                        |          |          |   | \$475.00 |

|                  |  |  |            |
|------------------|--|--|------------|
| WILL NOT EXCEED: |  |  | \$4,950.00 |
|------------------|--|--|------------|

Thank you for your business!



## Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Apex may derive financial benefits from financial institutions in connection with the deposit and investment of funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.