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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN LUIS OBISPO

ELISA ALVAREZ, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

SLO ARCHES, INC., a California Corporation;
IVERNIA, INCORPORATED, a California
Corporation; GOLDEN SENECA, INC., a
California Corporation; and DOES 1 through
50, Inclusive;

Defendants.

Case No. 21CV-0533

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

Date:

Time:

Judge:

Hon. Craig van Rooyen

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 ELISA ALVAREZ (hereafter "Plaintiff") in this wage and hour class action filed against SLO
6 ARCHES, INC., a California Corporation; IVERNIA, INCORPORATED, a California Corporation;
7 and GOLDEN SENECA, INC., a California Corporation (hereinafter "Defendants").

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

10 **I. EXHIBITS**

11 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Stipulation
12 of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement" or "Settlement
13 Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and correct copy of the proposed
14 Amended Class Notice.

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

19 5. Attached hereto as **Exhibit "3"** is a true and correct copy of the bid for settlement
20 administration submitted by ILYM Group Inc., in the amount of \$15,300.

21 **II. INTRODUCTION**

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

1 denied or of Defendants prevailing at trial. The entire Net Settlement Amount will be paid to all
2 Settlement Class Members who do not opt out of the Settlement resulting in an average Individual
3 Settlement Payment of **\$661.11**(Net Settlement Amount divided by Class Members), ***assuming all 630***
4 ***Class Members participate in the Settlement.***

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

10 **III. FACTS AND PROCEDURE**

11 **A. Overview of the Litigation**

12 8. Defendants operate McDonald’s restaurants in San Luis Obispo, where Plaintiff worked.
13 Plaintiff worked for Defendants in California from March of 2017 to March of 2019. At all times during
14 her employment, Plaintiff was denied legally compliant meal and rest periods, and minimum wages and
15 overtime compensation. Throughout her employment, Plaintiff was subject to Defendants’ written
16 policies and procedures contained in, among other documents, the Employee Handbook.

17 9. Generally, Plaintiff claims that Defendants failed to provide compliant meal and rest
18 periods, failed to pay for all time worked, and failed to pay all wages upon separation. Defendants deny
19 liability for each of Plaintiff’s claims. Further, Defendants assert that they fully complied with all
20 applicable employment laws and raised several other significant defenses to Plaintiff’s claims, including
21 but not limited to, asserting that they maintained facially compliant meal and rest period policies, paid
22 their employees for all hours worked, and timely paid all wages due upon separation of employment.

23 10. On September 16, 2021, Plaintiff filed a class action complaint in the San Luis Obispo
24 County Superior Court, Case No. 21CV-0533 (“Action”). The Action alleged seven causes of action
25 against Defendants for: (1) Unfair Competition in violation of Bus. and Prof. Code §§ 17200; (2) Failure
26 to Pay Overtime Wages in Violation of California Labor Code §§ 510; (3) Failure to Pay Minimum
27 Wages in Violation of California Labor Code §§ 1194, 1197, and 1197.1.; (4) Failure to Provide

1 Required Meal Periods in Violation of California Labor Code §§ 226.7 and 512; (5) Failure to Provide
2 Required Rest Periods in Violation of California Labor Code §§ 226.7 and 512; (6) Failure to Reimburse
3 Employees for Required Expenses in Violation of California Labor Code § 2802; (7) Failure to Provide
4 Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; and (8) Failure to Provide
5 Wages When Due in Violation of California Labor Code §§ 201, 202, and 203.

6 11. After Plaintiff commenced written discovery, the Parties agreed to mediate this action.
7 To prepare for mediation, the Parties agreed to informally exchange additional documents and data
8 points subject to the mediation privilege, including but not limited to, the Class Members' time data
9 and certain payroll data points. As discussed *infra*, Plaintiff's counsel retained the forensic consultants
10 at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data.

11 12. On October 17, 2022, the Parties participated in a full day mediation with mediator,
12 Steven Rottman, Esq. The mediation concluded with a settlement which was subsequently
13 memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and
14 negotiated a long-form settlement agreement, which is the subject of the instant motion.

15 13. As part of the Settlement, on December 16, 2022, Plaintiff served Defendants and the
16 Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice").
17 Plaintiff's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of
18 various provisions of the California Labor Code and applicable Industrial Welfare Commissions
19 ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys
20 General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA").

21 14. Prior to the filing of this Motion, Plaintiff filed a First Amended Complaint adding a ninth
22 cause of action for Violation of the Private Attorneys General Action [Labor Code §§ 2698, *et. seq.*].

23 **B. Overview of Plaintiff's Original Motion for Preliminary Approval, Mailing of the**
24 **Class Notice, and Motion for Final Approval**

25 15. On June 20, 2023, Plaintiff filed the original Motion for Preliminary Approval ("original
26 Motion"). The original Motion represented to the Court that if preliminary approval was granted,
27 valuable monetary relief would be provided to 711 Class Members and 412 Aggrieved Employees.

1 Further, the original Motion included a copy of the Agreement, wherein Section III(A)(2) provided that
2 if the escalator provision was triggered, Defendants had the option to either pay a proportional increased
3 settlement amount, or to cut off the end date for the Class Period on the date the number of workweeks
4 reached 32,348. (Agreement at § III(A)(2).) On July 28, 2023, the Court entered the order granting
5 Plaintiff's original Motion for preliminary approval ("Preliminary Approval Order"). The Preliminary
6 Approval Order stated, in part, "The Court preliminarily approves the Stipulation of Settlement of Class
7 Action Claims and Release of Claims." Accordingly, Defendants' option to either pay a proportional
8 increased settlement amount, or to cut off the end date of the Class Period was not an element of surprise
9 as it was expressly provided for in the Agreement and not negotiated after the escalator was triggered.
10 Nonetheless, Plaintiff recognizes that Defendants' declaration regarding the number of Class Members
11 and workweeks worked during the Class Period should have been requested and filed with Plaintiff's
12 original Motion. Similarly, Plaintiff recognizes that the oversight led to the original Motion requesting
13 preliminary approval of the original, rather than shortened Class Period, and the Court's Preliminary
14 Approval Order conditionally certified the Class and approved the Class Notice based on the original
15 Class Period.

16 16. On November 9, 2023, Plaintiff filed the original Motion for Final Approval. The
17 Settlement Administrator submitted a supplemental declaration in support thereof, providing the Court
18 with a timeline of events leading up to the initial mailing of the Class Notice. In summary, between
19 August 11, 2023 and October 4, 2023, Defendants provided the Settlement Administrator with the Class
20 Data, the Settlement Administrator discovered that the escalator was triggered, informed Defendants
21 that the Gross Settlement Amount would increase by \$67,447.94 if Defendants paid a proportional
22 increase pursuant to the escalator provision, and Defendants ultimately elected to cut off the end date
23 for the Class Period as of the date on which the number of workweeks reached 32,348, which was May
24 28, 2021. Thereafter, the Class Notice was revised to reflect the shortened Class Period of September
25 16, 2017 to May 28, 2021. On October 11, 2023, the Settlement Administrator **only** mailed the Class
26 Notice to the 630 individuals who worked for Defendants during the shortened Class Period.

27 17. As articulated herein, the Settlement, if approved using the shortened Class Period, does
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not prejudice any Class Members *outside* of the shortened Class Period and results in Class Members *within* the shortened Class Period being paid more than they would have under the original Class Period.

C. Class Counsel Thoroughly Investigated the Factual and Legal Issues

18. 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, the Plaintiff produced documents related to her employment, including wage statements, portions of Defendants' handbooks, compensation policies and time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry.

19. Class Counsel subsequently requested Plaintiff's employee files from Defendants. In response, Defendants produced several documents, including but not limited, copies of Plaintiff's hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claims that Defendants failed to, among other things, provide compliant meal and rest periods, failed to pay all wages due to rounding, and failed to pay for all hours worked.

20. To prepare for mediation, Defendants produced time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed more than 1,000 pages of documents and more than 100,000 unique cells of time and payroll data.

21. 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.

22. BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of unpaid wages,

1 amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and
2 average number of hours worked per week. BCG also estimated the number of missed, late, or truncated
3 meal and rest periods, the amount of unpaid wages, the amount of unpaid overtime, the amount of
4 unpaid sick pay, the amount of off-the-clock work, and the amount of missed meal and rest period
5 premiums paid during the Class Period.

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

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

23 **D. The Parties Settled at Mediation**

24 25. On October 17, 2022, the Parties conducted a full day of mediation with Steven Rottman,
25 Esq. Mediator Rottman helped manage the Parties' expectations and provided a useful, neutral analysis
26 of the issues and risks to both sides. The Parties made substantial progress with Mediator Rottman's
27 assistance. Namely, the Parties exchanged information regarding their respective claims and defenses,
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1 including their respective evaluation of the damages. The mediation concluded with a settlement, after
2 both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are
3 now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate,
4 and reasonable compromise of the claims at issue.

5 26. Class Counsel only agreed to enter the Settlement following this thorough investigation
6 and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and
7 marketplace for similar settlements, and considering the risk of significant delay and uncertainty
8 associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly
9 believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms
10 are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

11 **IV. ARGUMENT**

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

13 27. Plaintiff's original Motion represented that given approximately 711 Class Members who
14 worked for Defendants during the original Class Period of September 16, 2017 to October 17, 2022, the
15 average net recovery for each Class Member would be **\$585.79** (Net Settlement Amount divided by
16 Settlement Class Members). Further, since the Class Data Defendants provided to the Settlement
17 Administrator showed there were actually 762 Class Members who worked for Defendants during the
18 original Class Period, the average net recovery for each Class Member would have been **\$546.58**. Here,
19 given there are 630 Class Members who worked for Defendants during the shortened Class Period of
20 September 16, 2017 to May 28, 2021, the average net recovery for each Class Member would be
21 **\$661.11**, an increase from what they would have received pursuant to the original Class Period.
22 Therefore, the overall workweek value of the Settlement was maintained at a higher rate and the 630
23 Class Members who received the initial Class Notice would receive more than they would have under
24 the original Class Period.

25 28. Importantly, there is no prejudice to the 132 Class Members who worked for Defendants
26 outside of the shortened Class Period because they did not receive the Class Notice. Further, the Parties
27 did not engage in the *Belaire-West* process here such that any Class Member received notice of the

lawsuit generally. Accordingly, no Class Members who worked for Defendants outside of the shortened Class Period received notice of this lawsuit and relied upon it to their detriment. Indeed, the 132 Class Members who worked for Defendants outside of the shortened Class Period (from May 29, 2021 to present) are not releasing any claims against Defendants and are within the statute of limitations to bring their individual Labor Code claims against Defendants.

29. The Gross Settlement Amount of \$750,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger Consulting Group to develop economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA Penalties) at \$4,131,730 dollars. Thus, the Gross Settlement Amount of \$750,000 represents approximately 18.15% of Defendants' *class-wide* liability exposure. The following summarizes Defendants' estimated exposure.

30. Plaintiff's primary claim in this action alleges that Defendants failed to provide compliant rest periods. Specifically, Defendants had in place a written rest period policy that was silent on whether employees could leave the premises during rest periods in violation of *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal. 5th 257. Consequently, Plaintiff alleged that she is owed rest period premiums for rest period violations that occurred during the Class Period.

31. Again, Defendants denied liability and asserted that they maintained legally compliant rest period policies and practices throughout the Class Period. Defendants argued that some evidence of a uniform unlawful policy does not show that Defendants had a *practice* of denying rest breaks. (See *Cacho v. Eurostar, Inc.* (2019) 256 Cal.Rptr.3d 547 at 569 (providing that "the existence of a uniform unlawful policy does not necessarily mean the employer has liability for violations that can be demonstrated with common proof."). Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification

likely would have required depositions of Class Members who provided declarations, and Defendants surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that Defendants may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Accordingly, Plaintiff estimated Defendants’ exposure for rest period claims at \$1,749,691.

32. Further, Plaintiff alleged that Defendants failed to provide compliant meal periods. Specifically, Plaintiff alleged that because of her rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were unable to take timely and duty-free meal periods. Conversely, Defendants argued, among other things, that they provided all their employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant meal periods. Defendants also argued that they maintained facially compliant meal period policies and paid meal period premiums throughout the Class Period. Thus, Defendants argued that any missed meal periods were voluntarily and did not trigger liability for premium payments. Similarly, Defendants argued that any divergence from these written policies were not systematic and, if they existed at all, were location specific. Thus, Defendants argued that there was no potential liability for Plaintiff’s alleged meal period violations. In total, Class Counsel estimated Defendants’ exposure for meal period claims at \$357,829.

33. Additionally, Plaintiff alleged that Defendants failed to pay their employees for all hours worked. Specifically, Plaintiff asserted that Defendants failed to pay employees for time spent responding to COVID-19 questionnaires. Defendants vigorously denied liability for this claim. Defendants argued that all Class Members were properly paid minimum and overtime compensation for all hours worked and that Class Members were instructed not to work off-the-clock. In total, Class Counsel estimated Defendants’ exposure for this claim at \$169,120.

34. Plaintiff further alleged that Defendants required the Class Members to regularly pay out-of-pocket to launder their work uniforms. California law requires “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...” (See *Cal. Labor Code* § 2802(a).) Class Counsel estimated Defendants’ exposure for this claim at \$84,660 or \$10 per month for each member of the Class during the Class Period. Defendants deny they owe any unpaid reimbursements to Class Members.

35. Plaintiff also alleged that Defendants failed to calculate certain non-discretionary compensation into the regular rate of pay for purposes of paying overtime wages and redeemed sick pay. Based on the review of the Class Members' time and payroll data, BCG estimated Defendants underpaid the Class Members approximately \$1,199. Defendants vigorously denied liability and asserted that employees were paid all wages owing and that all incentive compensation was either properly calculated into the regular rate of pay or properly excluded as discretionary compensation.

36. Plaintiff also alleged that Defendants failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges that as a result of Defendants' failure to provide meal and rest periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Further, Defendants argued that even if it failed to furnish accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. Class Counsel estimated that Defendants' exposure for this claim at \$620,400.

37. Plaintiff also alleged that the Defendants' labor code violations resulted in derivative liability for waiting time penalties. Although these *penalties* represented one of Defendants' largest dollar amount of exposure, this is Plaintiff's most uncertain claim. Specifically, Defendants argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Class Counsel's estimated Defendants' exposure for this claim at \$1,148,831.

38. Class Counsel's damage models also estimated Defendants' exposure for PAGA Settlement. At the time of mediation, Plaintiff estimated Defendants' PAGA exposure to be \$2,935,400 if successful at trial.

39. Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$37,500 which is 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Settlement. Seventy-Five percent (75%) of the PAGA Settlement (\$7,500.00) will be paid to the LWDA (“LWDA PAGA Settlement”) with the remaining twenty-five percent (25%) of the PAGA Settlement (\$2,500.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA Settlement approved by courts and should be approved.

40. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%. Moreover, in *Carrington*, the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be less than Plaintiff's calculation, even had Plaintiff prevailed on the PAGA claim. Here, multiplying the number of pay periods (approximately 6,410) by \$5 results in a total potential liability of \$32,050.

B. Litigation Risks

41. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor

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

13 42. Finally, continuing to litigate this action would require continued and extensive resources
14 coupled with significant Court time to proceed through trial and post-trial motions; which can often
15 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
16 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
17 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
18 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
19 the risk of an appeal and subsequent reversal is real.

20 43. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$750,000.00 that
21 is approximately 18.15% of Defendants’ *class-wide* liability exposure for damages and statutory
22 penalties, and approximately 10.61% of Defendants’ maximum class wide liability exposure for
23 damages and penalties, including PAGA Penalties. Given the amount of the settlement here, as
24 compared to potential value of the claims, offset by the various inherent risks to continued litigation,
25 the settlement is fair and reasonable.

26
27 ///

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

2 44. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
3 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
4 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
5 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
6 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
7 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
8 and scope of the Released Claims. Agreement at § I(S). The Parties negotiated this method to ensure
9 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
10 administration of the Settlement.

11 45. Accordingly, both the method of disseminating the Class Notice and content of the Class
12 Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d
13 460,485 (the class notice must “fairly apprise the class members of the terms of the proposed
14 compromise and of the options open to dissenting class members.”).

15 **C. The Court Should Preliminarily Approve the Enhancement Award**

16 46. The Settlement provides for a Class Representative Service Award of \$10,000 for
17 Plaintiff. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the
18 action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class
19 Counsel on the status of her case and the strategies for prosecuting the claims, and reviewing the
20 proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class.

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

25 **D. The Court Should Preliminary Approve the Negotiated Class Counsel Award**

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

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

7 **E. The Court Should Provisionally Certify the Settlement Class**

8 50. For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional
9 certification of the Class is appropriate.

10 51. Because all Class Members are Defendants' current and former employees, the class is
11 readily ascertainable from Defendants' regular business records, i.e., payroll records.

12 52. The statutes relating to each of Plaintiff's claims apply with equal force and effect to the
13 entire Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants'
14 liability can be determined by facts common to all members of the class. The wage and hour issues are
15 both numerous and substantial, and a class action is the most advantageous method of dealing with the
16 claims of the Settlement Class.

17 53. Plaintiff's wage and hour claims are typical of the proposed Settlement Class because
18 they arise from the same factual basis and are based on the same legal theories applicable to the other
19 Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the
20 Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to which
21 the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated
22 her ability to advocate for the interests of the Class Member by initiating this litigation, undertaking
23 extensive class discovery, and evaluating the proposed settlement to assure that it is fair.

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

F. Class Counsel's Experience

55. Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class.

56. Plaintiff, the Settlement Class Members and the Aggrieved Employees are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions, PAGA Actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Sydney Castillo-Johnson, Esq. (Associate Attorney), Monnett De La Torre, Esq. (Associate Attorney), Tesla Stone (Paralegal), Maria Watters (Paralegal), and Jennifer Hemming (Administrative Assistant), Sara Christensen (Legal Assistant), and Madelyn Uchiyama (Legal Assistant).

57. I am qualified to represent the Plaintiff, the State of California and the Aggrieved Employees. 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 Aggrieved Employees throughout this action.

58. 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.

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

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

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

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

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

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

25 f. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota,* Los Angeles Superior
26 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed
27
28

1 the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement
2 for, *inter alia*, missed meal and rest periods.)

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

7 h. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.
8 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL
9 Law Firm as Class Counsel and granted final approval of wage and hour class action for,
10 *inter alia*, off-the-clock work.)

11 i. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
12 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class
13 Counsel and granted final approval of wage and hour class action for off-the-clock
14 work.)

15 j. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case
16 No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm
17 as class counsel and granted final approval of wage and hour class action for meal period
18 violations.)

19 k. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No.
20 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of
21 PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC
22 acted as lead counsel.)

23 l. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-
24 2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement
25 for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead
26 counsel.)

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

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

9 o. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-
10 00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as
11 class counsel and granted final approval of wage and hour class action for unpaid
12 overtime.)

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

18 q. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No.
19 CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC,
20 as Class Counsel and granted final approval for a wage and hour class action settlement
21 for *inter alia*, missed meal and rest periods and independent contractor
22 misclassification.)

23 r. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-
24 00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm,
25 APC, as Class Counsel and granted final approval for a wage and hour wage class action
26 settlement involving misclassified house cleaners.)
27
28

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);

EXHIBIT 1

JCL LAW FIRM, APC

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ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN LUIS OBISPO

ELISA ALVAREZ, an individual, on behalf
of herself and on behalf of all persons
similarly situated,

PLAINTIFF,

vs.

SLO ARCHES, INC., a California
Corporation; IVERNIA, INCORPORATED,
a California Corporation; GOLDEN
SENECA, INC., a California Corporation;
and DOES 1 through 50, Inclusive;

DEFENDANTS.

Case No. 21CV-0533

[Action Filed: September 16, 2021]

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

Judge: Honorable Rita Federman
Dept.: 2

This Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims is entered into by and between plaintiff ELISA ALVAREZ (hereinafter “Plaintiff”), individually and on behalf of the putative class and the State of California as a private attorney general, and defendants SLO ARCHES, INC., IVERNIA, INCORPORATED and GOLDEN SENECA, INC. (hereinafter, collectively, “Defendants”):

I. DEFINITIONS

- A. “Action” shall mean the putative class action lawsuit designated *Alvarez v. SLO Arches, Inc., et al.*, San Luis Obispo County Superior Court, Case No. 21CV-0533, filed September 16, 2021 (hereinafter “the Action”).
- B. “Aggrieved Employees” shall mean all non-exempt employees who are or previously were employed by Defendants in California during the period of September 16, 2020 to October 17, 2022.
- C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims.
- D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and Shani Zakay, Esq. of Zakay Law Group, APLC.
- E. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Actions, consisting of attorneys’ fees currently not to exceed one-third of the Gross Settlement Amount currently estimated to be \$250,000.00 out of \$750,000.00 plus costs and expenses in an amount not to exceed \$20,000. Class Counsel’s award for attorneys’ fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC).
- F. “Class Data” means information regarding Class Members that Defendants will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member’s full name; last known address; Social Security Number; start dates and end dates of employment.

- 1 G. "Class Members" or the "Class" means all non-exempt employees who are or
2 previously were employed by Defendants and performed work in California during
3 the period of September 16, 2017 to October 17, 2022.
- 4 H. "Class Period" means the period between September 16, 2017 to October 17, 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 her Individual Settlement Payment
7 and her pro-rata share of the PAGA Settlement, in recognition of her efforts and risks
8 in assisting with the prosecution of the Actions and in exchange for executing a
9 General Release of Defendants.
- 10 J. "Class Representative" shall mean plaintiff ELISA ALVAREZ.
- 11 K. "Court" means the Superior Court for the State of California, County of San Luis
12 Obispo currently presiding over the Action.
- 13 L. "Defendants" shall mean SLO Arches, Inc., Ivernia, Incorporated and Golden Seneca,
14 Inc.
- 15 M. "Defendants' Counsel" shall mean Efthalia S. Rofos, Esq. of Lewis Brisbois Bisgaard
16 & Smith LLP.
- 17 N. "Effective Date" means the latest of the following dates: (i) sixty-one (61) calendar
18 days following the date the Court enters an order granting Final Approval of the
19 Settlement, assuming no appeal, objection, or request to intervene is filed, or (ii) if a
20 timely appeal, objection, or request to intervene is filed, the date of final resolution of
21 that appeal, objection, or intervening action (including any requests for rehearing
22 and/or petitions for writs of certiorari) resulting in final judicial approval of the
23 Settlement.
- 24 O. "Funding Date" shall mean ten (10) calendar days after the Effective Date and is the
25 date Defendants transfer the Gross Settlement Amount into the QSF in accord with
26 the terms of this Agreement.
- 27 P. "Gross Settlement Amount" means Seven Hundred Fifty Thousand Dollars
28 (\$750,000.00) that Defendants must pay into the QSF in connection with this

Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs and *exclusive* of the employer's share of payroll tax, if any, triggered by any payment under this Settlement.

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

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

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

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

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

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

W. "PAGA Period" means the period between September 16, 2020 to October 17, 2022.

X. "PAGA Settlement" shall mean Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) to be allocated from the Gross Settlement Amount, with 25% of the payment going to the Aggrieved Employees and 75% of the payment going to the Labor and Workforce Development Agency ("LWDA"). The amount of the PAGA Settlement Payment is subject to Court approval pursuant to California Labor Code

1 section 2699(l). Any reallocation of the Gross Settlement Amount to increase the
2 PAGA Settlement Payment will not constitute grounds by either party to void this
3 Agreement, so long as the Gross Settlement Amount remains the same.

4 Y. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
5 Plaintiff or Defendants, individually.

6 Z. "Class Payment Ratio" means the respective Workweeks for each Class Member
7 divided by the sum total Workweeks for all Class Members.

8 AA. "Plaintiff" shall mean ELISA ALVAREZ.

9 BB. "QSF" means the Qualified Settlement Fund established, designated and maintained
10 by the Settlement Administrator to fund the Gross Settlement Amount.

11 CC. "Released Class Claims" means all class claims alleged in the operative First
12 Amended Complaint which occurred during the Class Period, and expressly
13 excluding all other claims, including claims for vested benefits, wrongful termination,
14 unemployment insurance, disability, social security, workers' compensation, and
15 class claims outside of the Class Period.

16 DD. "Released PAGA Claims" means all PAGA claims alleged in the operative First
17 Amended Complaint and Plaintiff's PAGA notice to the LWDA which occurred
18 during the PAGA Period, and expressly excluding all other claims, including claims
19 for vested benefits, wrongful termination, unemployment insurance, disability, social
20 security, workers' compensation, and PAGA claims outside of the PAGA Period.

21 EE. "Released Parties" shall mean Defendants and any and all of its respective owners,
22 officers, directors, partners, shareholders, employees, agents, affiliates, subsidiaries,
23 successors, assigns, executors, trustees, fiduciaries, administrators, beneficiaries,
24 business managers, contractors, insurers, reinsurers, attorneys, employees, past and
25 present and/or legal representatives.

26 FF. "Response Deadline" means the date forty-five (45) days after the Settlement
27 Administrator mails Notice Packets to Class Members and the last date on which
28 Class Members may submit requests for exclusion or objections to the Settlement.

- 1 GG. "Settlement" means the disposition of the Actions pursuant to this Agreement.
- 2 HH. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
3 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
4 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
5 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
6 of the Gross Settlement Amount is deposited for the purpose of resolving the claims
7 of Settlement Class Members. The Settlement Administrator shall maintain the funds
8 until distribution in an account(s) segregated from the assets of Defendants and any
9 person related to Defendants. *All accrued interest shall be paid and distributed to*
10 *the Settlement Class Members as part of their respective Individual Settlement*
11 *Payment.*
- 12 II. "Settlement Class Members" or "Settlement Class" means all Class Members who
13 have not submitted a timely and valid request for exclusion as provided in this
14 Agreement.
- 15 JJ. "Workweeks", for purposes of calculating the distribution of the Net Settlement
16 Amount, means the number of weeks of employment during the Class Period that
17 each Class Member was employed by Defendants in California, excluding weeks
18 during which the Class Member did not perform any work for Defendants.

19 **II. RECITALS**

- 20 A. On September 16, 2021, Plaintiff filed the Class Action lawsuit for:
- 21 1. Unfair Competition in Violation of Bus. and Prof. Code §§ 17200, *et seq*;
- 22 2. Failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, *et seq*.
- 23 3. Failure to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197
24 & 1197.1;
- 25 4. Failure to provide required meal periods in violation of Cal. Lab. Code §§
26 226.7 and 512 and the applicable IWC wage order;
- 27 5. Failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7
28 and 512 and the applicable IWC wage order;

6. Failure to reimburse Employees for required expenses in violation of Cal. Lab. Code § 2802;

7. Failure to provide accurate itemized wage statements in violation of Cal. Lab. Code § 226;

8. Failure to pay wages when due in violation of Cal. Lab. Code §§ 201, 202 and 203.

B. On December 16, 2022, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants.

C. Prior to the filing of the Preliminary Approval Motion, Plaintiff filed the operative First Amended Complaint to include an additional cause of action for Violations of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*].

D. The Class Representative believes she 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.

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

F. 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 Defendants pursuant to informal requests for information to prepare for mediation. Defendants produced for the purpose of settlement negotiations certain

1 employment data, including payroll and timekeeping records, concerning the
2 Settlement Class, which Class Counsel reviewed and analyzed. Based on their own
3 independent investigation and evaluation, Class Counsel are of the opinion that the
4 Settlement with Defendants is fair, reasonable and adequate, and is in the best interest
5 of the Settlement Class in light of all known facts and circumstances, including the
6 risks of significant delay, defenses asserted by Defendants, uncertainties regarding
7 class certification, and numerous potential appellate issues. Although it denies any
8 liability, Defendants are agreeing to this Settlement solely to avoid the
9 inconveniences and cost of further litigation. The Parties and their counsel have
10 agreed to settle the claims on the terms set forth in this Agreement.

11 G. On October 17, 2022, the Parties participated in mediation presided over by Steven
12 Rottman, Esq., a mediator of wage and hour class actions. The mediation concluded
13 with a settlement, which was subsequently memorialized in the form of a
14 Memorandum of Understanding (“MOU”).

15 H. This Agreement replaces and supersedes the MOU and any other agreements,
16 understandings, or representations between the Parties. This Agreement represents a
17 compromise and settlement of highly disputed claims. Nothing in this Agreement is
18 intended or will be construed as an admission by Defendants that the claims in the
19 Actions of Plaintiff or the Class Members have merit or that Defendants bear any
20 liability to Plaintiff or the Class on those claims or any other claims, or as an
21 admission by Plaintiff that Defendants’ defenses in the Actions have merit.

22 I. The Parties believe that the Settlement is fair, reasonable and adequate. The
23 Settlement was arrived at through arm’s-length negotiations, taking into account all
24 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
25 attendant to continuing the Action through trial and any appeal. Accordingly, the
26 Parties desire to fully, finally, and forever settle, compromise and discharge all
27 disputes and claims arising from or relating to the Action.
28

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

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

6 **III. TERMS OF AGREEMENT**

7 A. Settlement Consideration and Settlement Payments by Defendants.

8 1. Settlement Consideration. In full and complete settlement of the Actions, and
9 in exchange for the releases set forth below, Defendants and the Released
10 Parties will pay the sum of the Individual Settlement Payment, the Class
11 Representative Service Award, the Class Counsel Award, PAGA Settlement,
12 and the Settlement Administration Costs, as specified in this Agreement, equal
13 to the Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars
14 (\$750,000.00). The Parties agree that this is a non-reversionary Settlement and
15 that no portion of the Gross Settlement Amount shall revert to Defendants.
16 Other than the Defendants' share of employer payroll taxes, and as provided
17 for in ¶ III.A.2. below, Defendants shall not be required to pay more than the
18 Gross Settlement Amount.

19 2. Class Size. At the time of mediation, Defendants estimated that the Settlement
20 Class was comprised of 711 individuals who collectively worked
21 approximately 32,348 Workweeks ("Projected Workweeks") during the Class
22 Period. In regard hereto, Defendants will provide a declaration under penalty
23 of perjury before the deadline for the filing of the motion for preliminary
24 approval of the settlement, confirming the number of Class Members and
25 workweeks they worked during the applicable Class Period. If the workweek
26 number increases by more than 10% of the estimate stated herein, then
27 Defendants, at its option, can either choose to: (1) cut off the end date for the
28 class release as of the date on which the number of work weeks reaches 32,348

1 or (2) increase the Settlement Amount proportionally for the number of
2 workweeks over 110% of 32,348 (35,583).

3 3. Settlement Payment. Defendants and the Released Parties, and each of them,
4 are jointly and severally liable for payment of the Gross Settlement Amount.
5 Defendants shall pay the Gross Settlement Amount to the Settlement
6 Administrator on the Funding Date.

7 4. Defendants' Share of Payroll Taxes. Defendants' share of employer side
8 payroll taxes is in addition to the Gross Settlement Amount and shall be paid
9 together with the Gross Settlement Amount.

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

17 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth
18 in this Agreement, Plaintiff waives, releases, acquits and forever discharges the
19 Released Parties from any and all claims, whether known or unknown, which exist or
20 may exist on her behalf as of the date of this Agreement, including but not limited to
21 any and all tort claims, contract claims, wage claims, wrongful termination claims,
22 disability claims, benefit claims, public policy claims, retaliation claims, statutory
23 claims, personal injury claims, emotional distress claims, invasion of privacy claims,
24 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising
25 under any federal, state or other governmental statute, law, regulation or ordinance,
26 including, but not limited to claims for violation of the Fair Labor Standards Act, the
27 California Labor Code, the Wage Orders of California's Industrial Welfare
28 Commission, other state wage and hour laws, the Americans with Disabilities Act, the

1 Age Discrimination in Employment Act (ADEA), the Employee Retirement Income
2 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment
3 and Housing Act, the California Family Rights Act, the Family Medical Leave Act,
4 California's Whistleblower Protection Act, California Business & Professions Code
5 Section 17200 et seq., and any and all claims arising under any federal, state or other
6 governmental statute, law, regulation or ordinance. Plaintiff also waives and
7 relinquishes any and all claims, rights or benefits that she may have under California
8 Civil Code § 1542, which provides as follows:

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

15 Thus, notwithstanding the provisions of section 1542, and to implement a full and
16 complete release and discharge of the Released Parties, Plaintiff expressly
17 acknowledges this Settlement Agreement is intended to include in its effect, without
18 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
19 the time of signing this Settlement Agreement, and that this Settlement Agreement
20 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
21 has read this Settlement Agreement, including this waiver of California Civil Code
22 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
23 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically
24 about the waiver of section 1542, and that Plaintiff understands this Settlement
25 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
26 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
27 discover facts different from or in addition to those Plaintiff now knows or believes to
28 be true regarding the matters released or described in this Settlement Agreement, and

1 even so Plaintiff agrees that the releases and agreements contained in this Settlement
2 Agreement shall remain effective in all respects notwithstanding any later discovery of
3 any different or additional facts. Plaintiff expressly assumes any and all risk of any
4 mistake in connection with the true facts involved in the matters, disputes, or
5 controversies released or described in this Settlement Agreement or with regard to any
6 facts now unknown to Plaintiff relating thereto.

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

- 9 1. The Court enters an order granting preliminary approval of the Settlement;
- 10 2. The Court enters an order granting final approval of the Settlement and a Final
11 Judgment;
- 12 3. If an objector appears at the final approval hearing, the time for appeal of the
13 Final Judgment and Order Granting Final Approval of Class Action
14 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
15 any appeal from the Judgment and Order Granting Final Approval of Class
16 Action Settlement; and
- 17 4. Defendants fully fund the Gross Settlement Amount.

18 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
19 not preliminarily or finally approved by the Court, fails to become effective, or is
20 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
21 Defendants from obtaining a complete resolution of the Released Claims, or if
22 Defendants fail to fully fund the Gross Settlement Amount:

- 23 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
24 and shall not be admissible in any judicial, administrative or arbitral
25 proceeding for any purpose or with respect to any issue, substantive or
26 procedural;
- 27 2. The conditional class certification (obtained for any purpose) shall be void *ab*
28 *initio* and of no force or effect, and shall not be admissible in any judicial,

1 administrative or arbitral proceeding for any purpose or with respect to any
2 issue, substantive or procedural; and

3 3. None of the Parties to this Settlement will be deemed to have waived any
4 claims, objections, defenses or arguments in the Actions, including with
5 respect to the issue of class certification.

6 4. If Defendants fail to fully fund the Gross Settlement Amount, Defendants
7 shall bear the sole responsibility for any cost to issue or reissue any curative
8 notice to the Settlement Class Members and all Settlement Administration
9 Costs incurred to the date of nullification.

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

18 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
19 effect of the payments called for, and Class Members and/or Aggrieved Employees are
20 not relying on any statement or representation by the Parties in this regard. Class
21 Members and/or Aggrieved Employees understand and agree that they will be
22 responsible for the payment of any taxes and penalties assessed on the Individual
23 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
24 Settlement described and will be solely responsible for any penalties or other
25 obligations resulting from their personal tax reporting of Individual Settlement
26 Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.

27 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
28 the "acknowledging party" and each Party to this Agreement other than the

acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

J. Preliminary Approval Motion. At the earliest practicable time, but no later than sixteen (16) court days prior to the hearing on the Motion for Order Granting Preliminary Approval, Plaintiff shall file with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which shall include this Settlement Agreement. Plaintiff will provide Defendants with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendants an opportunity to propose changes or additions to the Motion.

K. Settlement Administrator. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representative, Class Counsel, LWDA and Class Members; printing and mailing the Notice Packets to the Class Members as directed by the Court; receiving and reporting the objections and requests for exclusion; calculating, deducting and

1 remitting all legally required taxes from Individual Settlement Payments and
2 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
3 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
4 Settlement; processing and mailing tax payments to the appropriate state and federal
5 taxing authorities; providing declaration(s) as necessary in support of preliminary
6 and/or final approval of this Settlement; and other tasks as the Parties mutually agree
7 or the Court orders the Settlement Administrator to perform. The Settlement
8 Administrator shall keep the Parties timely apprised of the performance of all
9 Settlement Administrator responsibilities by among other things, sending a weekly
10 status report to the Parties' counsel stating the date of the mailing, the of number of
11 Elections Not to Participate in Settlement it receives (including the numbers of valid
12 and deficient), and number of objections received.

13 L. Notice Procedure.

14 1. Class Data. No later than ten (10) business days after the Preliminary
15 Approval Date, Defendants shall provide the Settlement Administrator with
16 the Class Data for purposes of preparing and mailing Notice Packets to the
17 Class Members.

18 2. Notice Packets.

19 a) The Notice Packet shall contain the Notice of Class Action Settlement
20 in a form substantially similar to the form attached as Exhibit A. The
21 Notice of Class Action Settlement shall inform Class Members and
22 Aggrieved Employees that they need not do anything in order to
23 receive an Individual Settlement Payment and/or Aggrieved
24 Employees' individual shares of the PAGA Settlement and to keep the
25 Settlement Administrator apprised of their current mailing address, to
26 which the Individual Settlement Payments and/or Aggrieved
27 Employees' individual shares of the PAGA Settlement will be mailed
28 following the Funding Date. The Notice of Class Action Settlement

1 shall set forth the release to be given by all members of the Class who
2 do not request to be excluded from the Settlement Class and/or
3 Aggrieved Employees' in exchange for an Individual Settlement
4 Payment and/or Aggrieved Employees' individual shares of the PAGA
5 Settlement, the number of Workweeks worked by each Class Member
6 during the Class Period and PAGA Period, if any, and the estimated
7 amount of their Individual Settlement Payment if they do not request
8 to be excluded from the Settlement and each Aggrieved Employee's
9 share of the PAGA Settlement, if any. The Settlement Administrator
10 shall use the Class Data to determine Class Members' Workweeks and
11 PAGA Workweeks. The Notice will also advise the Aggrieved
12 Employees that they will release the Released PAGA Claims and will
13 receive their share of the PAGA Settlement regardless of whether they
14 request to be excluded from the Settlement.

15 b) The Notice Packet's mailing envelope shall include the following
16 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
17 ENTITLED TO PARTICIPATE IN A CLASS ACTION
18 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
19 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
20 NOTICE."

21 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
22 Settlement Administrator will perform a search based on the National Change
23 of Address Database to update and correct any known or identifiable address
24 changes. No later than fourteen (14) calendar days after receiving the Class
25 Data from Defendants, the Settlement Administrator shall mail of the Notice
26 Packet to all Class Members via regular First-Class U.S. Mail. The Settlement
27 Administrator shall exercise its best judgment to determine the current mailing
28 address for each Class Member. The address identified by the Settlement

1 Administrator as the current mailing address shall be presumed to be the best
2 mailing address for each Class Member.

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

19 5. Disputes Regarding Individual Settlement Payments. Class Members will
20 have the opportunity, should they disagree with Defendants' records regarding
21 the start and end dates of employment to provide documentation and/or an
22 explanation to show contrary dates. If there is a dispute, the Settlement
23 Administrator will consult with the Parties to determine whether an
24 adjustment is warranted. The Settlement Administrator shall determine the
25 eligibility for, and the amounts of, any Individual Settlement Payments under
26 the terms of this Agreement. The Settlement Administrator's determination
27 of the eligibility for and amount of any Individual Settlement Payment shall
28 be binding upon the Class Member and the Parties.

- 1 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
2 by the Settlement Administrator concerning the administration of the
3 Settlement will be resolved by the Court under the laws of the State of
4 California. Before any such involvement of the Court, counsel for the Parties
5 will confer in good faith to resolve the disputes without the necessity of
6 involving the Court.
- 7 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
8 Packet shall state that Class Members who wish to exclude themselves from
9 the Settlement must submit a written request for exclusion by the Response
10 Deadline. The written request for exclusion must state that the Class Member
11 wishes to exclude himself or herself from the Settlement and (1) must contain
12 the name, address, and the last four digits of the Social Security number of the
13 person requesting exclusion; (2) must be signed by the Class Member; (3)
14 must be postmarked or fax stamped by the Response Deadline and returned to
15 the Settlement Administrator at the specified address or fax telephone number;
16 and (4) contain a typewritten or handwritten notice stating in substance: “I
17 wish to opt out of the settlement of the class action lawsuit entitled *Alvarez v.*
18 *SLO Arches, Inc., et al.*, current pending in San Luis Obispo County Superior
19 Court, Case No. 21CV-0533. I understand that by requesting to be excluded
20 from the settlement, I will receive no money from the Settlement described in
21 this Notice.” The request for exclusion will not be valid if it is not timely
22 submitted, if it is not signed by the Class Member, or if it does not contain the
23 name and address and last four digits of the Social Security number of the
24 Class Member. The date of the postmark on the mailing envelope or fax stamp
25 on the request for exclusion shall be the exclusive means used to determine
26 whether the request for exclusion was timely submitted. Any Class Member
27 who requests to be excluded from the Settlement Class will not be entitled to
28 an Individual Settlement Payment and will not be otherwise bound by the

1 terms of the Settlement or have any right to object, appeal or comment
2 thereon. However, any Class Member that submits a timely request for
3 exclusion that is also a member of the Aggrieved Employees will still receive
4 his/her pro rata share of the PAGA Settlement, as specified below, and in
5 consideration, will be bound by the Release by the Aggrieved Employees as
6 set forth herein. Settlement Class Members who fail to submit a valid and
7 timely written request for exclusion on or before the Response Deadline shall
8 be bound by all terms of the Settlement and any final judgment entered in this
9 Action if the Settlement is approved by the Court. No later than fourteen (14)
10 calendar days after the Response Deadline, the Settlement Administrator shall
11 provide counsel for the Parties with a final list of the Class Members who have
12 timely submitted written requests for exclusion. At no time shall any of the
13 Parties or their counsel seek to solicit or otherwise encourage members of the
14 Class to submit requests for exclusion from the Settlement.

- 15 8. Objections. The Notice of Class Action Settlement contained in the Notice
16 Packet shall state that Class Members who wish to object to the Settlement
17 may submit to the Settlement Administrator a written statement of objection
18 (“Notice of Objection”) by the Response Deadline. The postmark date of
19 mailing shall be deemed the exclusive means for determining that a Notice of
20 Objection was served timely. The written Notice of Objection must be signed
21 by the Settlement Class Member and state: (1) the case name and number; (2)
22 the name of the Settlement Class Member; (3) the address of the Settlement
23 Class Member; (4) the last four digits of the Settlement Class Member’s Social
24 Security number; (4) the basis for the objection; and (5) if the Settlement Class
25 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
26 Class Members who fail to make objections in writing in the manner specified
27 above may still make their objections orally at the Final Approval/Settlement
28 Fairness Hearing with the Court’s permission. Settlement Class Members will

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

8 M. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
9 pay the Gross Settlement Amount on or before the Funding Date, plus any employer's
10 share of payroll taxes as mandated by law within the time specified herein.

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

25 2. Calculation of Individual Payments to the Aggrieved Employees. Using the
26 Class Data, the Settlement Administrator shall add up the total number of
27 PAGA pay periods for all Aggrieved Employees during the PAGA Period.
28 The respective PAGA pay periods for each Aggrieved Employee will be

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 and treated as follows: 15% as wages
8 (“Wage Portion”); 85% as penalties and interest (“Non-Wage Portion”). The
9 Wage Portion is subject to wage withholdings and shall be reported on IRS
10 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings
11 and shall be reported on IRS Form 1099 issued by the Settlement
12 Administrator.

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

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

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

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

- 1 9. Class Representative Service Award. In addition to the Individual Settlement
2 Payment and her individual share of the PAGA Settlement to be paid to
3 Plaintiff, Plaintiff will apply to the Court for an award of not more than
4 \$10,000, as the Class Representative Service Award. Defendants do not
5 presently intend to oppose a Class Representative Service Award of not more
6 than \$10,000 for Plaintiff. The Settlement Administrator shall pay the Class
7 Representative Service Award, either in the amount stated herein if approved
8 by the Court or some other amount as approved by the Court, to Plaintiff from
9 the Gross Settlement Amount no later than fifteen (15) calendar days after the
10 Funding Date. Any portion of the requested Class Representative Service
11 Award that are not awarded to the Class Representative shall be part of the
12 Net Settlement Amount and shall be distributed to Settlement Class Members
13 as provided in this Agreement. The Settlement Administrator shall issue an
14 IRS Form 1099 — MISC to Plaintiff for her Class Representative Service
15 Award. Plaintiff shall be solely and legally responsible to pay any and all
16 applicable taxes on her Class Representative Service Award and shall hold
17 harmless the Released Parties from any claim or liability for taxes, penalties,
18 or interest arising as a result of the Class Representative Service Award. The
19 Class Representative Service Award shall be in addition to Plaintiff's
20 Individual Settlement Payment as a Settlement Class Member. Approval of
21 this Settlement shall not be conditioned on Court approval of the requested
22 amount of the Class Representative Service Award. In the event that the Court
23 reduces or does not approve the requested Class Representative Service
24 Award, Plaintiff shall not have the right to revoke the Settlement, and it will
25 remain binding.
- 26 10. Class Counsel Award. Defendants understand a motion by Class Counsel for
27 attorneys' fees not to exceed one-third of the Gross Settlement Amount
28 currently estimated to be Two Hundred Fifty Thousand Dollars (\$250,000.00)

1 plus costs and expenses supported by declaration not to exceed Twenty
2 Thousand Dollars (\$20,000.00), from the Gross Settlement Amount will be
3 filed. Any portion of the requested Class Counsel Award that is not awarded
4 to Class Counsel shall be part of the Net Settlement Amount and shall be
5 distributed to Settlement Class Members as provided in this Agreement. The
6 Settlement Administrator shall allocate and pay the Class Counsel Award to
7 Class Counsel from the Gross Settlement Amount no later than fifteen (15)
8 calendar days after the Funding Date. Class Counsel shall be solely and
9 legally responsible to pay all applicable taxes on the payment made pursuant
10 to this paragraph. The Settlement Administrator shall issue an IRS Form 1099
11 — MISC to Class Counsel for the payments made pursuant to this paragraph.
12 In the event that the Court reduces or does not approve the requested Class
13 Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke
14 the Settlement, or to appeal such order, and the Settlement will remain
15 binding.

- 16 11. PAGA Settlement. Thirty-Seven Thousand Five Hundred Dollars
17 (\$37,500.00) shall be allocated from the Gross Settlement Amount for
18 settlement of claims for civil penalties under the Private Attorneys General
19 Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay
20 seventy-five percent (75%) of the PAGA Settlement (\$28,125.00) to the
21 California Labor and Workforce Development Agency no later than fifteen
22 (15) calendar days after the Funding Date (hereinafter “LWDA Payment”).
23 Twenty-five percent (25%) of the PAGA Settlement (\$9,375.00) will be
24 distributed to the Aggrieved Employees as described in this Agreement
25 (hereinafter “Aggrieved Employee Payment”). For purposes of distributing
26 the PAGA Settlement to the Aggrieved Employees, each Aggrieved
27 Employee shall receive their pro-rata share of the Aggrieved Employee
28 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 \$16,000. The Settlement Administrator shall be paid the Settlement Administration Costs no later than fifteen (15) calendar days after the Funding Date.

N. 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 Defendants with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendants 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.

- 1 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
2 an opportunity for Counsel for Defendants to review the Motions for Preliminary and
3 Final Approval, including the Order Granting Final Approval of Class Action
4 Settlement, and Judgment at least three (3) days before filing with the Court. The
5 Parties and their counsel will cooperate with each other and use their best efforts to
6 affect the Court's approval of the Motions for Preliminary and Final Approval of the
7 Settlement, and entry of Judgment.
- 8 O. Cooperation. The Parties and their counsel will cooperate with each other and use
9 their best efforts to implement the Settlement.
- 10 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
11 except such proceedings necessary to implement and complete the Settlement, pending
12 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
- 13 Q. Amendment or Modification. This Agreement may be amended or modified only by
14 a written instrument signed by counsel for all Parties or their successors-in-interest.
- 15 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
16 Agreement among these Parties, and no oral or written representations, warranties or
17 inducements have been made to any Party concerning this Agreement or its Exhibit
18 other than the representations, warranties and covenants contained and memorialized
19 in this Agreement and its Exhibit.
- 20 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
21 represent they are expressly authorized by the Parties whom they represent to negotiate
22 this Agreement and to take all appropriate Action required or permitted to be taken by
23 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
24 documents required to effectuate the terms of this Agreement. The persons signing
25 this Agreement on behalf of Defendants represents and warrants that he/she is
26 authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and
27 warrants that she is authorized to sign this Agreement and that she has not assigned
28 any claim, or part of a claim, covered by this Settlement to a third-party.

- 1 T. No Public Comment: The Parties and their counsel agree that they will not issue any
2 press releases, initiate any contact with the press, respond to any press inquiry, or have
3 any communication with the press about the fact, amount or terms of the Settlement
4 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
5 of its terms for any marketing or promotional purposes. Nothing herein will restrict
6 Class Counsel from including publicly available information regarding this settlement
7 in future judicial submissions regarding Class Counsel's qualifications and experience.
8 Further, Class Counsel will not include, reference or use the Settlement Agreement for
9 any marketing or promotional purposes, either before or after the Motion for
10 Preliminary Approval is filed.
- 11 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
12 to the benefit of, the successors or assigns of the Parties, as previously defined.
- 13 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
14 shall be governed by and interpreted according to the laws of the State of California.
- 15 W. Counterparts. This Agreement may be executed in one or more counterparts. All
16 executed counterparts and each of them shall be deemed to be one and the same
17 instrument provided that counsel for the Parties to this Agreement shall exchange
18 among themselves copies or originals of the signed counterparts.
- 19 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
20 is a fair, adequate and reasonable settlement of this Action and have arrived at this
21 Settlement after extensive arms-length negotiations, taking into account all relevant
22 factors, present and potential.
- 23 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
24 respect to the interpretation, implementation and enforcement of the terms of this
25 Agreement and all orders and judgments entered in connection therewith, and the
26 Parties and their counsel submit to the jurisdiction of the Court for purposes of
27 interpreting, implementing and enforcing the settlement and all orders and judgments
28 entered in connection with this Agreement.

1 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
2 the Parties shall first seek court intervention to construe the provisions valid to the
3 fullest extent possible consistent with applicable precedents so as to define all
4 provisions of this Agreement valid and enforceable.

5 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
6 intend to pursue any claims against the Released Parties, including, but not limited to,
7 any and all claims relating to or arising from Plaintiff's employment with Defendants,
8 regardless of whether Class Counsel is currently aware of any facts or legal theories
9 upon which any claims or causes of action could be brought against Released Parties,
10 including those facts or legal theories alleged in the operative complaint in this Action.
11 The Parties further acknowledge, understand and agree that this representation is
12 essential to the Agreement and that this Agreement would not have been entered into
13 were it not for this representation.

14 BB. Stipulation to Class Certification. The Parties agree to stipulate to class certification
15 for purposes of this settlement only.

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

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

26
27 DATED: Mar 6, 2023

Elisa Alvarez
Elisa Alvarez (Mar 6, 2023 11:55 PST)

ELISA ALVAREZ

1 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

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3 DATED: 3/2/2023

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12 IT IS SO AGREED AS TO FORM BY COUNSEL:

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28

Keith Handley

SLO ARCHES, INC.
IVERNIA, INCORPORATED
GOLDEN SENECA, INC.

Keith Handley

Printed Name

O/O

Title

DATED: _____

JCL LAW FIRM, A.P.C.

By: _____

Attorneys for Plaintiff and the Settlement Class
Members

DATED: _____

ZAKAY LAW GROUP, APLC

By: _____

Attorneys for Plaintiff and the Settlement Class
Members

DATED: _____

THALIA S. ROFOS
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

Attorneys for Defendants

1 IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

2
3 DATED: _____

SLO ARCHES, INC.
IVERNIA, INCORPORATED
GOLDEN SENECA, INC.

6
7 _____
Printed Name

8 _____
9 Title

10
11 IT IS SO AGREED AS TO FORM BY COUNSEL:

12
13 DATED: March 6, 2023

JCL LAW FIRM, A.P.C.

14
15 By:  _____

16 Attorneys for Plaintiff and the Settlement Class
17 Members

18
19 DATED: March 6, 2023

ZAKAY LAW GROUP, APLC

20
21 By:  _____

22 Attorneys for Plaintiff and the Settlement Class
23 Members

24 DATED: March 8, 2023

THALIA S. ROFOS
LEWIS BRISBOIS BISGAARD & SMITH LLP

25
26 By:  _____

27 Attorneys for Defendants
28

EXHIBIT A

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

(Alvarez v. SLO Arches, et al., San Luis Obispo County Superior Court Case No. 21CV-0533)

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: \$ _____. 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 Defendants 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 . 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 Luis Obispo (the “Court”) has been reached between Plaintiff Elisa Alvarez (“Plaintiff”) and Defendants SLO Arches, Inc., Ivernia, Incorporated and Golden Seneca, Inc. (“Defendants”). 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 Defendants and performed work in California during the period of September 16, 2017 to May 28, 2021.

The “Class Period” is the period of time running from September 16, 2017 to May 28, 2021.

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 September 16, 2021, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of San Luis Obispo. Plaintiff asserted claims that Defendants: (1) Violated California Business and Professions Code § 17200 *et seq.*; (2) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (3) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (4) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (5) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (6) Failed to reimburse for required business expenses in violation of California Labor Code § 2802; (7) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (8) Failed to pay wages when due in violation of Cal. Lab. Code §§ 201, 202 and 203. On July 18, 2023, Plaintiff filed the operative First Amended Complaint to include a ninth cause of action for Violations of the Private Attorney General Act at Labor Code Section 2698, *et seq.*

Defendants deny and dispute all claims asserted in the Actions and maintain that they have complied fully with state and federal law. Specifically, Defendants contended (and continues to contend) that the Action could not properly be maintained as a class action; that Defendants properly paid members of the class all wages and overtime that was due; that Defendants provided members of the class

with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendants provided accurate, itemized wage statements to members of the class; that Defendants did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendants are not liable for any of the penalties claimed or that could be claimed in the Actions.

On October 17, 2022, the Parties participated in an all-day mediation with Steven Rottman, Esq., a mediator of wage and hour class actions. At the conclusion of the full-day mediation, the Parties reached an agreement for settlement.

The Court originally granted preliminary approval of the Settlement on July 28, 2023. On February 29, 2024, the Court denied final approval of the Settlement and ordered Plaintiff to seek preliminary approval of the Settlement again. The Court requested that Plaintiff explain certain terms of the settlement, including but not limited to, why the original Class Period of September 16, 2017 to October 17, 2022 was shortened to September 16, 2017 to May 28, 2021. In preparation for mediation, Defendants projected that the Class consisted of 711 individuals who collectively worked 32,348 Workweeks (“Projected Workweeks”) during the Class Period. In order to ensure that the value of the Settlement was maintained, the Parties negotiated as part of the Settlement, “If the workweek number increases by more than 10% of the estimate stated herein, then Defendants, at its option, can either choose to: (1) cut off the end date for the class release as of the date on which the number of workweeks reaches 32,348 or (2) increase the Settlement Amount proportionally for the number of workweeks over 110% of 32,348 (35,583).” Here, it was ultimately discovered that the number of Projected Workweeks that Defendants provided at mediation was more than 35,583, which meant that Defendants could choose to cut off the end date for the Class Period, or increase the Settlement Amount proportionally. Defendants elected to cut off the end date for the class release as of the date on which the number of workweeks reached 32,348, which meant that the Class Period would be September 16, 2017 to May 28, 2021. You can request a copy of the Settlement Agreement by following the instructions provided in Section 10 below, or by visiting the website provided herein. As a result of the above, you are receiving this Amended Class Notice because the Court requested that Plaintiff seek preliminary approval of the Settlement again. Please note that you did **not** receive the original Class Notice in error, as you were a member of the Class who worked for Defendants from September 16, 2017 to May 28, 2021.

On _____, the Court granted preliminary approval of the Settlement. 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, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of Seven Hundred Fifty Thousand Dollars (\$750,000) (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, Defendants 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 \$16,000 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 \$250,000.00) and a Class Counsel Litigation Expenses Payment of not more than \$20,000 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 Payment of up to Ten Thousand Dollars (\$10,000) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook.
- PAGA Payment. A payment of \$37,500.00 relating to Plaintiff’s claim under the Private Attorneys General Act (“PAGA”), \$28,125.00 of which will be paid to the State of California’s Labor and Workforce Development Agency (“LWDA”) and the remaining \$9,375.00 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 (“Participating Class Members”). The Settlement Share for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Participating Class Members that occurred during the Class Period and multiplying the result by each individual Participating 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 Defendants’ records, a member of the class worked at least one-day during any such workweek.
- 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 PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective PAGA Employee during the PAGA Period. “PAGA Employees” means all non-exempt employee who are or previously were employed by Defendants in California during the PAGA Period. The PAGA Period means the period between September 16, 2020 to May 28, 2021.

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. Fifteen percent (15%) 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. Eighty-five percent (85%) 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 PAGA Employees, and each PAGA Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants’ counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

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

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

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendants, Plaintiff and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged in the operative First Amended Complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period. The Released PAGA Claims shall be released as follows. As of the Settlement Effective Date and upon funding in full of the Gross Settlement Amount by Defendants, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the “PAGA Release”). “Released PAGA Claims” means all PAGA claims alleged in the operative First Amended Complaint and Plaintiff’s PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants 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?

Defendants' records reflect that you have 0.14 Workweeks worked during the Class Period (September 16, 2017 to May 28, 2021).

Based on this information, your estimated Settlement Share is \$.

Defendants' records reflect that you have 0.00 pay periods worked during the PAGA Period (September 16, 2020 to May 28, 2021).

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 _____.

6. How can I get a payment?

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

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

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 ILYM Group, Inc. P.O. Box 2031 Tustin, CA 92781. The request for exclusion must state in substance that the Class Member has read the Class Notice and wishes to opt out of the class action settlement. 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 *Alvarez v. SLO Arches, et al., San Luis Obispo County Superior Court Case No. 21CV-0533*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

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

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is ILYM Group, Inc. P.O. Box 2031 Tustin, CA 92781.

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

Counsel for Defendants:

Efthalia S. Rofos, Esq.
 O'Hagan Meyer
 4695 MacArthur Court Suite 900
 Newport Beach, CA 92660
 Tel.: (949) 849-5005
 E-Mail: trofos@ohaganmeyer.com

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

The Court will hold a Final Approval Hearing at _____ on _____, at the San Luis Obispo County Superior Court, Department 2, located at 1050 Monterey Street, San Luis Obispo, CA 93408 before Judge Craig van Rooyen. 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?
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You may call the Settlement Administrator at (888) 250-6810 or write to *Alvarez v. SLO Arches, et al., San Luis Obispo County Superior Court Case No. 21CV-0533*, Settlement Administrator, c/o ILYM Group, Inc. P.O. Box 2031 Tustin, CA 92781.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the website listed in this notice.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

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

EXHIBIT 2

EXHIBIT 3

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Alvarez v. SLO Arches

Monday, November 21, 2022

Requesting Attorneys Name:

Shani Zakay

E-Mail:

shani@zakaylaw.com

ILYM Contact:

Lisa Mullins

E-Mail:

Lisa@ilymgroup.com

Contact Number:

714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	711
Estimated Mail Returned as Undeliverable	20%
NCOA	Yes
Certified Spanish Translation	Yes
Case Duration (Year(s))	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	3	\$450.00
Programming of Class Database	Hourly	\$175.00	3	\$525.00

*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 \$975.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	7	\$840.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	3	\$210.00
Report Processing	Hourly	\$70.00	5	\$350.00
NCOA	Flat Rate	\$75.00	1	\$75.00
Toll Free Customer Service Representative	Flat Fee	\$150.00	1	\$150.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website, Includes Postage	Flat Fee	\$750.00	1	\$750.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$3,695.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$1.60	711	\$1,137.60
USPS First Class Postage	Per Piece	\$0.60	711	\$426.60
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	142	\$284.40
Storage, Photocopies, Deliveries	Flat Fee	\$241.10	1	\$241.10

Subtotal \$2,089.70

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	5	\$750.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	5	\$625.00
Check, Stub & Release - Print & Mail (1099)	Per Check	\$1.50	711	\$1,066.50
USPS First Class Postage	Per Piece	\$0.60	711	\$426.60
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$2.00	71	\$142.20
Preparation of Taxes	Hourly	\$120.00	14	\$1,680.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$6,190.30

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	5	\$500.00
Project Manager Final Reporting	Hourly	\$120.00	5	\$600.00
Process Unclaimed Funds to State Controller's Office	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	4	\$500.00

Subtotal \$2,350.00

TOTAL CASE ESTIMATE: \$15,300.00

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.