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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

RICARDO COLIN COVARRUBIAS, an
individual(S), on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

v.

PENINSULA CUSTOM HOMES, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 22-CIV-02733

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: December 6, 2022

Time: 2:00 p.m.

Reservation ID:

Judge: Hon. Marie S. Weiner

Dept.: 2

1 I, Jean-Claude Lapuyade, 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 attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am co-counsel of record for
5 Plaintiff RICARDO COLIN COVARRUBIAS (hereafter "Plaintiff") in this wage and hour class action
6 filed against PENINSULA CUSTOM HOMES, 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 fully executed Stipulation
11 of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement" or "Settlement
12 Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed
13 Class Notice.

14 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the
15 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement
16 and Motion for Preliminary Approval of Class and PAGA Action Settlement evidencing Class
17 Counsel's compliance with California Labor Code Section 2699(1)(2).

18 5. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for settlement
19 administration submitted by ILYM Group, Inc., in the amount of \$6,490.00.

20 **II. INTRODUCTION**

21 6. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
22 the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
23 The Settlement confers substantial benefits to the Class. The relief offered by the Settlement is
24 particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
25 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
26 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
27 denied or of Defendant prevailing at trial. Given that there are approximately 58 Class Members, the

1 average gross recovery is approximately \$1,862.07 (Net Settlement Amount divided by Class
2 Members).

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

8 **III. FACTS AND PROCEDURE**

9 **A. Overview of the Litigation**

10 8. Defendant is a California corporation that owns a residential construction business in
11 California. More specifically, Defendant specializes in building custom homes for its clients. This
12 action asserts claims on behalf of Defendant's non-exempt employees working in California. Plaintiff,
13 in his position as a carpenter building custom homes, worked for Defendant as a non-exempt employee
14 in California between January 2021 to August 2021. At all times during his employment, Plaintiff
15 earned an hourly wage, including overtime, and was entitled to legally compliant meal and/or rest
16 periods. Throughout his employment, Plaintiff was subject to Defendant's written policies and
17 procedures.

18 9. Generally, Plaintiff claims that Defendant failed to pay for all time worked, including,
19 time spent waiting for and undergoing mandatory COVID-19 screenings, failed to provide compliant
20 meal and rest periods, failed to furnish accurate itemized wage statements, failed to pay all wages when
21 due and failed to reimburse employees for mandatory business expenses. Defendant forcefully denies
22 liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
23 applicable employment laws and raised several other significant defenses to Plaintiff's claims, including
24 but not limited to, facially compliant meal and rest period policies, compliant wage statements, and
25 timely payment all wages due upon separation of employment.

26 10. On November 9, 2021, Plaintiff served Defendant and the Labor and Workforce
27 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA
28

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 July 5, 2022, Plaintiff filed a class action complaint in the San Mateo Superior Court,
6 Case No. 22-CIV-02733 ("Action"). The Action alleged nine causes of action against Defendant for:
7 (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure
8 to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure
9 to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide
10 Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required
11 Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized
12 Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide Wages When Due in
13 Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Reimburse Employees for Required
14 Expenses in Violation of Cal. Lab. Code § 2802; and (9) Violation of the Private Attorneys General Act
15 [Labor Code §§ 2698 *et seq.*].

16 12. Plaintiff and Defendant agreed to mediate the Action with Hon. Carl J. West (Ret.), a
17 respected jurist and experienced mediator of wage and hour class and PAGA actions. In anticipation of
18 mediation, the Parties agreed to stay formal discovery in the Action. To prepare for mediation,
19 Defendant agreed to informally produce documents and data points subject to the mediation privilege,
20 including but not limited to, the Class Members' time data and certain payroll data points. As discussed
21 *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to
22 analyze Defendant's time and payroll data.

23 13. On August 3, 2022, the Parties participated in a full day mediation with Judge West.
24 After arms-length negotiations and bargaining, the Parties agreed to a Mediator's Proposal and signed
25 a Memorandum of Understanding. Subsequently, the Parties drafted and negotiated a long-form
26 settlement agreement, which is the subject of the instant motion. The Parties now seek approval of the
27 entire Agreement.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

14. Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment, including time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry.

15. Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited to, copies of Plaintiff's hiring documents, payroll and time records, and various policies. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant's failed to, among other things, pay for all time worked and to provide compliant meal and rest periods.

16. Considering the many anticipated factual disputes, the Parties agreed, relatively early in the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced the time records for the Class Members, aggregate workweek and pay period data for the Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period policies. In total, Defendant produced nearly 4,000 pages of pertinent policy documents and time and payroll data for Class Counsel to analyze.

17. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data.

18. BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts,

workweeks, pay periods, average length of shift and average number of hours worked per week and pay periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount of off-the-clock work performed by the Class Members during the Class Period.

19. In advance of mediation, Class Counsel created a damage model predicated on the BCG analysis. Class Counsel's model calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. This damage model informed and guided Class Counsel during the mediated settlement discussions.

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

C. The Parties Settled at Mediation

21. On August 3, 2022, the Parties conducted a full day of mediation with Judge West. Judge West helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge West's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. After a full day of arm's length and adversarial negotiations, the mediation concluded in a Mediator's Proposal and settlement. The complete and final terms of the Parties'

1 settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a
2 fair, adequate, and reasonable compromise of the claims at issue.

3 22. Once the Parties reached a settlement, the Parties engaged in protracted negotiations
4 regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-
5 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement
6 is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate
7 and represent a reasonable compromise of the claims at issue.

8 **IV. ARGUMENT**

9 **A. The Court Should Preliminarily Approve the Proposed Class Action Settlement**

10 23. The Gross Settlement Amount of \$225,000 is fair and reasonable considering the nature
11 and magnitude of the claims being settled and the various potential impediments to recovery. Prior to
12 mediation, Class Counsel retained BCG to develop economic a damage model measuring Defendant's
13 liability exposure while accounting for the uncertainties of continued litigation. The model was
14 informed by Class Counsel's investigation, including the analysis of a significant sample of time and
15 payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA
16 Penalties) at approximately \$890,835 for actual damages (excluding interest and penalties), and
17 \$2,151,420 when also including interest and statutory penalties, if successful at trial. Thus, the Gross
18 Settlement Amount of \$225,000 represents approximately 25.2% of Defendant's liability for damages,
19 and 10.4% of Defendant's *class-wide* liability exposure, as estimated by Class Counsel at the time of
20 mediation. The following summarizes Defendant's estimated exposure.

21 24. One of Plaintiff's primary claims in the Action was that Defendant failed to pay for all
22 hours worked. Specifically, Plaintiff asserted that Defendant employed an unlawful custom, practice,
23 and policy that require employees to manipulate time records to make it appear as though each employee
24 clocked-in and clocked-out in accordance with their scheduled shift without regard for the actual time
25 an employee worked. Defendant did not keep actual time records. Rather, Defendant used pre-printed
26 timesheets which simply show exactly eight hours worked each day, but do not accurately depict the
27 actual start and end times of each employee's shift. As a result, Plaintiff alleged that he often performed
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pre-shift and post-shift work while off-the-clock, including but not limited to setting up and breaking down his tools, and beginning his tasks for the day. Further, Plaintiff asserted that Defendant failed to pay for all time spent waiting for and undergoing mandatory COVID-19 screenings, as well as attending off-the-clock training and orientation.

25. Defendant vigorously denied liability for claim. Defendant asserted that its written policies and procedures directed its employees to accurately record their time and undergo COVID-19 screenings while on-the-clock. Defendant asserted that any deviation from these written policies were employee specific and, thus, created individualized issues of liability unsuitable for class treatment.

26. Notwithstanding Defendant's arguments, Plaintiff perceived the off-the-clock as a strong claim in the Action. Assuming ten (10) minutes of unpaid compensable time per shift worked by the Class Members during the Class Period, made up of COVID-19 screenings and other off-the-clock tasks, plus two and a half (2.5) hours of unpaid training hours per Class Member during the Class Period, BCG estimated Defendant's exposure for this claim at \$248,406, including interest.

27. Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff contends that Defendant maintained records that recorded fictitiously compliant meal periods. Defendant's pre-printed time records show auto-deducted, rounded meal breaks, without accurate recording of when employees clocked in and out. This resulted in a purported 100% *compliance* rate for meal periods. However, Plaintiff contends that despite the time records approximately 25% of all meal periods were either missed, late, or interrupted.

28. Conversely, Defendant asserted that it maintained facially compliant meal period policies and practices throughout the Class Period and that time records evidenced a 100% meal period compliance. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period violations.

29. Notwithstanding, Plaintiff estimated the damages for this claim at approximately \$377,774, including interest predicated on the assumed 25% violation rate.

30. Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of the practical reality of working on a construction site, Class Members were

1 not able to take timely and duty-free rest periods because of the expectation that all employees were to
2 remain on premise during rest breaks. Plaintiff's testimony supported a similar 25% violation rate for
3 missed, late, and/or interrupted rest periods.

4 31. Again, Defendant denied liability and asserted that it maintained legally compliant rest period
5 policies and practices throughout the Class Period. Further, the District Court for the Central District recently
6 held that the plaintiffs failed to show that Defendant's rest period policy requiring employees to remain on
7 site is facially invalid. *Ritenour v. Carrington Mortg. Servs.* (C.D. Cal. Sept. 12, 2018) 2018 WL 5858658,
8 at *7. More specifically, the Court held that the policy did not conflict with *Augustus v. ABM Security*
9 *Services, Inc.* (2016) 2 Cal.5th 257, noting that the California Supreme Court never stated that an employer
10 cannot require an employee to remain on the premises during a rest period. (*Id.*) Moreover, Plaintiff
11 recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would
12 rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability
13 stages. Defendant likely would have argued that only a small number of Class Members missed their rest
14 breaks. Certification likely would have required depositions of Class Members who provided declarations,
15 and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or
16 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013
17 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that
18 defendant may have an illegal, written rest break policy is insufficient for this Court to find that common
19 issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL
20 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform
21 practices."). Plaintiff estimated the damages for this claim at approximately \$377,774, including interest.

22 32. Plaintiff alleges that Defendant failed to reimburse its employees for mandatory business
23 expenses. Specifically, Plaintiff and Class Members, as business expenses, were required by Defendant
24 to use their own personal cellular phones and their personal vehicles as a result of and in furtherance of
25 their job duties as employees for Defendant but were not reimbursed or indemnified by Defendant for
26 the cost associated with the use of their personal cellular phones or personal vehicles for Defendant's
27 benefit.

33. Plaintiff estimated Defendant's exposure for this claim at approximately \$51,725, which accounts for a \$25 monthly reimbursement, including interest.

34. Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Plaintiff would have to overcome precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's *maxim* exposure for these claims at approximately \$314,740 (approximately \$187,740 for waiting time and \$128,000 for wage statement).

35. Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure was approximately \$780,000.

36. In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested.

B. Litigation Risks

37. Although Plaintiff is confident about the strength of his claims, it would be foolish to ignore the most immediate risk to continued litigation, i.e., class certification. Class certification is far from certain in this, in part, meal and rest period case. Class certification is routinely denied for meal and rest period claims based on an inability to establish predominance.

38. Plaintiff recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or substantially impair the value of Plaintiff's lawsuit. Collectively, the examples cited in Plaintiff's brief illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

39. Finally, continuing to litigate this action would require continued and extensive resources coupled with significant court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment.

40. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$225,000 that is roughly 10.4%-25.2% of Defendant's maximum class wide liability exposure. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

B. Proposed Notice Informs the Class About the Case and Settlement

41. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to request for exclusion or to object to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and

scope of the Released Claims. This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement.

42. As detailed in the Agreement, the method of disseminating the proposed Class Notice and contents of the Proposed Class Notice satisfy due process and the California Rule of Court 3.766.

C. The Court Should Preliminarily Approve the Class Representative Service Payment

43. The 58 Class Members will share in the Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Class Representative Service Award of \$10,000 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class.

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

D. The Court Should Preliminary Approve the Class Counsel Fees Payment

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

46. Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

E. The Court Should Provisionally Certify the Settlement Class

(Partner/Owner), Monnett De La Torre (Associate), Sydney Castillo-Johnson, Esq. (Associate), Tesla Stone (Paralegal), Maria Watters (Paralegal), Jennifer Heming (Administrative Assistant).

53. I am qualified to represent the Plaintiff, the State of California and the PAGA Members. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiff, the State of California and the PAGA Members throughout this action.

54. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 13 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

55. I have significant class counsel and collective action counsel experience. I served as class and/or collective (PAGA) counsel in the following matters:

a. *Nunes v. Home Depot U.S.A., Inc.* San Joaquin Superior Court Case No. Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross appointed the Jean-Claude Lapuyade, Esq. as Class Counsel and approved a \$1.5 million dollar wage and hour class and PAGA action settlement for, among things, unpaid off-the-clock work.

b. *Munoz v. AMTCR, Inc.*, San Bernardino Superior Court Case No. CIVDS2001914 (August 24, 2021 – Hon. David Cohn approved a \$1.85 million dollar wage and hour class and PAGA action for, among other things, inaccurate itemized wage statements, and appointed the JCL Law Firm, APC as Class Counsel.)

c. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

d. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

e. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)

f. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)

g. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

h. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)

i. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)

j. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm

as class counsel and granted final approval of wage and hour class action for meal period violations.)

k. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)

l. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)

m. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

n. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

o. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)

p. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)

- q. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)
- r. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)
- s. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)
- t. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);
- u. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);
- v. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)
- w. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

x. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

y. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);

z. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

aa. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

56. Since 2010, my firm has successfully resolved more than sixty (65) cases and recovered in excess of \$75 million on behalf of the Firm's clients.

57. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

58. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

59. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of November, 2022, at San Diego, California.

JCL LAW FIRM, APC

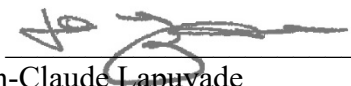
By: 
Jean-Claude Lapuyade
Attorneys for Plaintiff

EXHIBIT 1

ZAKAY LAW GROUP, APLC

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

RICARDO COLIN COBARRUBIAS, an
individual(s), on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

vs.

PENINSULA CUSTOM HOMES, INC., a
California Corporation, and DOES 1-50,
inclusive,

Defendant.

Case No.: 22-CIV-02733

[Action Filed 07/07/2021]

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

Judge: Marie S. Weiner
Dept.: 2

1 This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is
2 entered into by and between plaintiff RICARDO COLIN COBARRUBIAS (hereinafter “Plaintiff”),
3 an individual, on behalf of the Settlement Class, and in his representative capacity on behalf of the
4 State of California and the Aggrieved Employees, and Defendant PENINSULA CUSTOM HOMES,
5 INC. (hereinafter “Defendant”):

6 **I. DEFINITIONS**

- 7 A. “Action” shall mean the putative class action lawsuit *Cobarrubias v. Peninsula*
8 *Custom Homes, Inc.*, San Mateo County Superior Court, Case No. 22-CIV-02733.
- 9 B. “Aggrieved Employees” shall mean all non-exempt employees who are or previously
10 were employed by Defendant and performed work in California during the PAGA
11 Period.
- 12 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
13 Class Action and Release of Claims.
- 14 D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and
15 Shani Zakay of Zakay Law Group, APLC.
- 16 E. “Class Counsel Award” means the award of fees and expenses that the Court
17 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
18 and the Settlement Class in the Action, consisting of attorneys’ fees not to exceed
19 one-third of the Gross Settlement Amount, currently estimated to be \$75,000.00 out
20 of \$225,000.00, **plus** costs of up to \$15,000.00. Attorneys’ fees will be divided
21 equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law
22 Group, APLC).
- 23 F. “Class Data” means information regarding Class Members that Defendant will in
24 good faith compile from its records and provide to the Settlement Administrator. It
25 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
26 Member’s full name; last known address; Social Security Number; and dates of
27 employment during the Class Period and PAGA Period.

- 1 G. "Class Members" or the "Class" means shall mean all non-exempt employees who
2 are or previously were employed by Defendant and performed work in California
3 during the Class Period.
- 4 H. "Class Period" means the period between July 5, 2018 to October 3, 2022.
- 5 I. "Class Representative Service Award" means the amount that the Court authorizes to
6 be paid to the Class Representative, in addition to his Individual Settlement Payment
7 and his pro-rata share of the PAGA Settlement, in recognition of his efforts and risks
8 in assisting with the prosecution of the Action. Subject to the Court granting final
9 approval of this Settlement Agreement and subject to the exhaustion of any and all
10 appeals, Plaintiff will request Court approval of a Class Representative Enhancement
11 Payment of Ten Thousand Dollars (\$10,000). As part of the consideration for the
12 Class Representative Enhancement Payment, Plaintiff shall be required to execute a
13 general release of all known and unknown claims that Plaintiff may have against
14 Defendants, their respective and former parents, subsidiaries, and affiliated
15 corporations based on Plaintiff's employment with Defendant. The Settlement
16 Administrator (not the Defendant) shall issue an IRS Form 1099 to Plaintiff reflecting
17 his Enhancement Payment and General Release Payment.
- 18 J. "Class Representative" shall mean plaintiff RICARDO COLIN COBARRUBIAS.
- 19 K. "Court" means the Superior Court for the State of California, County of San Mateo
20 currently presiding over the Action.
- 21 L. "Defendant" shall mean PENINSULA CUSTOM HOMES, INC.
- 22 M. "Effective Date" means the earliest date, following entry by the Court of an order and
23 judgment of Final Approval upon which one of the following have occurred: (a) if
24 no Class Member files and serves any timely and valid objection to the Settlement,
25 then the date upon which the Court grants Final Approval of the Settlement; (b) if any
26 Class Member files and serves a timely and valid objection but it is subsequently
27 withdrawn, then the date upon which the Court grants Final Approval of the
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1 Settlement; or (c) if any Class Member files and serves a valid and timely objection,
2 then the date which is sixty-five (65) days after (i) service of notice of entry of the
3 Final Approval Order and Judgment on the Parties to the Action and all objectors to
4 the Settlement, if any, without appeals or requests for review being taken, or (ii) order
5 affirming the Final Approval Order and Judgment or denying review after exhaustion
6 of all appellate remedies, if appeals or requests for review have been taken.

7 N. "Final Approval" means the date on which the Court enters an order granting final approval
8 of the Settlement Agreement.

9 O. "Funding Date" shall mean sixty -five (65) calendar days after the Effective Date and
10 is the date Defendant transfers the Gross Settlement Amount into the QSF in accord
11 with the terms of this Agreement.

12 P. "Gross Settlement Amount" means Two Hundred Twenty-Five Thousand Dollars
13 (\$225,000.00) that Defendant must pay into the QSF in connection with this Settlement, inclusive of
14 the sum of the Individual Settlement Payments, the Class Representative Service Award, the Class
15 Counsel Award, PAGA Settlement and the Settlement Administration Costs and *exclusive* of the
16 employer's share of payroll tax, This Gross Settlement Amount has been agreed to By Plaintiff and
17 Defendant based on the aggregation of the agreed-upon settlement value of individual and PAGA
18 claims. In no event will Defendant be liable for more than the Gross Settlement Amount except as
19 otherwise explicitly set forth herein at Section III. A. (2). There will be no reversion of the Gross
20 Settlement Amount to Defendant. Defendant will be separately responsible for any employer
21 payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which
22 shall not be paid from the Gross Settlement Amount.

23 Q. "Individual Settlement Payment" means the amount payable from the Net Settlement
24 Amount to each Settlement Class Member and excludes any amounts distributed to
25 Aggrieved Employees pursuant to PAGA.
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1 R. "Net Settlement Amount" or "NSA" means the Gross Settlement Amount, less Class
2 Counsel Award, Class Representative Service Award, PAGA Settlement, and
3 Settlement Administration Costs.

4 S. Notice of Objection" means a Class Member's valid and timely written objection to the
5 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector's full
6 name, signature, address, and telephone number, (ii) a written statement of all grounds for the
7 objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or
8 other documents upon which the objection is based; and (iv) a statement whether the objector
9 intends to appear at the final fairness hearing.

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

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

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

19 W. "PAGA Payment Ratio" means the respective pay periods during the PAGA Period
20 for each Aggrieved Employee divided by the sum total of the pay periods for all
21 Aggrieved Employees during the PAGA Period.

22 X. "PAGA Period" means the period between November 9, 2020 to October 3, 2022.

23 Y. "PAGA Settlement" shall mean Ten Thousand Dollars (\$10,000.00) to be allocated
24 from the Gross Settlement Amount of which Seventy-Five Percent (75%) shall be
25 paid to the LWDA ("LWDA Payment") and the remaining Twenty-Five Percent
26 (25%) paid to the Aggrieved Employees ("Aggrieved Employee Payment").
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1 Z. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
2 Plaintiff or Defendant, individually.

3 AA. "Payment Ratio" means the respective Workweeks for each Class Member divided
4 by the sum total Workweeks for all Class Members.

5 BB. "Plaintiff" shall mean RICARDO COLIN COBARRUBIAS.

6 CC. "QSF" means the Qualified Settlement Fund established, designated and maintained
7 by the Settlement Administrator to fund the Gross Settlement Amount.

8 DD. "Preliminary Approval" means the date on which the Court enters an order granting
9 preliminary approval of the Settlement Agreement.

10 EE. "Released Class Claims" means all class claims reasonably arising out of the facts alleged
11 in the operative complaint which occurred during the Class Period including all claims, rights,
12 demands, liabilities, and causes of action, reasonably arising from, or related to, the same set of
13 operative facts as those set forth in the operative complaint during the Class Period, including, but
14 not limited to: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations;
15 (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to reimburse for necessary
16 business expenses; (v) all claims for the failure to timely pay wages upon termination based on the
17 preceding claims; (vi) all claims for the failure to timely pay wages during employment based on
18 the preceding claims; (vii) all claims for wage statement violations based on the preceding claims;
19 (viii) all claims asserted through California Business & Professions Code §§ 17200, *et seq.* arising
20 from the alleged labor code violations alleged in the operative complaint; and (ix) all claims for
21 monies owed due to "off-the-clock" work.

22 W. "Released PAGA Claims" means all PAGA claims alleged in the operative complaint at the
23 time the Court enters an order preliminarily approving this Settlement and Plaintiff's PAGA notice
24 to the LWDA which occurred during the PAGA Period, including all claims, rights, demands,
25 liabilities, and causes of action, for PAGA penalties set forth in the operative complaint and
26 Plaintiff's PAGA notice to the LWDA during the PAGA Period, including, but not limited to claims
27 for PAGA penalties arising from: (i) all claims for unpaid overtime; (ii) all claims for meal and rest
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break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to reimburse for necessary business expenses; (v) all claims for the failure to timely pay wages upon termination based on the preceding claims; (vi) all claims for the failure to timely pay wages during employment based on the preceding claims; (vii) all claims for wage statement violations based on the preceding claims; and (viii) all claims for monies owed due to “off-the-clock” work. The definition of “Released PAGA Claims” expressly excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the PAGA Period.

X. “Released Parties” shall mean Defendant, their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, if any, , benefit plans sponsored by such Defendant, trustees, fiduciaries, representatives, and divisions if any.

Y. Request for Exclusion” means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement; and (v) be faxed or postmarked on or before the Response Deadline.

a. Z. “Response Deadline” means the date forty-five (45) days after the Settlement Administrator mails Notice Packets to Class Members and the last date on which Class Members may submit requests for exclusion or objections to the Settlement.

AA. “Settlement” means the disposition of the Action pursuant to this Agreement.

BB. “Settlement Administrator” means ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin,

CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement Administrator establishes, designates and maintains, as a QSF under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendant and any person related to Defendant. . The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. *All accrued interest shall be paid and distributed to the Settlement Class Members as part of their respective Individual Settlement Payment.*

CC. "Settlement Class Members" or "Settlement Class" means all Class Members who have not submitted a timely and valid request for exclusion by the Response Deadline as provided in this Agreement.

DD. "Workweeks", for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Class Member was employed by Defendant in California.

II. RECITALS

A. On November 9, 2021, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant.

B. On July 5, 2022, Plaintiff filed the class action lawsuit for:

1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;
2. Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1;
3. Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*;
4. Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;

5. Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;
6. Failure to provide accurate itemized wage statements in violation of California Labor Code section 226;
7. Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203;
8. Failure to reimburse employees for required expenses in violation of California Labor Code section 2802; and
9. Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*].

- C. The Class Representative believes he has meritorious claims based on alleged violations of the California Labor Code, and the Industrial Wage Commission Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.
- D. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representative are owed, and further contends 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 they complied with the California Labor Code and the Industrial Wage Commission Orders.
- E. The Class Representative is represented by Class Counsel. Class Counsel conducted an investigation into the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through informal discovery, and reviewing documents and information provided by Defendant pursuant to informal requests for information to prepare for mediation. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendant is

1 fair, reasonable and adequate, and is in the best interest of the Settlement Class in
2 light of all known facts and circumstances, including the risks of significant delay,
3 defenses asserted by Defendant, uncertainties regarding class certification, and
4 numerous potential appellate issues. Although it denies any liability, Defendant is
5 agreeing to this Settlement solely to avoid the inconveniences and cost of further
6 litigation. The Parties and their counsel have agreed to settle the claims on the terms
7 set forth in this Agreement.

8 F. On August 3, 2022, the Parties participated in mediation presided over by Hon. Carl
9 J. West (Ret.), a respected jurist and experienced mediator of wage and hour class
10 and PAGA actions. The mediation concluded a settlement after the Parties agreed
11 to a Mediator's Proposal which was memorialized in the form of a Memorandum of
12 Understanding("MOU").

13 G. This Agreement replaces and supersedes the MOU and any other agreements,
14 understandings, or representations between the Parties. This Agreement represents
15 a compromise and settlement of highly disputed claims. Nothing in this Agreement
16 is intended or will be construed as an admission by Defendant that the claims in the
17 Action of Plaintiff or the Class Members have merit or that Defendant bears any
18 liability to Plaintiff or the Class on those claims or any other claims, or as an
19 admission by Plaintiff that Defendant's defenses in the Action have merit.

20 H. The Parties believe that the Settlement is fair, reasonable and adequate. The
21 Settlement was arrived at through arm's-length negotiations, taking into account all
22 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
23 attendant to continuing the Action through trial and any appeal. Accordingly, the
24 Parties desire to fully, finally, and forever settle, compromise and discharge all
25 disputes and claims arising from or relating to the Action.

26 I. The Parties agree to certification of the Class for purposes of this Settlement only.
27 If for any reason the settlement does not become effective, Defendant reserve the
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1 right to contest certification of any class for any reason and reserves all available
2 defenses to the claims in the Action.

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

4 **III. TERMS OF AGREEMENT**

5 A. Settlement Consideration and Settlement Payments by Defendant.

6 1. Settlement Consideration. In full and complete settlement of the Action, and
7 in exchange for the releases set forth below, Defendant and the Released
8 Parties will pay the sum of the Individual Settlement Payment, the Class
9 Representative Service Award, the Class Counsel Award, PAGA Settlement,
10 and the Settlement Administration Costs, as specified in this Agreement, equal
11 to the Gross Settlement Amount of Two Hundred Twenty-Five Thousand
12 Dollars (\$225,000.00). The Parties agree that this is a non-reversionary
13 Settlement and that no portion of the Gross Settlement Amount shall revert to
14 Defendant. Other than the Defendant's share of employer payroll taxes and
15 as provided for in Section III(A)(2) below, if any, Defendant shall not be
16 required to pay more than the Gross Settlement Amount, except as provided
17 for hereinbelow.

18 2. Class Size. At the time of mediation, Defendant estimated that the Settlement
19 Class was comprised of 58 individuals who collectively worked
20 approximately 7,700 Workweeks ("Projected Workweeks") during the Class
21 Period. In regard hereto, Defendant will provide a declaration under penalty
22 of perjury confirming the number of applicable Class Members and
23 Workweeks they worked during the applicable Class Period. If the Workweek
24 number increases by more than 20% of the estimate stated herein, the
25 Settlement Amount will increase proportionally for the number of Workweeks
26 over 20% of 7,700 (9,240).

- 1 3. Settlement Payment. Defendant and the Released Parties, and each of them,
2 are jointly and severally liable for payment of the Gross Settlement Amount.
3 Defendant shall pay the Gross Settlement Amount to the Settlement
4 Administrator on the Funding Date.
- 5 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
6 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
7 together with the Gross Settlement Amount.
- 8 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
9 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
10 together and individually, shall fully and forever release and discharge all of the
11 Released Parties, or any of them, from each of the Released Claims arising during the
12 Class Period.
- 13 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
14 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of
15 California shall fully and forever release and discharge the Released Parties from the
16 PAGA Released Claims for the PAGA Period.
- 17 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth
18 in this Agreement, in addition to all claims being released by Class Members and
19 Aggrieved Employees, Plaintiff waives, releases, acquits and forever discharges the
20 Released Parties from any and all claims, whether known or unknown, asserted or
21 not asserted, which exist or may exist on his behalf as of the date of this Agreement,
22 including but not limited to any and all tort claims, contract claims, wage claims,
23 wrongful termination claims, disability claims, benefit claims, public policy claims,
24 retaliation claims, statutory claims, personal injury claims, emotional distress claims,
25 invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims,
26 and any and all claims arising under any federal, state or other governmental statute,
27 law, regulation or ordinance, including, but not limited to claims for violation of the
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1 Fair Labor Standards Act, the California Labor Code, the Wage Orders of
2 California's Industrial Welfare Commission, other state wage and hour laws, the
3 Americans with Disabilities Act, the Age Discrimination in Employment Act
4 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil
5 Rights Act of 1964, the California Fair Employment and Housing Act, the California
6 Family Rights Act, the Family Medical Leave Act, California's Whistleblower
7 Protection Act, California Business & Professions Code Section 17200 et seq., and
8 any and all claims arising under any federal, state or other governmental statute, law,
9 regulation or ordinance. Plaintiff also waives and relinquishes any and all claims,
10 rights or benefits that he may have under California Civil Code § 1542, which
11 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 complete release
21 and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is
22 intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to
23 exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement
24 Agreement contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff has
25 read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that
26 Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing
27 about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff
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1 understands this Settlement Agreement and the section 1542 waiver, and so Plaintiff freely and
2 knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later
3 may discover facts different from or in addition to those Plaintiff now knows or believes to be true
4 regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees
5 that the releases and agreements contained in this Settlement Agreement shall remain effective in all
6 respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly
7 assumes any and all risk of any mistake in connection with the true facts involved in the matters,
8 disputes, or controversies released or described in this Settlement Agreement or with regard to any
9 facts now unknown to Plaintiff relating thereto. Partially, in exchange for this general release, Plaintiff
10 will receive the Class Representative Service Award which will be reported on an IRS Form 1099 to be
11 provided by the Settlement Administrator.

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

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

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

- 3 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
4 and shall not be admissible in any judicial, administrative or arbitral
5 proceeding for any purpose or with respect to any issue, substantive or
6 procedural;
- 7 2. The conditional class certification (obtained for any purpose) shall be void *ab*
8 *initio* and of no force or effect, and shall not be admissible in any judicial,
9 administrative or arbitral proceeding for any purpose or with respect to any
10 issue, substantive or procedural; and
- 11 3. None of the Parties to this Settlement will be deemed to have waived any
12 claims, objections, defenses or arguments in the Actions, including with
13 respect to the issue of class certification.
- 14 4. If Defendant fails to fully fund the Gross Settlement Amount, Defendant shall
15 bear the sole responsibility for any cost to issue or reissue any curative notice
16 to the Settlement Class Members and all Settlement Administration Costs
17 incurred to the date of nullification.

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

26 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
27 effect of the payments called for, and Class Members and/or Aggrieved Employees are
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1 not relying on any statement or representation by the Parties in this regard. Class
2 Members and/or Aggrieved Employees understand and agree that they will be
3 responsible for the payment of any taxes and penalties assessed on the Individual
4 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
5 Settlement described and will be solely responsible for any penalties or other
6 obligations resulting from their personal tax reporting of Individual Settlement
7 Payments and/or Aggrieved Employee Payments of the PAGA Settlement.

8 I. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
9 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND
10 EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
11 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO
12 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION
13 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
14 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
15 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
16 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
17 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
18 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
19 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN,
20 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
21 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
22 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION
23 OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER
24 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
25 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
26 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
27 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
28

1 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
2 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
3 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
4 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
5 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
6 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
7 CONTEMPLATED BY THIS AGREEMENT.

8 H. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
9 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
10 which shall include this Settlement Agreement. Plaintiff will provide Defendant with
11 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
12 Defendant an opportunity to propose changes or additions to the Motion.

13 I. Settlement Administrator. The Settlement Administrator shall be responsible for:
14 establishing and administering the QSF; calculating, processing and mailing payments
15 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
16 mailing the Notice Packets to the Class Members as directed by the Court; receiving
17 and reporting the objections and requests for exclusion; calculating, deducting and
18 remitting all legally required taxes from Individual Settlement Payments and
19 distributing tax forms, including 1099 and w-2 IRS Forms, for the Wage Portion and
20 Non-Wage Portion of the Individual Settlement Payments and/or Aggrieved Employee
21 Payments of the PAGA Settlement; processing and mailing tax payments and
22 penalties, if any, to the appropriate state and federal taxing authorities; providing
23 declaration(s) as necessary in support of preliminary and/or final approval of this
24 Settlement; and other tasks as the Parties mutually agree or the Court orders the
25 Settlement Administrator to perform. The Settlement Administrator shall keep the
26 Parties timely apprised of the performance of all Settlement Administrator
27 responsibilities by among other things, sending a weekly status report to the Parties'

counsel stating the date of the mailing, the of number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.

J. Notice Procedure.

1. Class Data. No later than twenty (20) business days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class Data for purposes of preparing and mailing Notice Packets to the Class Members.

2. Notice Packets.

a) The Notice Packet shall contain the Notice of Class Action Settlement in a form substantially similar to the form attached as Exhibit A. The Notice of Class Action Settlement shall inform Class Members and Aggrieved Employees that they need not do anything in order to receive an Individual Settlement Payment and/or Aggrieved Employees' individual shares of the PAGA Settlement and to keep the Settlement Administrator apprised of their current mailing address, to which the Individual Settlement Payments and/or Aggrieved Employee Payments of the PAGA Settlement will be mailed following the Funding Date. The Notice of Class Action Settlement shall set forth the release to be given by all members of the Class who do not request to be excluded from the Settlement Class and/or Aggrieved Employees' in exchange for an Individual Settlement Payment and/or Aggrieved Employee Payments of the PAGA Settlement, the number of Workweeks worked by each Class Member during the Class Period and PAGA Period, if any, and the estimated amount of their Individual Settlement Payment if they do not request to be excluded from the Settlement and each Aggrieved Employee's share of the PAGA

1 Settlement, if any. The Settlement Administrator shall use the Class
2 Data to determine Class Members' Workweeks and PAGA Pay
3 Periods. The Notice will also advise the Aggrieved Employees that
4 they will release the Released PAGA Claims and will receive their
5 share of the PAGA Settlement regardless of whether they request to
6 be excluded from the Settlement.

7 b) The Notice Packet's mailing envelope shall include the following
8 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
9 ENTITLED TO PARTICIPATE IN A CLASS ACTION
10 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
11 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
12 NOTICE."

13 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
14 the Settlement Administrator will perform a search based on the National
15 Change of Address Database to update and correct any known or identifiable
16 address changes. No later than fourteen (14) calendar days after receiving the
17 Class Data from Defendant, the Settlement Administrator shall mail copies of
18 the Notice Packet to all Class Members via regular First-Class U.S. Mail. The
19 Settlement Administrator shall exercise its best judgment to determine the
20 current mailing address for each Class Member. The address identified by the
21 Settlement Administrator as the current mailing address shall be presumed to
22 be the best mailing address for each Class Member.

23 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
24 Administrator as non-delivered on or before the Response Deadline shall be
25 re-mailed to any forwarding address provided. If no forwarding address is
26 provided, the Settlement Administrator shall promptly attempt to determine a
27 correct address by lawful use of skip-tracing, or other search using the name,
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1 address and/or Social Security number of the Class Member involved, and
2 shall then perform a re-mailing, if another mailing address is identified by the
3 Settlement Administrator. In addition, if any Notice Packets, which are
4 addressed to Class Members who are currently employed by Defendant, are
5 returned to the Settlement Administrator as non-delivered and no forwarding
6 address is provided, the Settlement Administrator shall notify Defendant.
7 Defendant will request that the currently employed Class Member provide a
8 corrected address, and transmit to the Administrator any corrected address
9 provided by the Class Member. Class Members who received a re-mailed
10 Notice Packet shall have their Response Deadline extended fifteen (15) days
11 from the original Response Deadline.

12 5. Disputes Regarding Individual Settlement Payments. Class Members will
13 have the opportunity, should they disagree with Defendant's records regarding
14 the start and end dates of employment to provide documentation and/or an
15 explanation to show contrary dates. If there is a dispute, the Settlement
16 Administrator will consult with the Parties to determine whether an
17 adjustment is warranted. The Settlement Administrator shall determine the
18 eligibility for, and the amounts of, any Individual Settlement Payments under
19 the terms of this Agreement. The Settlement Administrator's determination
20 of the eligibility for and amount of any Individual Settlement Payment shall
21 be binding upon the Class Member and the Parties. All disputes will be
22 decided within ten (10) business days of the Response Deadline.

23 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
24 by the Settlement Administrator concerning the administration of the
25 Settlement will be resolved by the Court under the laws of the State of
26 California. Before any such involvement of the Court, counsel for the Parties
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1 will confer in good faith to resolve the disputes without the necessity of
2 involving the Court.

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

25 8. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
26 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the
27 Settlement Administrator within the Response Deadline. In the case of Requests for
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Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.

- 9 Defective Submissions. If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

9.

10. 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 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 Settlement Class Member; (4) the last four digits of the Settlement Class Member's Social Security number; (5) the basis for the objection; and (6) if the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. Class Members who fail to make objections in writing in the manner specified above may still make their objections orally at the Final Approval/Settlement Fairness Hearing with the Court's permission. Settlement Class Members will have a right to appear at the Final Approval/Settlement Fairness Hearing to

1 have their objections heard by the Court. At no time shall any of the Parties or
2 their counsel seek to solicit or otherwise encourage Class Members to file or
3 serve written objections to the Settlement or appeal from the Order and Final
4 Judgment. Class Members who submit a written request for exclusion may not
5 object to the Settlement. Class Members may not object to the PAGA
6 Settlement.

7 K. Funding and Allocation of the Gross Settlement Amount. Defendant is required to pay
8 the Gross Settlement Amount on or before the Funding Date, plus any employer's
9 share of payroll taxes, if any, as mandated by law within the time specified herein.

10 1. Individual Settlement Payments. Individual Settlement Payments shall be
11 paid from the Net Settlement Amount and shall be paid pursuant to the
12 formula set forth herein. Using the Class Data, the Settlement Administrator
13 shall add up the total number of Workweeks for all Class Members. The
14 respective Workweeks for each Class Member will be divided by the total
15 Workweeks for all Class Members, resulting in the Payment Ratio for each
16 Class Member. Each Class Member's Payment Ratio will then be multiplied
17 by the Net Settlement Amount to calculate each Class Member's estimated
18 Individual Settlement Payments. Each Individual Settlement Payment will be
19 reduced by any legally mandated employee tax withholdings (e.g., employee
20 payroll taxes, etc.). Individual Settlement Payments for Class Members who
21 submit valid and timely requests for exclusion will be redistributed to
22 Settlement Class Members who do not submit valid and timely requests for
23 exclusion on a pro rata basis based on their respective Payment Ratios.

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

6 3. Allocation of Individual Settlement Payments. For tax purposes, Individual
7 Settlement Payments shall be allocated as follows: 10% as wages (“Wage
8 Portion”); 90% as penalties and interest (“Non-Wage Portion”). The Wage
9 Portion is subject to wage withholdings and shall be reported on IRS Form W-
10 2. The Non-Wage Portion shall not be subject to wage withholdings and shall
11 be reported on IRS Form 1099.

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

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

26 6. All monies received by Settlement Class Members under the Settlement which
27 are attributable to wages shall constitute income to such Settlement Class
28

Members solely in the year in which such monies actually are received by the Settlement Class Members. It is the intent of the Parties that Individual Settlement Payments and individual shares of the PAGA Settlement provided for in this Settlement agreement are the sole payments to be made by Defendant to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments and/or their shares of the PAGA Settlement.

7. Mailing. Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees last known mailing address no later than fifteen (15) calendar days after the Funding Date.

8. Expiration. Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employee does not cash his or her settlement check within 90 days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the 180th day, and invite that Settlement Class Member and/or Aggrieved Employee to request reissuance in the event the check was destroyed, lost or misplaced. In the event an Individual Settlement Payment and/or Aggrieved Employee's individual share of the PAGA Settlement check has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued thereon, shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500

1 *et seq.*, in the names and corresponding amounts associated with each Class
2 Member and/or Aggrieved Employee whose check(s) are cancelled.

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

10. Class Counsel Award. Defendant understands a motion by Class Counsel for attorneys' fees not to exceed one-third of the Gross Settlement Amount currently estimated to be \$75,000, plus costs and expenses supported by declaration not to exceed fifteen Thousand Dollars (\$15,000), from the Gross Settlement Amount will be filed. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall allocate and pay the Class Counsel Award to Class Counsel from the Gross Settlement Amount no later than fifteen (15) calendar days after the Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. If the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

11. PAGA Settlement. Ten Thousand Dollars (\$10,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA Settlement"). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Settlement (\$7,500.00) to the California Labor and Workforce Development Agency no later than fifteen (15) calendar days after the Funding Date (hereinafter "LWDA Payment"). Twenty-five percent (25%) of the PAGA Settlement (\$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 Settlement 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 \$7,000.00. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after the Funding Date.

- L. 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 Class Representative Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will provide Defendant with a draft of the Motion at least 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 fourteen (14) 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 Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the number of objections received, the amount of the average Individual Settlement Payment and highest Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

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

N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendant to review the Motions for Preliminary and Final Approval, including the Order Granting Final Approval of Class Action Settlement, and Judgment before filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to affect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

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

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

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

1. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

R. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set

forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

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

U. No Public Comment: The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount or terms of the Settlement Agreement. Class Counsel further agrees not to use the Settlement Agreement or any of its terms for any marketing or promotional purposes. Nothing herein will restrict Class Counsel from including publicly available information regarding this settlement in future judicial submissions regarding Class Counsel's qualifications and experience. Further, Class Counsel will not include, reference or use the Settlement Agreement for any marketing or promotional purposes, either before or after the Motion for Preliminary Approval is filed.

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

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

X. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same

instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

Y. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

Z. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement and all orders and judgments entered in connection with this Agreement.

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

BB. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently intend to pursue any claims against the Released Parties, including, but not limited to, any judicial, arbitral, or administrative forum, except for the already asserted individual claim/complaint by Plaintiff against Defendant, and any and all claims relating to or arising from Plaintiff's employment with Defendant, regardless of whether Class Counsel is currently aware of any facts or legal theories upon which any claims or causes of action could be brought against Released Parties, including those facts or legal theories alleged in the operative complaint in this Action. The Parties further acknowledge, understand and agree that this representation is essential to the

1 Agreement and that this Agreement would not have been entered into were it not for
2 this representation.

3 CC. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
4 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel
5 may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the
6 Court, and either party may appeal any court order that materially alters the Settlement Agreement's
7 terms.

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

13
14 No Admissions by the Parties. The Parties enter into this Settlement to resolve the dispute that has
15 arisen between them and to avoid the burden, expense and risk of continued litigation. In entering
16 into this Settlement, Defendant do not admit, and specifically deny, that it violated any federal, state,
17 or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
18 applicable laws, regulations or legal requirements; breached any contract; violated or breached any
19 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
20 respect to their employees. Neither this Settlement Agreement, nor any of its terms or provisions,
21 nor any of the negotiations connected with it, will be construed as an admission or concession by
22 Defendant of any such violations or failures to comply with any applicable law. Except as necessary
23 in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and
24 provisions will not be offered or received as evidence in any action or proceeding to establish any
25 liability or admission on the part of Defendant or to establish the existence of any condition
26 constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

- 1 b. Enforcement Actions. In the event that one or more of the Parties institutes any
2 legal action or other proceeding against any other Party or Parties to enforce the
3 provisions of this Settlement or to declare rights and/or obligations under this
4 Settlement, the successful Party or Parties will be entitled to recover from the
5 unsuccessful Party or Parties reasonable attorneys' fees and costs, including
6 expert witness fees incurred in connection with any enforcement actions.
- 7 c. Mutual Preparation. The Parties have had a full opportunity to negotiate the
8 terms and conditions of this Settlement Agreement. Accordingly, this
9 Settlement Agreement will not be construed more strictly against one party than
10 another merely by virtue of the fact that it may have been prepared by counsel
11 for one of the Parties, it being recognized that, because of the arms-length
12 negotiations between the Parties, all Parties have contributed to the preparation
13 of this Settlement Agreement.
- 14 d. Representation By Counsel. The Parties acknowledge that they have been
15 represented by counsel throughout all negotiations that preceded the execution
16 of this Settlement Agreement, and that this Settlement Agreement has been
17 executed with the consent and advice of counsel. Further, Plaintiff and Class
18 Counsel warrant and represent that there are no liens on the Settlement
19 Agreement.

20 J. All Terms Subject to Final Court Approval. All amounts and procedures described in this
21 Settlement Agreement herein will be subject to final Court approval.

22 K. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
23 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
24 Settlement Agreement.

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1 L. Binding Agreement. The Parties warrant that they understand and have full authority to
2 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
3 enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure
4 in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
5 otherwise might apply under federal or state law.
6

7
8 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

9
10 DATED: Sep 22, 2022

Ricardo colin

Ricardo colin (Sep 22, 2022 16:38 PDT)

RICARDO COLIN COBARRUBIAS

11
12
13 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

14 DATED: September 26, 2022

Jennifer Beck

PENINSULA CUSTOM HOMES, INC.

Jennifer Beck

Printed Name

COO

Title

15
16
17
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19
20
21 IT IS SO AGREED AS TO FORM BY COUNSEL:

22
23 DATED: September 23, 2022

JCL LAW FIRM, A.P.C.

24 By: [Signature]

25 Attorneys for Plaintiff and the Settlement Class
26 Members
27
28

1 DATED: September 23, 2022

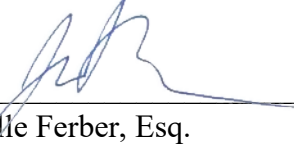
ZAKAY LAW GROUP, APLC

2 By: 

3 Attorneys for Plaintiff and the Settlement Class
4 Members

5
6
7 DATED: September 26, 2022

FERBER LAW, APC

8 By: 

9 Michelle Ferber, Esq.

10 Jon Babione, Esq.

11 Attorneys for Defendant
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EXHIBIT A

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

*(Cobarrubias v. Peninsula Custom Homes, Inc., San Mateo County Superior Court
Case No. 22-CIV-02733)*

A court authorized this Notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights may be affected whether you act or do not act.

PLEASE READ THIS NOTICE CAREFULLY.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<[REDACTED]>>. See the explanation below. 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.
Exclude Yourself	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 no money from the Settlement, except that if you are also an Aggrieved Employee, you will still receive your pro rata share of the PAGA Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. 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 San Mateo (the “Court”) has been reached between Plaintiff Ricardo Colin Cobarrubias (“Plaintiff”) and Defendant Peninsula Custom Homes, Inc. (“Defendant”). 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 non-exempt employees who are or previously were employed by Defendant and performed work in California during the Class Period.

The “Class Period” is the period of time running from July 5, 2018 to October 3, 2022.

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 July 5, 2022, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Mateo. Plaintiff asserted claims that Defendant: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; (h) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802; and (i) Violations of the Private Attorney General Act at Labor Code §§ 2698, *et seq.*

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; that Defendant fully reimbursed members of the class for required business expenses; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

On August 3, 2022, the Parties participated in an all-day mediation with Hon. Carl J. West (Ret.) a respected jurist and an experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after the Parties agreed to a Mediator's Proposal which was memorialized in the form of a Memorandum of Understanding. 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 has agreed to pay an “all in” amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel's attorneys' fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payment to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

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 Expenses. Payment to the Settlement Administrator, estimated not to exceed \$7,000.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys' Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Gross Settlement Amount (currently \$75,000) and a Class Counsel Litigation Expenses Payment of not more than \$15,000 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions 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.
- Class Representative Service Payment. Class Representative Service Award of up to Ten Thousand Dollars (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for 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 \$7,500.00 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments the LWDA Payment, and the Settlement Administration Expenses 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 Settlement Share 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 a normal seven-day week of work during the Class Period in which, according to Defendant's records, the Class Member was employed by Defendant in California.
- Calculation of PAGA Penalties Payments to PAGA Employees. The Net PAGA Amount shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount 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 Employees" means all non-exempt employees who are or previously were employed by Defendant and performed work in California during the PAGA Period. The PAGA Period means the period between November 9, 2020 to October 3, 2022.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share 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 insure you receive your payment.

Tax Matters. 10% of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. 90% of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such

payment. In addition, no taxes will be withheld from the PAGA Penalties 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.

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?

Release by Settlement Class Members. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release all class claims reasonably arising out of the facts alleged in the operative complaint which occurred during the Class Period including all claims, rights, demands, liabilities, and causes of action, reasonably arising from, or related to, the same set of operative facts as those set forth in the operative complaint during the Class Period, including, but not limited to: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to reimburse for necessary business expenses; (v) all claims for the failure to timely pay wages upon termination based on the preceding claims; (vi) all claims for the failure to timely pay wages during employment based on the preceding claims; (vii) all claims for wage statement violations based on the preceding claims; (viii) all claims asserted through California Business & Professions Code §§ 17200, et seq. arising from the alleged labor code violations alleged in the operative complaint; and (ix) all claims for monies owed due to "off-the-clock" work.

Release by the Aggrieved Employees. The Released PAGA Claims shall be released as follows. Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all PAGA claims alleged in the operative complaint at the time the Court enters an order preliminarily approving this Settlement and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, including all claims, rights, demands, liabilities, and causes of action, for PAGA penalties set forth in the operative complaint and Plaintiff's PAGA notice to the LWDA during the PAGA Period, including, but not limited to claims for PAGA penalties arising from: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to reimburse for necessary business expenses; (v) all claims for the failure to timely pay wages upon termination based on the preceding claims; (vi) all claims for the failure to timely pay wages during employment based on the preceding claims; (vii) all claims for wage statement violations based on the preceding claims; and (viii) all claims for monies owed due to "off-the-clock" work. The Released PAGA Claims expressly excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside 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 (July 5, 2018 to October 3, 2022).

Based on this information, your estimated Individual Settlement Payment is << ____ >>.

Defendant's records reflect that you have << ____ >> pay periods worked during the PAGA Period (November 9, 2020 to October 3, 2022).

Based on this information, your estimated PAGA Payment Share 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 re-mailed Notice].

6. How can I get a payment?

Important Note: Peninsula Custom Homes will not retaliate against you in any way for either participating or not participating in this Settlement.

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: _____. (800) _____.

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 www._____.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 Net PAGA Amount.

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 _____. The request for exclusion must state in substance: "I wish to opt out of the settlement of the class action and settlement of the case. 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 ***Cobarrubias v. Peninsula Custom Homes, Inc., San Mateo County Superior Court, Case No. 22-CIV002733***. 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 [REDACTED]. The address for the Settlement Administrator is ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780.

The court has decided that class counsel identified below are qualified to represent you and all other Class Members simultaneously. You do not need to hire your own attorney, but you may, if you want, at your own cost.

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

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
Website: www.zakaylaw.com

Counsel for Defendant:

Michelle Ferber, Esq.
Jon Babione, Esq.
Ferber Law, APC
2603 Camino Ramon, Suite 385
San Ramon, CA 94583
Tel.: (925) 235-9800
E-Mail: mferber@ferberlaw.com
jbabione@ferberlaw.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 [REDACTED], at the San Mateo County Superior Court, Department 2, located 400 County Center, Redwood City, CA 94063 before Judge Marie S. Weiner. 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 1-888-250-6810 or write to *Cobarrubias v. Peninsula Custom Homes, Inc., San Mateo County Superior Court, Case No. 22-CIV002733*, Settlement Administrator, c/o _____.

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.

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 State Controller's Office, Unclaimed Property Division in the name of the absent employee. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

EXHIBIT 3

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Covarrubias v. Peninsula

Friday, August 12, 2022

Requesting Law Firm:

JCL Law Firm, A.P.C.

Attorney Contact:

Eddie Garcia

E-Mail Address:

EGarcia@jcl-lawfirm.com

ILYM Group Contact:

Sean Hartranft

E-Mail Address:

Sean@ilymgroup.com

Contact Number:

949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Estimated Class Size	58
Estimated Percentage of Undeliverable Mail	10%
ILYM Group Static Website	Yes
Certified Spanish Translation	No

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

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

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	4	\$480.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	0	\$0.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	3	\$210.00
NCOA	Flat Fee	\$18.82	1	\$18.82
Toll-Free Call Center Support	Flat Fee	\$45.00	1	\$45.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Fee	\$750.00	1	Waived

Subtotal \$1,573.82

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice	Per Piece	\$3.00	58	\$174.00
USPS First Class Postage	Per Piece	\$0.81	58	\$46.98
Re-Mails (Skip Trace/Undeliverable/Requests)	Per Piece	\$3.50	12	\$40.60
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$561.58

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Check Stub & Release - (including W-2 & 1099)	Per Check	\$2.50	58	\$145.00
Check Mailing Postage	Per Piece	\$0.60	58	\$34.80
Re-Mails (Skip Trace/Undeliverable/Requests)	Per Piece	\$3.00	12	\$34.80
Preparation of Taxes	Hourly	\$125.00	10	\$1,250.00
Annual Filing of Tax Return	Per Year	\$1,000.00	1	\$1,000.00

**Additional Bank fees may apply*

Subtotal \$3,014.60

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Declarations	Hourly	\$125.00	2	\$250.00

Subtotal \$690.00

Total Case Estimate: \$6,490.00

Terms and Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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