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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ISABEL RODRIGUEZ, and DANIEL TOVAR,
on behalf of themselves all employees similarly
situated,

Plaintiffs,

v.

ROY MILLER PAINTING, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2023-01314830-CU-OE-CXC

[Assigned for all purposes to Hon. Melissa R.
McCormick, Dept. CX104]

**JOINT STIPULATION OF CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: March 20, 2023

Trial: Not Set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class and PAGA Representative Action Settlement (“Joint Stipulation of
3 Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiffs ISABEL
4 RODRIGUEZ, and DANIEL TOVAR, individually, and on behalf of all others similarly situated,
5 (“Plaintiffs” or “Class Representatives”), and Defendant ROY MILLER PAINTING, INC. (“Defendant”).
6 Plaintiffs and Defendant are collectively referred to herein as “the Parties.”

7
8 THE PARTIES STIPULATE AND AGREE as follows:

9 **DEFINITIONS**

10 1. For purposes of this Settlement, “Complaint” refers to the operative complaint, which is
11 the First Amended Complaint.

12 2. For purposes of this Settlement, this matter, entitled *Rodriguez, et al. v. Roy Miller*
13 *Painting, Inc.*, Case No. 30-2023-01314830-CU-OE-CXC, is referred to herein as the “Action.”

14 3. For purposes of this Settlement, the “Class Period” is March 20, 2019 through May 1,
15 2023.

16 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All current
17 and former non-exempt employees of Defendant who worked in California at any time during the Class
18 Period. “Settlement Class Members” are those Class Members who do not submit a timely exclusion
19 request to the Settlement Administrator.

20 5. For purposes of this Settlement, “Class Counsel” means TUNYAN LAW, APC.

21 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a
22 Class Member worked for Defendant in California during the Class Period.

23 7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after
24 the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on
25 which Settlement Class Members may submit a request for exclusion or written objection to the
26 Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days
27 after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as
28 expressly described herein.

8. For purposes of the Settlement, “Defendant’s Counsel” means SHEPPARD, MULLIN, RICHTER & HAMPTON LLP.

9. For purposes of this Settlement, “PAGA Allocation” means the amount that the Parties have agreed to allocate to resolution of the claim for violation of the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that the PAGA Allocation will be \$15,000.00 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent (75%), or \$11,250.00, of the PAGA Allocation will be paid to the LWDA (“PAGA Penalty Payment”), and Twenty Five Percent (25%), or \$3,750.00, of the PAGA Allocation will be included in the Net Settlement Amount for PAGA Employees (“PAGA Settlement Payment”).

10. For purposes of this Settlement, “PAGA Period” means the period between March 20, 2022 through May 1, 2023.

11. For purposes of this Settlement, “PAGA Employee(s)” means all current and former non-exempt employees of Defendant who worked in California at any time during the PAGA Period. PAGA Employees cannot opt out of the settlement of the PAGA claim.

12. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods each PAGA Employee worked during the PAGA Period.

13. For purposes of this Settlement, “PAGA Representatives” means Plaintiffs.

14. For purposes of this Settlement, “Settlement Payments” means all of the payments to Settlement Class Members (the “Settlement Class Payments”) and all of the payments to the PAGA Employees (the “PAGA Settlement Payment”).

STIPULATED BACKGROUND

15. On March 20, 2023, Plaintiffs filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages (Lab. Code §§ 204, 510, 1194, 1194.2, 1197, 1998); (2) failure to provide meal periods (Lab. Code §§ 226.7, 512 and 1198 and Wage Order); (3) failure to provide rest periods (Lab. Code §§ 226.7 and 1198 and Wage Order); (3); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204 and 210); (6) failure to indemnify necessary business expenses (Lab. Code § 2802); and (7) Unfair Business Practices in violation of Bus. & Prof. Code

§ 17200 et seq. On May 25, 2023, Plaintiffs filed their First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). In the Complaint, Plaintiffs sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint through the date final judgment is entered.

16. For purposes of this Agreement only, the parties stipulate that Plaintiffs satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”) by submission of the notice to the LWDA and Defendant on March 20, 2023. Defendant expressly reserves the right to assert this as a defense should the Court decide to not approve this Settlement.

17. For purposes of this Agreement only, the Parties and their respective counsel stipulate and agree to certification of the Class. If, for any reason, the Settlement is not approved, the stipulation to certification will have no force or effect. The Parties agree that certification for purposes of the Settlement is in no way an admission that class certification is proper under the standard applied to contested certification motions and that this Agreement will not be submitted in this or any other proceeding as evidence that (i) the Class should be certified, or (ii) Defendant is liable to Plaintiff or any of the Class Members or PAGA Employees. Further, neither this Agreement nor the Court’s actions with regard to this Agreement will be submitted in any court or other tribunal regarding the propriety of class certification or collective treatment for purposes other than the settlement of the Action. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Defendant will not be deemed to have waived, limited, or affected in any way, any of its objections or defenses in the Action, including, but not limited to, its defenses in opposition to class certification.

18. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiffs’ claims, Defendant contends, among other things, that Plaintiffs and the Class Members and PAGA Employees have been paid proper wages, have been provided meal periods, have been provided rest periods, have

1 been paid timely wages upon separation of employment, have been provided with accurate itemized wage
2 statements, have been reimbursed for all necessary business expenses, and treated in all respects in
3 accordance with California law with regard to the claims and facts alleged in the Complaint. Defendant
4 contends, among other things, that it has complied at all times with the California Labor Code and the
5 applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims,
6 Defendant contends that it has complied at all times with the California Business and Professions Code.

7 19. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
8 all disputes and claims arising from or related to the Complaint.

9 20. Class Counsel has conducted a thorough investigation into the facts of this Action,
10 including an extensive review of relevant documents, and has diligently pursued an investigation of the
11 claims of the Class and PAGA claims against Defendant. Based on its own independent investigation and
12 evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on
13 the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best
14 interest of the Class and PAGA Employees in light of all known facts and circumstances, including the
15 risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by
16 Defendant, and numerous potential appellate issues.

17 21. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
18 preliminary and final approval of this Settlement.

19 22. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
20 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
21 Court.

22 **PRIMARY TERMS OF SETTLEMENT**

23 23. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements
24 set forth herein, the Parties agree, subject to the Court's approval, as follows:

- 25 (a) Effective Date: The "Effective Date" of the Settlement will be the last to occur of
26 the following: (a) the sixty-first (61st) day after service of notice of entry of the
27 court order granting final approval of the settlement; or (b) if an appeal, review or
28 writ is sought from the order, the day after the order is affirmed or the appeal,

1 review or writ is dismissed or denied, and the order is no longer subject to further
2 judicial review. Prior to the Effective Date, Defendant will not be required to fund
3 the settlement, in whole or in part, through the settlement administrator or any third
4 party.

5 (b) Gross Settlement Amount: Defendant's maximum total payment under the
6 Settlement, including all attorney's fees and costs, the Service Payment to the
7 named Plaintiffs, the costs of settlement administration, the PAGA Allocation, and
8 any other payments provided by this Settlement, is One Hundred Eighty-One
9 Thousand Dollars and Zero Cents (\$181,000.00) ("Gross Settlement Amount"),
10 subject to the Escalator Clause.

11 (c) Escalator Clause: Defendant represents that the number of workweeks worked in
12 the Class Period for those Class Members was estimated to be nine thousand fifty
13 (9,050). The parties stipulate to a 10% escalation of the estimated workweeks
14 without an increase to the Gross Settlement Amount. If the number of actual
15 workweeks during the Class Period exceeds 10% of the estimated workweeks (i.e.
16 exceeds 9,955 workweeks), Defendant can either have the Class Period end on the
17 date that the workweeks exceed 9,955 or increase the Gross Settlement Amount by
18 a pro-rata dollar value equal to the number of workweeks in excess of 9,955
19 workweeks. For example, if there is a 1% increase over 10%, then Defendant
20 could choose to increase the Gross Settlement Amount increases by 1% (the
21 "Escalator Clause").

22 (d) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
23 revert to Defendant.

24 (e) No Claims Required: Class Members will not be required to submit a claim to
25 receive their Settlement payment.

26 (f) Net Settlement Amount: The Net Settlement Amount shall be calculated by
27 deducting from the Gross Settlement Amount (\$181,000.00) the following sums,
28 subject to approval by the Court: (1) attorney's fees (not to exceed 33 and 1/3% of

1 the Gross Settlement Amount, or \$60,333.33); (2) reasonable litigation costs (not to
2 exceed \$22,000.00); (3) the Service Payments (not to exceed \$5,000.00 to each
3 named Plaintiff, total \$10,000.00); (4) the PAGA Penalty Payment in the amount
4 of \$11,250.00 (which is 75% of the PAGA Allocation); and (5) costs of settlement
5 administration (estimated not to exceed \$6,500). Settlement Payments to the Class
6 Members and PAGA Employees will be calculated by the Settlement
7 Administrator and paid out of the Net Settlement Amount as set forth below.

8 (g) Payroll Taxes and Required Withholdings: To the extent that any portions of the
9 Settlement Class Members' Settlement Payments constitute wages, Defendant will
10 be responsible for any **employer** payroll taxes required by law separate from the
11 Gross Settlement Amount, including the employer FICA, FUTA, and SDI
12 contributions. Except for any employer payroll taxes, it is understood and agreed
13 that Defendant's maximum total liability under this Settlement shall not exceed the
14 Gross Settlement Amount. The Settlement Administrator will calculate and submit
15 the Defendant's employer share of payroll taxes after advising Defendant of the
16 total amount owed, in aggregate, as employer-side payroll taxes and receiving a
17 lump sum payment from Defendant in that amount when the Gross Settlement
18 Amount is delivered to the Settlement Administrator.

19 (h) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
20 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
21 Member (i.e., those Class Members who do not opt out of the Class Settlement, as
22 defined above) will be paid a pro-rata share of the Net Settlement Amount, less the
23 PAGA Settlement Payments totalling \$3,750.00, as calculated by the Settlement
24 Administrator. The pro-rata share will be determined by comparing the individual
25 Settlement Class Member's Covered Workweeks employed during the Class
26 Period in California to the total Covered Workweeks of all the Settlement Class
27 Members during the Class Period as follows: ([Workweeks worked by a
28 Settlement Class Member] ÷ [Sum of all Covered Workweeks worked by all

Settlement Class Members]) \times [Net Settlement Amount – all PAGA Settlement Payments] = individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Uncashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(i) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. PAGA Employees are not permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $([\text{PAGA Pay Periods worked by a PAGA Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]) \times [\text{PAGA Settlement Payment to Employees, i.e. \$3,750.00}]$ = individual PAGA Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time the Settlement Payments issue.

(j) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 20% to wages, 40% to penalties and 40% to interest. The PAGA Settlement Payment shares to PAGA Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will

1 receive an IRS Form W-2 with respect to this portion of the Settlement Payment.
2 The employer's share of payroll taxes and other required withholdings will be paid
3 as set forth above, including but not limited to the Defendant's FICA and FUTA
4 contributions, based on the payment of claims to the Class Members. Class
5 Members are responsible to pay appropriate taxes due on the Settlement Payments
6 they receive. To the extent required by law, IRS Forms 1099 and W-2 will be
7 issued to each Class Member with respect to such payments. All PAGA
8 Settlement Payments will be allocated as 100% penalties.

9 (k) Settlement Payments Do Not Give Rise to Additional Benefits: The Settlement
10 Payments to be paid to Plaintiffs, Settlement Class Members, and PAGA
11 Employees, and the Service Award to be paid to Plaintiffs, shall be deemed not to
12 be pensionable earnings and shall not have any effect on the eligibility for, or
13 calculation of, any of the employee benefits (e.g., vacations, holiday pay,
14 retirement plans, etc.) of Plaintiffs, any Settlement Class Members, or any PAGA
15 Employees. Such payments do not represent any modification of Plaintiffs',
16 settlement Class Members', or PAGA Employees previously credited hours of
17 service or other eligibility criteria under any employee pension benefit plan or
18 employee welfare benefit plan sponsored by Defendant. Further, any Settlement
19 Payments or Service Awards shall not be considered "compensation" in any year
20 for purposes of determining eligibility for, or benefit accrual within, an employee
21 pension benefit plan or employee welfare benefit plan sponsored by Defendant.

22 (l) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
23 object to Class Counsel's application for attorney's fees not to exceed 33 and 1/3%
24 of the Gross Settlement Amount (\$60,333.33) and reimbursement of litigation
25 costs and expenses not to exceed \$22,000.00. Approved attorney's fees and
26 litigation costs shall be paid at the same time Settlement Payments issue to the
27 Settlement Class Members.

28 (m) Service Payments: Subject to Court approval, and in exchange for a general

1 release, Defendant will not object to Class Counsel's application for an additional
2 payment of up to \$5,000.00 to each Plaintiff for service as a Class Representative,
3 total \$10,000.00 ("Service Payment"). It is understood that the Service Payment is
4 in addition to the individual Settlement Payment to which a Class Representative is
5 entitled to along with the other Class Members.

6 (n) Plaintiffs' General Release. Plaintiffs fully and finally release the Released
7 Parties (as defined herein), and each of them, from any and all claims, whether
8 asserted or unasserted, known and unknown, under federal, state and/or local
9 law, statute, ordinance, regulation, common law, or other source of law,
10 including but not limited to claims arising from or related to their employment
11 with Defendant and their compensation while an employee of Defendant
12 ("Plaintiffs' Released Claims"). Plaintiffs' Released Claims include all claims
13 arising from or related to the Action; all claims for unpaid wages, including, but
14 not limited to, failure to pay minimum wages, straight time compensation,
15 overtime compensation, double-time compensation, and interest; the calculation
16 of the regular rate of pay; wages related to alleged illegal rounding; missed
17 meal periods and rest periods; meal and rest period premiums; reimbursement
18 for all business expenses; payment for all hours worked, including off-the-clock
19 work; inaccurate wage statements; unauthorized or improper deductions; failure
20 to keep accurate records; unfair business practices; penalties, including, but not
21 limited to, meal/rest period penalties, recordkeeping penalties, wage statement
22 penalties, minimum-wage penalties, and waiting-time penalties; attorneys' fees;
23 and costs, as well as all claims arising under the California Labor Code
24 (including but not limited to Sections 200, 201, 201.3, 201.5, 201.6, 201.8,
25 201.9, 202, 203, 204, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5,
26 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 256, 450, 500,
27 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2,
28 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802, 2698 et seq., and 2699 et seq.);

1 the Wage Orders of the California Industrial Welfare Commission; the
2 California Private Attorneys General Act of 2004 (“PAGA”); California
3 Business and Professions Code Section 17200, et seq.; the California Civil
4 Code, including but not limited to Sections 3287, 3336, and 3294; 8 CCR
5 Sections 11010, 11040, and 11090; California Code of Civil Procedure,
6 including but not limited to Section 1021.5; the California common law of
7 contract; the FLSA, 29 U.S.C. Section 201, et seq.; federal common law; and
8 the Employee Retirement Income Security Act, 29 U.S.C. Section 1001, et seq.
9 (“ERISA”). Plaintiff’s Released Claims also include all claims for lost wages
10 and benefits, emotional distress, retaliation, punitive damages, and attorneys’
11 fees and costs arising under federal, state, or local laws for discrimination,
12 harassment, retaliation, and wrongful termination, such as, by way of example
13 only, (as amended) 42 U.S.C. Section 1981, Title VII of the Civil Rights Act of
14 1964, the Americans With Disabilities Act, the Age Discrimination in
15 Employment Act, and the California Fair Employment and Housing Act; and
16 the law of contract and tort. Plaintiffs who are 40 years of age or older shall
17 release all claims under the ADEA pursuant to the OWBPA Plaintiffs stipulate
18 and agree that each of them have expressly waived and relinquished, to the
19 fullest extent permitted by law, the provisions, rights and benefits of Section
20 1542 of the California Civil Code, or any other provision under federal or state
21 law, which provides:

22 A general release does not extend to claims which the creditor or
23 releasing party does not know or suspect to exist in his or her favor at
24 the time of executing the release, which if known by him or her must
25 have materially affected his or her settlement with the debtor or released
26 party.

27 The Parties understand that the General Release does not release any claims that
28 Plaintiffs cannot lawfully release. It is also understood and agreed by

1 Defendant that this release does not limit Plaintiffs from filing and seeking
2 damages for any Workers' Compensation claims and/or unemployment
3 insurance claims.

4 (o) The Settlement Administrator will issue an IRS Form 1099 for the Service
5 Payment to the Plaintiffs. Plaintiffs shall be solely and legally responsible to pay
6 any and all applicable taxes on the Service Payment and shall hold harmless the
7 Released Parties from any claim or liability for taxes, penalties or interest arising as
8 a result of the payment. Plaintiffs are solely responsible for providing a completed
9 IRS W-9 form to the Settlement Administrator prior to distribution. The
10 Settlement Administrator will issue to Plaintiffs an IRS Form 1099 reflecting the
11 Service Payment. Plaintiffs agree not to opt out or object to the Settlement,
12 including the Service Payment as the Class Representative.

13 (p) Settlement Administrator: The Settlement Administrator will be ILYM GROUP,
14 Inc. Settlement Administration Costs are estimated not to exceed \$6,500.

15 (q) Funding of Settlement Account: Defendant will fund the Gross
16 Settlement Amount in two equal installments. The first installment in the
17 amount of \$90,500 will be funded by Defendant no later than twelve (12)
18 months from November 18, 2023 or five (5) days after the Effective Date,
19 whichever date is later ("First Installment"). The second installment in the
20 amount of \$90,500 will be funded by Defendant no later than six (6) months
21 from the date of the first installment payment receipt ("Second Installment").
22 Defendant shall also fund the amounts necessary to fully pay Defendant's share
23 of payroll taxes by transmitting the funds to the Settlement Administrator with
24 each installment payment.

25 (r) Distribution and Mailing of Settlement Payments: The Administrator shall
26 mail checks for the First Installment no later than fourteen (14) calendar days
27 after Defendant funds the First Installment, in the following order of priority
28 from the First Installment: (i) full payment of the Service Payment to Class

Representatives; (ii) partial payment in the amount of one half (50%) of LWDA
PAGA Payment; (iii) partial payment in the amount of one half (50%) of all
Individual PAGA Payments; (iv) partial payment in the amount of one half
(50%) of Individual Class Payments; (v) partial payment in the amount of one
half (50%) of the Administration Expenses Payment; (vi) partial payment in the
amount of one half (50%) of the Class Counsel costs, and (vii) partial payment
in the amount of the remainder of the First Installment after deduction of the
payments provided in subclauses (i)-(vi) to the Class Counsel Fees Payment.
The Administrator shall mail checks for the Second Installment no later than
fourteen (14) calendar days after Defendant funds the Second Installment, in the
following order of priority from the Second Installment: (i) partial payment in
the amount of the remaining half (50%) of Individual Class Payments, (ii)
partial payment in the amount of the remaining half (50%) of Individual PAGA
Payments, (iii) partial payment in the amount of the remaining half (50%) of
LWDA PAGA Payment; (iii) partial payment in the amount of the remaining
half (50%) of the Administration Expenses Payment, (iv) partial payment in the
amount of the remaining half (50%) of the Class Counsel costs, and (v) partial
payment in the amount of the remainder the Class Counsel Fees Payment after
deduction of the partial payment of Class Counsel Fees received from the First
Installment.

- (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the
material terms of the proposed Settlement, along with instructions about how to
object or request exclusion from the proposed class action Settlement (“Notice”) as
well as an Objection Form and Request for Exclusion Form attached to this
Agreement as Exhibits C and D (together with the “Notice,” the “Notice Packet”).
For each Class Member, there will be pre-printed information on the mailed
Notice, based on Defendant’s records, stating the Class Member’s Covered
Workweeks during the Class Period and the estimated total Settlement Payment

1 under the Settlement, including the Settlement Class Payment and the PAGA
2 Settlement Payment that will be distributed irrespective of any exclusion request.
3 The pre-printed information based on Defendant's records shall be presumed to be
4 correct. A Class Member may dispute the pre-printed information on the Notice as
5 to his or her Covered Workweeks during the Class Period. Class Members must
6 submit any dispute regarding the information on the Notice as to his or her
7 Covered Workweeks within the Response Deadline.

8 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

9 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

10 Class Members submitting a Request for Exclusion will nevertheless receive their
11 pro-rata share of the PAGA Settlement Payment. If the Court approves the
12 compromise of the PAGA Claim, all Class Members are bound by the Court's
13 resolution of the PAGA Claim. Plaintiffs shall serve a notice of settlement on the
14 California Labor and Workforce Development Agency at or before the time
15 Plaintiffs files the motion for preliminary approval.

16 (v) Resolution of Workweek Disputes: Defendant's records will be presumed
17 determinative, absent credible evidence to rebut the accuracy of the Workweeks
18 credited to a Class Member based thereon. If a Class Member disputes the
19 Workweeks credited to him or her, as stated in the Notice, the Class Member must
20 submit written correspondence to the Settlement Administrator that is postmarked
21 no later than the Response Deadline explaining the basis for the dispute and
22 including any supporting documentation showing that the Workweeks credited to
23 him or her is inaccurate. If a Class Member disputes the accuracy of Defendant's
24 records used to calculate Covered Workweeks, the Settlement Administrator will
25 evaluate the evidence submitted by the Class Member and make a recommendation
26 to the Parties as to which figures should be applied. If the Parties disagree with the
27 Settlement Administrator's recommendation, the dispute will be presented to the
28 Court for determination.

(w) Right of Class Member to Request Exclusion from the Settlement: Class Members who wish to exclude themselves from the Settlement must submit a complete, valid, and timely Request for Exclusion Form (“Request for Exclusion Form”) to the Settlement Administrator by mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope will be the exclusive means for determining whether a Request for Exclusion has been timely submitted. The Request for Exclusion Form that will accompany the Notice is attached hereto as **Exhibit “C.”** The Request for Exclusion Form accompanying the Notice will be pre-printed with the Class Member’s name and address to facilitate identification by the Settlement Administrator. To be complete, the Class Member must sign and date the Request for Exclusion Form and include the last four digits of their social security number. The name and last four digits of the Social Security number provided by the Class Member on the Request for Exclusion Form must match Defendant’s records as provided to the Settlement Administrator, or match Defendant’s records for that particular Class Member. The name and Social Security number provided by the Class Member will be deemed to match Defendant’s records only if: (1) both the first name and the last name and the last four digits of the Social Security number provided by the Class Member match Defendant’s records; (2) the first name and the last four digits of the Social Security number provided by the Class Member match Defendant’s records and it appears the last name has been changed as a result of a change in marital status or is a shortened or lengthened version of the name that appears in Defendant’s records; or (3) the last four digits of the Social Security number and last name match Defendant’s records and the first name provided is either a nickname or a shortened or lengthened version of the name that appears in Defendant’s records. Each Class Member who does not submit a Request for Exclusion Form in compliance with this paragraph will be deemed to be a Settlement Class Member. Settlement Class Members will be bound by all terms

of the Settlement Agreement and the Final Approval Order and Final Judgment. Any Class Member who submits a Request for Exclusion Form will not be a Settlement Class Member, will not be entitled to receive any Settlement Class Payment, and will not be bound by this Agreement or have any right to object, appeal, or comment thereon. No later than thirty (30) calendar days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with a complete list of all Class Members who have submitted a complete, valid, and timely Request for Exclusion Form.

- (x) Right of Settlement Class Member to Object to The Settlement: A Settlement Class Member may object to the Settlement. To assert an objection to the Settlement, a Settlement Class Member must submit an Objection Form to the Settlement Administrator by first class U.S. mail at the address specified on the Notice in the form attached hereto as **Exhibit “D”**, not later than the Response Deadline. The date of the postmark will be the exclusive means for determining whether an objection has been timely submitted. If any Class Member chooses to submit a written objection not in the form attached hereto as **Exhibit “D”**, the written objection must include: (1) the objector’s full name, address, last four digits of his or her Social Security number, and signature; (2) the case name and number; (3) the factual and legal basis, with supporting documents, if any, on which the objection is based; (4) whether the objector is represented by an attorney and providing the contact information of any such attorney; and (5) whether the objector plans to appear at the Final Approval Hearing. The Parties agree that the Settlement Administrator shall not disclose the last four digits of any objecting Class Member’s Social Security number to anyone but the Parties, that such information will be securely held, and that the disclosure of those last four digits to the Parties shall not be used for any purpose except to ascertain the identity of the objector for administration of this Settlement. Any person who fails to timely submit their written objections in the manner specified above may still appear and

object at the Final Approval Hearing. If a Settlement Class Member objects to this Settlement, the Settlement Class Member will remain a member of the Class for Settlement purposes, and if the Court grants final approval of the Settlement, he or she will be bound by the terms of the Settlement and any Final Approval Order and Final Judgment. Within three (3) business days of receipt of an objection, the Settlement Administrator shall provide counsel for the Parties with a copy of the objection. No later than thirty (30) calendar days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with a complete list of Settlement Class Members who have submitted an objection. Prior to the Final Approval Hearing, the Settlement Administrator shall submit copies of the objections that it has received, to the Court by way of declaration. Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class Member must either make a timely complaint in intervention before final judgment or by file a motion to set aside and vacate the class judgment under Code of Civil Procedure § 663 to have standing to appeal entry of judgment approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court.

THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES

24. Subject to the Court's approval, and subject to reconsideration by the Parties after a

1 competitive bidding process, the Parties have agreed to the appointment of ILYM GROUP, Inc. to
2 perform the customary duties of Settlement Administrator. The Settlement Administrator will mail the
3 Notice, both in English and Spanish, to the Class Members.

4 25. The Settlement Administrator will independently review the Covered Workweeks
5 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
6 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
7 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
8 Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its
9 duties.

10 26. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
11 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
12 checks to the Class Members in two installments. Tax treatment of the Settlement Payments will be as set
13 forth herein, and in accordance with state and federal tax laws. All disputes relating to the Settlement
14 Administrator's performance of its duties shall be referred to the Court, if necessary, which will have
15 continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations
16 contemplated by this Settlement have been fully carried out.

17 27. The Settlement Administrator will post the First Amended Complaint, the notice letter to
18 the LWDA, the Settlement Agreement, the court orders granting preliminary and final approval of the
19 Settlement and final judgment approving the Settlement, and the Notice on the Settlement Administrator's
20 website for a period of not less than 180 calendar days after the final judgment is entered. The address of
21 that website will be included in the Notice.

22 **ATTORNEY'S FEES AND COSTS**

23 28. In consideration for resolving this matter and in exchange for the release of all claims by
24 the Class Members, including Plaintiffs, and subject to approval by the Court, Defendant will not object to
25 Class Counsel's application for attorney's fees not to exceed 33 and 1/3% of the Gross Settlement Amount
26 (\$60,333.33 of \$181,000.00) and litigation costs not to exceed \$22,000.00. The amounts set forth above
27 will cover all work performed and all fees and costs incurred to date, and all work to be performed and all
28 fees and costs to be incurred in connection with the approval by the Court of this Settlement and

administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement Amount. Class Counsel shall disclose to the Court any fee sharing agreements in existence.

THE NOTICE PROCESS

29. A Notice in approximately the form attached hereto as **Exhibit "B"**, the Request for Exclusion Form in approximately the form attached hereto as **Exhibit "C"** and the Objection Form in approximately the form attached hereto as **Exhibit "D"** and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice Packet shall be translated into Spanish so that Spanish and English language versions of the Notice Packet are included in the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

(a) Within 20 calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) social security number; and (4) dates of employment with Defendant in California. This database shall be based on Defendant's payroll and other business records and shall be provided in a format acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential and secure and use it only for the purposes described herein, and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement.

(b) Within 14 calendar days after the Class database is provided to the Settlement

Administrator, the Settlement Administrator will mail the Notices to the Class Members by First Class United States mail.

- (c) Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the Class Member's social security number or other information. In any instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline as described above. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final Judgment.
- (d) Class Counsel shall provide to the Court, at least five calendar days prior to the final approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due diligence and confirming mailing of the Notices.

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

30. As set forth above, each Class Member will have until the expiration of the applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class Member's Covered Workweek information on the Notice. No disputes will be honored if they are submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute. Each Class Member is responsible to maintain a copy of any documents sent to the Settlement Administrator and a record of proof of mailing.

31. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees in two installments as provided herein. Settlement Class Payments and PAGA Payments may be combined into one check. Settlement Payment checks shall

1 remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment
2 checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class
3 Member within that time, and the Class Member's relevant claims will remain released by the Settlement.
4 Settlement Payment checks which have expired will not be reissued.

5 32. Funds from uncashed or abandoned Settlement Payment checks, based on a 180-day void
6 date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of
7 each Class Member who failed to cash their Settlement Payment check prior to the void date.

8 33. Upon completion of its calculation of Settlement Payments, the Settlement Administrator
9 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to
10 be made to Class Members (to be identified anonymously by a random identifier). A Declaration attesting
11 to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and
12 filed with the Court by Class Counsel.

13 **RELEASE BY THE CLASS**

14 34. Released Class Claims. Settlement Class Members, and their successors, assigns, and/or
15 agents, upon full payment of Gross Settlement Amount, shall fully and finally release and discharge
16 Defendant and each of its past, present and future agents, employees, servants, officers, directors, partners,
17 trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors,
18 related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers,
19 consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of its
20 respective past, present and future employees, directors, officers, agents, attorneys, stockholders,
21 fiduciaries, parents, subsidiaries, and assigns, and each of them ("Released Parties") from the Class
22 Released Claims. The Class Released Claims are defined as any and all claims, debts, liabilities, demands,
23 actions, or causes of action pleaded or asserted in the First Amended Complaint in the Action, or that
24 could have been pleaded or asserted based on the facts alleged in the First Amended Complaint, including
25 but not limited to state and/or federal wage and hour claims (including all claims under the California
26 Labor Code and Industrial Welfare Commission Wage Orders), failure to pay all wages due, including
27 minimum wages, straight time compensation, overtime compensation, double-time compensation,
28 reporting time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal

periods and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay; payment for all hours worked, including off-the-clock work; wages related to alleged illegal rounding; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; failure to maintain accurate records, including payroll records; unfair business practices; declaratory relief; interest; penalties, including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs, withholding from wages. The Class Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Labor Code §§ 200-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2802); penalties under the Private Attorneys General Act sections 2698, *et seq.*; violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); the Wage Orders of the California Industrial Welfare Commission. This release excludes the release of claims not permitted by law.

35. Released PAGA Claims. Upon full payment of Gross Settlement Amount, Plaintiffs, the LWDA, and each and all PAGA Employees, on behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be deemed to have fully and finally released and discharged the Released Parties, and each of them, of any and all causes of action for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004 (California Labor Code § 2698, *et seq.*) that were alleged in the Action based on the facts and allegations pleaded in the Complaint and/or the LWDA notice letter attached hereto as “**Exhibit A,**” including all claims for civil penalties based upon or arising out of any Defendant's alleged failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay; payment for all hours worked, including off-the-clock work; wages related to alleged illegal rounding; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; failure to maintain accurate records, including payroll records; unfair business practices; declaratory relief; interest; penalties,

including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and claims for civil penalties arising under or based upon alleged violations of California Labor Code Sections 200-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, 2699 *et seq.*, and/or those arising under applicable Industrial Welfare Commission Wage Orders. The time frame of the Released PAGA Claims shall be the PAGA Period.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

36. Plaintiffs shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiffs' unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action Settlement, Plaintiffs shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representatives' service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class (for Settlement purposes only);
- (c) Approving as to form and content the proposed Notice Packet;
- (d) Directing the mailing of the Notice Packet;
- (e) Preliminarily approving the Settlement, including Class and PAGA claims, subject only to the objections of Class Members as to the Class Settlement and final review by the Court;
- (f) Conditionally appointing Plaintiffs and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM GROUP, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

37. Defendant and its counsel agree to cooperate to obtain approval of the Settlement, pursuant to the terms set forth herein. Pursuant to the Parties' confidentiality agreement, Defendant will provide to Plaintiff financial information justifying distribution of settlement money in two installment payments in connection with Defendant's financial condition. If ordered by the Court, Defendant will provide

necessary financial background to the Court via a declaration in the form satisfactory to the Court requirements to approve the Settlement . Failure by Defendant to provide necessary financial information and declarations requested by court justifying distribution of settlement money in two installment payments will constitute material breach of this Agreement. Should the Court find that information provided by Defendant not satisfactory for approval of the settlement money distribution in two installment payments, Defendant has an obligation to provide additional information to the court as requested until found satisfactory or negotiate with Plaintiff an amendment to the Settlement Agreement to distribute the settlement money in a single installment.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

38. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payments to the Class Representatives;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiffs and Class Counsel may adequately represent the Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action as to all PAGA and Class Claims and related issues;
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirms that the State's claims for civil

penalties pursuant to PAGA are also extinguished.

Any revised final judgments will also be provided to Defendant's Counsel for review and approval before they are submitted to the Court.

NULLIFICATION AND TERMINATION

39. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payments or settlement money distribution terms; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

40. If more than 20% of the Class Members opt out of this Settlement, then Defendant in its sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Plaintiffs' Counsel written notice, by facsimile, e-mail, or mail, no later than five (5) days prior to the date of the Final Approval Hearing. If this option is exercised by Defendant, Defendant shall be solely responsible for the costs incurred by the Settlement Administrator to that date.

41. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

PARTIES' AUTHORITY

42. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

43. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement including, but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement.

NO PRIOR ASSIGNMENTS

44. The Parties and their respective counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

NO ADMISSION OF LIABILITY

45. Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all the claims and contentions alleged by the Plaintiffs in this case. The Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

ENFORCEMENT ACTIONS

46. The Parties agree that following entry of the Final Approval Order and Judgment, this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Action over all parties and the Class Members to interpret and enforce the terms, conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover

1 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
2 incurred in connection with any enforcement actions.

3 **CONSTRUCTION**

4 47. The Parties hereto agree that the terms and conditions of this Settlement are the result of
5 lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed
6 in favor of or against any party by reason of the extent to which any party or his, her or its counsel
7 participated in the drafting of this Settlement.

8 **CAPTIONS AND INTERPRETATIONS**

9 48. Paragraph titles or captions contained herein are inserted as a matter of convenience and
10 for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision
11 hereof. Each term of this Settlement is contractual and not merely a recital.

12 **MODIFICATION**

13 49. This Settlement may not be changed, altered, or modified, except in writing and signed by
14 the Parties hereto, and approved by the Court. This Settlement may not be discharged except by
15 performance in accordance with its terms or by a writing signed by the Parties hereto.

16 **INTEGRATION CLAUSE**

17 50. This Settlement contains the entire agreement between the Parties relating to the
18 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
19 understandings, representations, and statements, whether oral or written and whether by a party or such
20 party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

21 **WAIVER OF APPEALS**

22 51. The Parties agree to waive appeals and to stipulate to class certification for purposes of
23 implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the
24 amount awarded as attorney's fees.

25 **BINDING ON ASSIGNS**

26 52. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
27 their respective heirs, trustees, executors, administrators, successors and assigns.
28

CLASS COUNSEL SIGNATORIES

53. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement. The Notice will advise all Class Members of the binding nature of the Released Class Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

54. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

CONFIDENTIALITY & PUBLIC COMMENT

55. Plaintiffs and Class Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the amount or terms of the Settlement. Class Counsel may respond to press inquiries by stating the matter has been resolved and refer the press to court filings. In addition, Plaintiffs and Class Counsel agree that they will not engage in any advertising or distribute any marketing materials specifying any material terms relating to the Settlement of the Action, including but not limited to any postings on any websites maintained by Class Counsel and including but not limited to the identity of Defendant and/or any information that identifies Defendant. The Settlement Administrator shall not create nor maintain any separate website regarding this Settlement at any time. Any communication about the Settlement to Class Members prior to the Court-approved mailing of the Class Notice will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice. Plaintiffs are prohibited from discussing the terms or the fact of the settlement with third parties other than (1) their immediate family members, and/or (2) their accountants or lawyers as necessary for tax purposes. Furthermore, Plaintiffs and Class Counsel will undertake any and all disclosures and submissions of papers that are required to be made to the LWDA in conformity with PAGA.

FINAL JUDGMENT

56. The Parties agree that, upon final approval of the Settlement, final judgment of this Action

will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiffs and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiffs & Class Representatives:

Dated: 1/18/2024 | 8:26 AM PST By:

DocuSigned by:

ISABEL RODRIGUEZ

Dated: 1/17/2024 | 7:17 PM PST

By:

DocuSigned by: b1

DANIEL TOAR

Plaintiffs' Counsel:

Dated: 1/18/2024 | 9:07 AM PST

TUNYAN LAW, APC

By:

DocuSigned by:

C1FEE94AA91E49A...

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiffs

Defendant:

Dated:

ROY MILLER PAINTING INC.

By:

Print Name

Signature

Pres

1-25-24

Title

Defendant's Counsel:

Dated: January 25, 2024

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Greg S. Labate
Lauren J. Blaes

Attorneys for Defendant

Exhibit “A”



Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

March 20, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Roy Miller
Agent for Service of Process for
Roy Miller Painting, Inc.
811 E. Emerson Avenue
Orange, CA 92865

VIA CERTIFIED MAIL

Return Receipt Requested

Roy Miller Painting, Inc.
1036 N. Lemon Street
Orange, CA 92867

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Isabel Rodriguez, et al. v. Roy Miller Painting, Inc.*

To Whom It May Concern:

Please be advised that my office has been retained by Isabel Rodriguez and Daniel Tovar ("Plaintiffs") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Labor Code §§ 2699, *et seq.*) against their former employer Roy Miller Painting, Inc. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which Plaintiffs allege Defendant engaged in with respect to Plaintiffs and all of Defendant's aggrieved employees.

Plaintiffs wish to pursue a PAGA representative action on behalf of themselves as aggrieved employees, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiffs and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiffs’ Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Orange County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiffs Isabel Rodriguez and Daniel Tovar worked for Defendant as painters from approximately July 2022 to October 2022, primarily in Orange County. Defendant classified Plaintiffs as non-exempt from overtime. During the time period that Plaintiffs were employed by Defendant, Plaintiffs typically worked 5 days per week, and between 8 to 10 hours each workday.

Throughout Plaintiffs' employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiffs' experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. “Hours worked” is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiffs and the Aggrieved Employees for all hours worked (including minimum

wages, straight time wages and overtime wages). Throughout the statutory period, Defendant maintained a policy and practice of not paying for all the time Plaintiffs and the Aggrieved Employees worked. Often Plaintiffs and the Aggrieved Employees missed hours or minutes worked on their paychecks. Throughout the statutory period, Defendant also maintained a policy and practice of requiring Plaintiffs and the Aggrieved Employees to perform work “off-the-clock”. During the statutory period Defendant required Plaintiffs and the Aggrieved Employees to clock out for meal periods but to continue working. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiffs and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiffs and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Plaintiffs and the Aggrieved Employees would often times miss their meal periods, have interrupted or short meal periods. In those occasions when Plaintiffs and the Aggrieved Employees had an opportunity to take their first meal periods, Defendant wrongfully required Plaintiffs and the Aggrieved employees to combine their 30-minute first meal periods with their first rest periods and have 45-minute combined meal and rest breaks instead of taking separate meal periods and separate rest periods, and wrongfully deducted 45-minutes from Plaintiffs’ and the Aggrieved Employees’

hours. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiffs and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiffs and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiffs and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiffs and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant did not schedule rest periods every 4 hours or a major fraction. Instead, Defendant wrongfully required Plaintiffs and the Aggrieved employees to combine their 30-minute first meal periods with their first rest periods and to take combined 45-minute first meal and rest breaks instead of taking separate meal periods and separate rest periods, and wrongfully deducted 45-minutes from Plaintiffs' and the Aggrieved Employees' hours. Not only Defendant deprived Plaintiffs and the Aggrieved Employees of their right to take first rest periods during the timeframe required under California law but refused to pay for rest periods by deducting 45 minutes of pay for combined meal periods and rest periods. Plaintiffs and the Aggrieved Employees have never been authorized and taken their second and third rest periods. Accordingly, Defendant's policy and practice was for Plaintiffs and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked

Plaintiffs seek penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiffs and the Aggrieved Employees. Additionally, Defendant included hours accrued as sick pay in the total number of hours worked in the wage statements.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiffs and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiffs and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included usage of personal cell phones to download and use application to record their time as well as to respond to work related calls from their supervisors. Plaintiffs and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant have failed to indemnify Plaintiffs and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiffs and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiffs and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Labor Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Labor Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendant included hours accrued as sick pay in the total number of hours worked in the wage statements. Most importantly, Defendant wrongfully stated all 9 digits of social security numbers of employees in their wage statements despite the requirement to include only 4 last digits. This is a blatant violation of the Labor Code requirements as well as California laws protecting privacy rights of employees.

As a result of Defendant violating Labor Code § 226, Plaintiffs and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiffs and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Labor Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Labor Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owe employees the legally required wages for unpaid wages, and Plaintiffs and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiffs and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiffs allege that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;

4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiffs seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiffs have placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiffs becomes aware of additional compensation owed or losses incurred by Plaintiffs or by any other aggrieved employee of Defendant or any additional facts, Plaintiffs expressly reserve the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Monday, March 20, 2023 12:41:03 PM

3/20/2023

LWDA Case No. LWDA-CM-943148-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Isabel Rodriguez, Daniel Tovar
Employer: Roy Miller Painting, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit “B”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Rodriguez, et al. v. Roy Miller Painting, Inc.
Orange County Superior Court Case No. 30-2023-01314830-CU-OE-CXC

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF ROY MILLER PAINTING, INC. (“DEFENDANT” or “RMP”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN MARCH 20, 2019 AND MAY 1, 2023 (THE “CLASS PERIOD”), THIS PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Purpose of this Notice

A proposed settlement (the “Settlement”) has been reached in a proposed class and PAGA action lawsuit brought by Plaintiffs Isabel Rodriguez and Daniel Tovar (“Plaintiffs”) against Defendant Roy Miller Painting, Inc. entitled *Rodriguez, et al. v. Roy Miller Painting, Inc.*, Orange Superior Court Case No. 30-2023-01314830-CU-OE-CXC (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement.

You are receiving this notice because RMP’s records indicate that you worked for RMP as a non-exempt employee in California for some time between March 20, 2019 and May 1, 2023 (“Class Period”). This means you are a potential Class Member, and you have a right to know about the proposed Settlement.

In addition, you are also a PAGA Employee if you are currently or were formerly employed as a non-exempt employee of RMP who worked for RMP within California at any time during the period from March 20, 2022 to May 1, 2023 (“PAGA Period”).

This Notice advises you of your options under this settlement, which include how you can participate in this settlement and receive your share of the settlement proceeds, how you can exclude yourself from the settlement, or how you can object to the settlement.

What is the case about?

On March 20, 2023, Plaintiffs Isabel Rodriguez and Daniel Tovar (“Plaintiffs”) filed a putative Class Action. On May 25, 2023, Plaintiffs filed a First Amended Complaint alleging the following claims against Defendant: (1) failed to pay all wages; (2) failed to provide meal periods; (3) failed to authorize and permit rest periods; (4) failed to timely pay all wages at termination; (5) failed to furnish accurate itemized wage statements; (6) failure to indemnify necessary business expenses; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”).

The Action seeks unpaid wages for a class of all current and former non-exempt employees of RMP who worked in California at any time during the Class Period (the “Class” or “Class Members”). The Action also seeks penalties under PAGA for all current and former non-exempt employees of RMP who worked in California at any time during the PAGA Period (“PAGA Employees”).

Defendant denies each and every allegation in the Lawsuit, denies any liability or wrongdoing of any kind, and believes that it treated, and continues to treat, its employees fairly and in full compliance with the law.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**DO NOTHING – GET MONEY**

If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive your individual settlement share under the Settlement if the Court finally approves the Settlement. You will also

	give up rights to assert the Released Claims against Defendant as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to exclude yourself from the Class Settlement. If you choose to do so, you must mail to the Administrator, in writing, a completed Request for Exclusion Form. If you exclude yourself, you will NOT receive any payment under the Settlement (other than based on the PAGA Claim, if applicable). Request for Exclusion Forms must be submitted by << RESPONSE DEADLINE >>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you must either mail a written explanation of why you do not agree with the Settlement to the Settlement Administrator by completing and submitting the Objection Form, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request for Exclusion Form if you wish to object. <i>Written</i> objections must be submitted by << RESPONSE DEADLINE >>.

What are the Settlement terms?

Subject to final Court approval, Defendant will pay a maximum total payment under the Settlement of \$181,000.00 (the “Gross Settlement Amount”) for: (a) individual Settlement Class Payments to Settlement Class Members; (b) the Service Payments to Plaintiffs (\$5,000.00 to be requested for each Plaintiff, totaling \$10,000.00); (c) attorneys’ fees (not to exceed 33 and 1/3% of the Gross Settlement Amount, \$60,333.33) and litigation costs to Class Counsel (not to exceed \$22,000) (“Class Counsel’s Fees and Costs”); (d) the amount of \$15,000.00 allocated toward civil penalties under the PAGA (the “PAGA Allocation”), of which the LWDA will be paid 75% (i.e. \$11,250.00 (“PAGA Penalty Payment”) and the remaining 25% (i.e. \$3,750.00) will be distributed to PAGA Employees (the “PAGA Settlement Payments”); and (e) payment to the Settlement Administrator for settlement administration services (estimated to be no more than \$6,500) (“Administrative Expenses”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Costs, the Service Payments to Plaintiffs, the PAGA Penalty Payment, and the Administrative Expenses. Settlement Class Payments and PAGA Settlement Payments (defined below) will be paid from the Net Settlement Amount.

Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a pro-rata share of the Net Settlement Amount, less the PAGA Settlement Payments totaling \$3,750.00, based upon the total number of workweeks employed by the Settlement Class Member during the Class Period (the “Settlement Class Payment”). The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$3,750.00 set aside for all PAGA Settlement Payment) × (the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members).

PAGA Employees will receive a pro-rata share of the \$3,750.00 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”) based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period, regardless of whether they request exclusion from the Settlement. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$3,750.00 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

The total payment to an individual, including their Settlement Class Payment and PAGA Settlement Payment, is their “Individual Settlement Payment”. Your estimated Individual Settlement Payment is <<**Estimated Payment**>>, which includes your payment from the Class settlement in the estimated amount of <<**Estimated Individual Settlement Class Payment**>> and your payment from the PAGA settlement in the estimated amount of <<**Estimated Individual PAGA Settlement Payment**>>. This is just an estimate. Your final share will be determined by the Settlement Administrator.

The above estimates are based on Defendant's records showing you worked _____ Workweeks during the Class Period and worked ____ Pay Periods during the PAGA Period. If you believe the number of Workweeks during the You may seek to dispute the number of your workweeks. Such challenges must: (i) be in writing; (ii) state your full name; (iii) include a statement that you are seeking to challenge your estimated Individual Settlement Payment set forth in this Class Notice; (iv) state the number of work weeks you believe you have worked during the Class Period; and (v) be mailed to the Settlement Administrator with a postmark date on or before <<RESPONSE DEADLINE>> (the "Response Deadline") at:

You must produce documentary evidence supporting your contention. Defendant's records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will evaluate the evidence submitted and make a recommendation to the Parties. If the Parties disagree with the recommendation, the dispute will be submitted by the Parties to the Court for final resolution.

For tax reporting purposes, the payments to Class Members will be allocated 20% as wages, 40% as penalties and 40% as interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller's Office to be held as unclaimed property in the name of each check recipient who is the payee of the check. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

The "Effective Date" of the Settlement will be the last to occur of the following: (a) the sixty-first (61st) day after service of notice of entry of the court order granting final approval of the settlement; or (b) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review. Upon final approval, Defendant will fund the settlement account in two equal installments. The first installment in the amount of \$90,500 will be distributed by Defendant no later than twelve (12) months from November 18, 2023 or five (5) days after the Effective Date, whichever date is later ("First Installment"). The second installment in the amount of \$90,500 will be distributed by Defendant no later than six (6) months from the date of the first installment payment receipt ("Second Installment"). The Administrator shall mail checks in the amount of one half (50%) of Individual Class Payments and one half (50%) of Individual PAGA Settlement Payments from the First Installment no later than fourteen (14) calendar days after Defendant funds the First Installment. The Administrator shall mail checks in the amount of the remaining other half (50%) of Individual Class Payments and one half (50%) of PAGA Payments from the Second Installment no later than fourteen (14) calendar days after Defendant funds the Second Installment.

PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

What claims are being released by the proposed Settlement?

Released Class Claims. Those Class Members who do not submit a timely and valid Request for Exclusion Form to the Settlement Administrator (i.e. Settlement Class Members), and their successors, assigns, and/or agents, upon full payment of Gross Settlement Amount, shall fully and finally release and discharge Defendant and each

of its past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of its respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, and each of them ("Released Parties") from the Class Released Claims.

The Class Released Claims are defined as any and all claims, debts, liabilities, demands, actions, or causes of action pleaded or asserted in the First Amended Complaint in the Action, or that could have been pleaded or asserted based on the facts alleged in the First Amended Complaint, including but not limited to state and/or federal wage and hour claims (including all claims under the California Labor Code and Industrial Welfare Commission Wage Orders), failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay; payment for all hours worked, including off-the-clock work; wages related to alleged illegal rounding; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; failure to maintain accurate records, including payroll records; unfair business practices; declaratory relief; interest; penalties, including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs, withholding from wages. The Class Released Claims also expressly include all claims arising under the California Labor Code (including but not limited to Labor Code §§ 200-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2802); penalties under the Private Attorneys General Act sections 2698, *et seq.*; violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); the Wage Orders of the California Industrial Welfare Commission. This release excludes the release of claims not permitted by law.

Release PAGA Claims. In addition, upon full payment of Gross Settlement Amount, Plaintiffs, the LWDA, and each and all PAGA Employees, on behalf of themselves and their heirs, successors, assigns, and/or agents, and each of them, will be deemed to have fully and finally released and discharged the Released Parties, and each of them, of any and all causes of action for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004 (California Labor Code § 2698, *et seq.*) that were alleged in the Action based on the facts and allegations pleaded in the Complaint and/or the LWDA notice letter attached hereto as "**Exhibit A,**" including all claims for civil penalties based upon or arising out of any Defendant's alleged failure to pay all wages due, including minimum wages, straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods and/or rest periods; failure to pay proper meal and/or rest period penalties at the proper rate of pay; payment for all hours worked, including off-the-clock work; wages related to alleged illegal rounding; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay all wages due at separation of employment; failure to maintain accurate records, including payroll records; unfair business practices; declaratory relief; interest; penalties, including but not limited to recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and claims for civil penalties arising under or based upon alleged violations of California Labor Code Sections 200-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, 2699 *et seq.*, and/or those arising under applicable Industrial Welfare Commission Wage Orders. The time frame of the Released PAGA Claims shall be the PAGA Period.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Class Released Claims as described above. If you are a PAGA Employee, you will automatically be included and issued your PAGA Settlement Payment. This means you will release the PAGA Released Claims.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified

deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you are a Class Member, and you do not request exclusion from the settlement, you may object to the settlement before final approval of the settlement by the Court by submitting a written objection or presenting your objection at the Final Approval Hearing.

To assert an objection to the Settlement, a Settlement Class Member must submit an Objection Form to the Settlement Administrator by first class U.S. mail at the address specified on the Notice in the Objection Form not later than _____. If you choose not to submit a written objection using the Objection Form, the written objection must include: (1) your full name, address, and last four digits of your Social Security number; (2) the factual and legal basis, with supporting documents, if any, on which the objection is based; (3) your signature; (4) the case and number (*Rodriguez, et al. v. Roy Miller Painting, Inc.*, Orange County Superior Court Case No. 30-2023-01314830-CU-OE- CXC); (5) whether the objector is represented by an attorney and providing the contact information of any such attorney; (6) whether the objector plans to appear at the Final Approval Hearing; and (7) be postmarked on or before <<RESPONSE DEADLINE>> and submitted to the Settlement Administrator at the address listed above. Any Class Member who fails to timely submit their written objections in the manner specified above may still appear and object at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must complete and return the included Request for Exclusion Form to the Settlement Administrator. In order to be valid, your Request for Exclusion form must be signed, dated, and include the last four digits of your social security number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement).

The Request for Exclusion Form (to remove you from the Class Settlement) must be postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion Form by the deadline to request exclusion, you will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims), and will not have any right to object to, appeal, or comment on the Class Settlement. PAGA Employees will still be issued a PAGA Settlement Payment and be bound by the Released PAGA Claims, irrespective of whether they submit a Request for Exclusion Form.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing on <<FINAL APPROVAL HEARING DATE & TIME>>, in Department CX104 of the Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. As described above, If you wish to attend the Final Approval Hearing remotely, you can do it through the court's online check-in process available through the court's website at <https://www.occourts.org/media-relations/civil.html>. If you wish to attend the Final Approval Hearing in person, you can attend it at Orange County Superior Court, 751 W. Santa Ana Boulevard, Santa Ana, California 92701. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment, the First Amended Complaint, the notice letter to the LWDA, the Settlement Agreement, and this Notice will be

posted on a website by the Settlement Administrator for a period of at least 180 days following the entry of that Order in the Court record. That website is: <<**website**>>.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

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How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class and PAGA Representative Action Settlement attached to the Declaration of Lilit Tunyan in Support of Plaintiffs' Motion for Preliminary Approval. The Joint Stipulation of Class and PAGA Representative Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Orange County Superior Court. You may also view documents filed in this case on the Court's website at: <https://ocjustice.occourts.org/civilwebShoppingNS/Search.do#searchAnchor>. You may need the case number to access and view case documents (30-2023-01314830-CU-OE- CXC). NOTE: If you choose to access documents online, the Court will charge you a fee for access.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “C”

REQUEST FOR EXCLUSION FORM

**Superior Court of California for the County of Orange
*Rodriguez, et al. v. Roy Miller Painting, Inc., Case No. 30-2023-01314830-CU-OE-CXC***

If you want to receive a Class Settlement Payment, you should not fill out this form. You are not required to do anything at this time. This form is to be used only if you want to exclude yourself from the Settlement.

If you decide to exclude yourself from the Settlement: (1) you will not receive any payment under the Settlement (except as to the PAGA Claim, if applicable); (2) you will not be able to object to the Settlement; and (3) you will not be bound by the class settlement or the class release if it is ultimately approved by the Court.

To be excluded from the Settlement, you must complete this Request for Exclusion Form and mail it to the Settlement Administrator at the address listed below, postmarked no later than **[Response Deadline--60 days following the date of mailing].**

**[INSERT NAME OF SETTLEMENT
ADMINISTRATOR]
[INSERT INFO]**

Request for Exclusion

I hereby certify that I am or was employed by Defendant as a non-exempt, hourly employee in California for some period of time between March 20, 2019 and May 1, 2023.

I have received the Notice of Class Action Settlement ("Notice") in the Action, and I request to be excluded from the Settlement. I understand that by submitting this Request for Exclusion Form, I will not be bound by the class settlement, including the Released Class Claims, as described in the Notice and in the Settlement Agreement on file with the Court, and I will not receive a payment from the class settlement. I understand that I cannot exclude myself from the PAGA Settlement Payment and that I will still receive a pro-rata share of the PAGA Settlement Amount and will be bound by the Released PAGA Claims regardless of whether I exclude myself from the Class Settlement Payment.

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: (____) _____

Last four digits of your SSN: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

Exhibit “D”

REQUEST FOR EXCLUSION FORM

Superior Court of California for the County of Orange
Rodriguez, et al. v. Roy Miller Painting, Inc., Case No. 30-2023-01314830-CU-OE-CXC

OBJECTION FORM

USE AND RETURN THIS FORM ONLY IF YOU WISH TO OBJECT TO THE CLASS SETTLEMENT.

If you do not wish to object to the Class Settlement, you should NOT fill out this form. You do not need to take any action.

If you wish to object to the Class Settlement, you must state all factual and legal bases for your objection (space is provided below for doing so), attach any documents you are relying on for your objection, indicate whether you are represented by counsel and, if so, provide their contact information, indicate whether you plan to appear at the Final Approval Hearing, write your name, address, and last four digits of your Social Security number, sign on the following page, and return this form by mail or delivery to the Settlement Administrator, at the following mailing address, postmarked or delivered on or before

[RESPONSE DEADLINE--60 days following the date of mailing].

TBD

[INSERT MAILING ADDRESS]

I wish to object to the Class Settlement on the following grounds:

[illegible]

If yes, please provide your attorney's name and contact information:

Date: _____