

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Kane Moon (SBN 249834)
E-mail: kane.moon@moonyanglaw.com
Allen Feghali (SBN 301080)
E-mail: allen.feghali@moonyanglaw.com
Brett Gunther (SBN 306448)
E-mail: brett.gunther@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

MAR 17 2023

E. Escobedo


Attorneys for Plaintiff Rhina Mendoza De Vielma

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

RHINA MENDOZA DE VIELMA individually,
and on behalf of all others similarly situated,

Plaintiff,

vs.

MODULAR METAL FABRICATORS, INC., a
California corporation; and DOES 1 through 10,
inclusive

Defendants.

Case No.: CVRI2000226

CLASS AND REPRESENTATIVE ACTION

*[Assigned for All Purposes to the Hon.
Harold Hopp; Dept. 10]*

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

PRELIMINARY APPROVAL HEARING

Date: March 17, 2023
Time: 8:30 a.m.
Dept. 10

1 The Court has before it Plaintiff Rhina Mendoza De Vielma's ("Plaintiff") Motion for
2 Preliminary Approval of Class Action and PAGA Settlement. Having reviewed the Motion
3 for Preliminary Approval of Class Action and PAGA Settlement, the Declaration of Kane
4 Moon, the Declaration of Plaintiff Rhina Mendoza De Vielma, the Declaration of Defense
5 Counsel Chris Milligan, the Declaration of Sean Hartranft on behalf of the Settlement
6 Administrator, the Joint Stipulation re: Class Action Settlement (which is referred to here as
7 the "Settlement Agreement"), and good cause appearing, the Court hereby finds, and orders as
8 follows:

9 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
10 be fair, adequate, and reasonable, and therefore meets the requirements for preliminary
11 approval. The Court grants preliminary approval of the Settlement Agreement and the Class
12 based upon the terms set forth in the Settlement Agreement attached to the Declaration of
13 Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class Action
14 Settlement ("Moon Declaration") as Exhibit 1. The Court preliminarily finds that the terms of
15 the Settlement Agreement appear to be within the range of possible approval, pursuant to
16 California Code of Civil Procedure § 382 and applicable law.

17 2. The Settlement Agreement falls within the range of reasonableness of a
18 settlement which could ultimately be given final approval by this Court, and appears to be
19 presumptively valid, subject only to any objections that may be raised at the Final Approval
20 Hearing and final approval by this Court. The Court notes that Defendant have agreed to
21 create a common fund of \$678,090.00 to cover (a) settlement payments to class members who
22 do not validly opt out; (b) \$30,000.00 allocated to penalties under the Private Attorneys
23 General Act of 2004 ("PAGA"), distributed as follows: 25% (\$7,500) to the PAGA Employees
24 and 75% (\$22,500) to the California Labor and Workforce Development Agency; (c) Class
25 Representative service payment of up to \$7,500.00 for Plaintiff; (d) Class Counsel's attorneys'
26 fees, not to exceed 33-1/3% of the Gross Settlement Amount (\$226,030.00), and up to
27 \$18,000.00 in costs for actual litigation expenses incurred by Class Counsel; and (e)
28 Settlement Administration costs of up to \$20,000.00.

1 3. The Court finds on a preliminary basis that: (1) the settlement amount is fair
2 and reasonable to the class members when balanced against the probable outcome of further
3 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
4 significant informal discovery, investigation, research, and litigation have been conducted
5 such that counsel for the Parties at this time are able to reasonably evaluate their respective
6 positions; (3) settlement at this time will avoid substantial costs, delay, and risks that would
7 be presented by the further prosecution of the litigation; and (4) the proposed settlement has
8 been reached as the result of intensive, serious, and non-collusive negotiations between the
9 Parties. Accordingly, the Court preliminarily finds that the Settlement Agreement was entered
10 into in good faith.

11 4. A final fairness hearing on the question of whether the proposed settlement,
12 attorneys' fees and costs to Class Counsel, and the class representative's enhancement award
13 should be finally approved as fair, reasonable and adequate as to the members of the class is
14 hereby set in accordance with the Implementation Schedule set forth below.

15 5. The Court provisionally certifies for settlement purposes only the following
16 class: the "Class Members" shall mean individuals who are a member of the Class (or if any
17 such person is incompetent, deceased, or unavailable due to military service, the person's
18 legal representative or successor in interest evidenced by reasonable verification). The term
19 "Class Members" shall not include any person who submits a timely and valid request for
20 exclusion. For the purposes of settlement and release only, "Class Members" are defined as
21 follows: "All persons who worked for Defendant Modular Metal Fabricators, Inc. in
22 California as an hourly, non-exempt employee at any time during the period beginning four
23 years before the filing of the initial complaint in this Action and ending on the date the Court
24 grants preliminary approval." (Settlement ¶ 7.)

25 6. Release as To All Participating Settlement Class Members. As of the Effective
26 Date and upon payment by Defendant of all funds due under this Settlement, all Participating
27 Class Members, including the Class Representative, release the Participating Class Members
28 Released Claims. (Settlement ¶ 69.)

- 1 a. **Released Parties** includes Defendant Modular Metal Fabricators Incorporated,
2 and its past and present, officers, directors, employees and agents. (Settlement ¶
3 71.)
- 4 b. **Plaintiff's Released Claims** shall mean, upon the Final Approval by the Court of
5 this Settlement and Defendant's payment of all sums due pursuant to this
6 Settlement, and except as to such rights or claims as may be created by this
7 Settlement, Plaintiff and Class Representative will release claims as follows: (a)
8 Plaintiff and Class Representative hereby fully and finally releases and discharges
9 the Releasees (defined above) from any and all of the released Claims (defined
10 above) and from any and all other claims, charges, complaints, liens, demands,
11 agreements, contracts, covenants, actions, suits, causes of action, penalties, wages,
12 obligations, debts, expenses, damages, attorneys' fees, costs, judgments, orders, and
13 liabilities of whatever kind or nature in law, equity, or otherwise, known or
14 unknown, suspected or unsuspected, that Plaintiff and Class Representative had,
15 now has, or may hereafter claim to have against the Released Parties arising out of,
16 or relating in any way to, the Plaintiff and Class Representative's hiring by,
17 employment with, separation of employment with, or any other transactions,
18 occurrences, acts or omissions or any loss, damage or injury whatsoever, known or
19 unknown, suspected or unsuspected, resulting from any act or omission by or on the
20 part of any Released Party (the "Class Representative's Released Claims"), arising
21 or accruing from the beginning of time up through the Final Approval Date Order
22 Date ("Class Representative's Released Period"). (Settlement ¶ 74.) The Class
23 Representative's Released Claims include, but are not limited to, claims arising
24 from or dependent on the California *Labor Code*; the Wage Orders of the California
25 Industrial Welfare Commission ("IWC"); California *Business and Professions Code*
26 §§ 17200, et seq.; the California Fair Employment and Housing Act, Cal. Gov't
27 Code §§ 12900, *et seq.* ("FEHA"); the California Healthy Workplaces, Healthy
28 Families Act, Cal. *Labor Code* § 245, *et seq.*, the California common law of

1 contract and tort; Title VII of the Civil Rights Act of 1964 (“Title VII”); the
2 Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* (“ADA”); the
3 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*
4 (“ERISA”); the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”), the
5 Portal to Portal Act, 29 U.S.C. §§ 251, *et seq.*, and the Families First Coronavirus
6 Response Act. (Settlement ¶ 71.) (b) Plaintiff and Class Representative also
7 acknowledges that she has read Section 1542 of the Civil Code of the State of
8 California, which provides as follows: **A GENERAL RELEASE DOES NOT**
9 **EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY**
10 **DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
11 **THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY**
12 **HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
13 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. (*Id.*)**

- 14 c. **Participating Class Members Released Claims.** As of the date of the
15 Judgment, each Participating Class Member, and without the need to manually
16 sign a release document, shall release the Released Parties from all causes of
17 action and claims that were alleged in the Action or reasonably could have been
18 alleged based on the facts and legal theories contained in the Action, including
19 all of the following claims for relief from November 17, 2016 through the date
20 of granting the preliminary approval: (1) Failure to Pay Minimum Wages; (2)
21 Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods; (4)
22 Failure to Authorize and Permit Rest Breaks; (5) Failure to Indemnify
23 Necessary Business Expenses; (6) Failure to Timely Pay All Wages Due Upon
24 Separation of Employment; (7) Failure to Provide Accurate and Itemized Wage
25 Statements; (8) Violation of Business & Professional Code section 17200.
26 (Settlement ¶ 69.) On July 2, 2021, Class Counsel amended the Complaint to add
27 a tenth cause of action for Civil Penalties pursuant to the Private Attorney’s
28 General Act of 2004, Labor Code §§ 2698, *et seq.* (*Id.*) All claims under the

1 Private Attorneys General Act of 2004 that were or could have been premised
2 on the claims, causes of action or legal theories of relief pleaded in the
3 operative complaint or the LWDA exhaustion letter. (Settlement ¶ 69.) The
4 Settlement Class members who cash their Settlement Checks further
5 acknowledge that they are releasing any claims they have against Defendant
6 under the Fair Labor Standards Act (“FLSA”) (collectively, “Released
7 Claims”). (*Id.*) The Class Released Claims for the Participating Class Members
8 excludes all claims for vested benefits, wrongful termination, unemployment
9 insurance, disability, social security, workers’ compensation, claims while
10 classified as exempt, and claims outside of the Class Period. (*Id.*) The Class
11 Released Claims only covers the time period of from November 17, 2016
12 through the date of granting the preliminary approval. (*Id.*)

13 d. **The PAGA Group Released Claims:** As of the date of the Judgment, Plaintiff
14 and the LWDA shall release the Released Parties and the State of California for
15 claims for civil penalties under the California Labor Code Private Attorney’s
16 General Act of 2004 arising from November 17, 2019 through the date of granting
17 the preliminary approval, that were alleged in Plaintiff’s LWDA Exhaustion
18 Letter or to the extent alleged in Plaintiff’s operative complaint, including but not
19 limited to: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime
20 Compensation; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and
21 Permit Rest Breaks; (5) Failure to Indemnify Necessary Business Expenses; (6)
22 Failure to Timely Pay All Wages Due Upon Separation of Employment; (7)
23 Failure to Provide Accurate and Itemized Wage Statements; (8) Violation of
24 Business & Professional Code section 17200; and (9) Civil Penalties pursuant to
25 the Private Attorney’s General Act of 2004. (Settlement ¶ 70.)

26 7. The Court finds, for settlement purposes only, that the Class meets the
27 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
28 Settlement Classes are so numerous that joinder is impractical; (2) there are questions of law

1 and fact that are common, or of general interest, to all Settlement Class Members, which
2 predominate over individual issues; (3) Plaintiff's claims are typical of the claims of the
3 Settlement Class Members; (4) Plaintiff and Class Counsel will fairly and adequately protect
4 the interests of the Settlement Class Members; and (5) a class action is superior to other
5 available methods for the fair and efficient adjudication of the controversy.

6 8. The Court appoints, for settlement purposes only, Rhina Mendoza De Vielma,
7 as Class Representative.

8 9. The Court appoints, for settlement purposes only, Kane Moon, Esq., Allen
9 Feghali, Esq., and Brett Gunther, Esq., of Moon & Yang, APC, as Class Counsel. The Court
10 further preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-
11 third of the Total Settlement Amount (\$226,030.00), and costs not exceeding \$18,000.00.

12 10. The Court appoints ILYM Group, Inc. as the Settlement Administrator with
13 reasonable administration costs estimated not to exceed \$20,000.00 to perform the duties and
14 obligations provided for in the Parties Settlement Agreement in Paragraph 68, which The
15 Settlement Administrator's duties will include (i) calculating Settlement and PAGA Payment
16 Shares; (ii) preparing, printing, and mailing the Class Notice to all Class Members; (iii) using
17 reasonable measures to contact all Class Members, including conducting a National Change of
18 Address search on all Class Members before mailing the Class Notice to each Class Member's
19 address; (iv) re-mailing the Class Notice to the Class Member's new address for those Class
20 Members whose address had changed; (v) setting up a toll-free telephone number to receive
21 calls from Class Members; (vi) receiving requests for exclusion and objections to the
22 Settlement; (vii) providing the Parties with weekly status reports about the delivery of Class
23 Notices and any requests for exclusion and objections; (viii) issuing the checks to effectuate
24 the payments due under the Settlement; (ix) using reasonable measures to deliver issued
25 checks to Participating Class Members, including use of a "skip-trace" for undeliverable
26 checks; and (x) otherwise administering the Settlement pursuant to this Agreement including
27 paying and reporting the employer's share of the payroll taxes to the appropriate taxing
28 agency. The Settlement Administrator will have the final authority to resolve all disputes

1 concerning the calculation of a Participating Class Member's Settlement Share and/or PAGA
2 Group Member's PAGA Payment Share, subject to the terms set forth in this Agreement.

3 11. The Court approves, as to form and content the Notice, attached to the
4 Settlement as **Exhibit A**. The Court finds on a preliminary basis that plan for distribution of
5 the Notice to Settlement Class Members satisfies due process, provides the best notice
6 practicable under the circumstances, and shall constitute due and sufficient notice to all
7 persons entitled thereto.

8 12. The Notice shall be accompanied by the Exclusion Form attached to the
9 Settlement as **Exhibit B** that the class members may use. Any exclusion form shall be
10 submitted to the settlement administrator rather than filed with the Court. Class members
11 should not send copies of the exclusion form to Class Counsel. The Settlement Administrator
12 shall file a declaration concurrently with the filing of any motion for final approval,
13 authenticating a copy of every exclusion form received by the administrator.

14 13. The Notice shall be accompanied by the Objection Form attached to the
15 Settlement as **Exhibit C** that the class members may use. Any objection shall be submitted to
16 the settlement administrator rather than filed with the Court. Class Members should not send
17 copies of the objection form to Class Counsel. The Settlement Administrator shall file a
18 declaration concurrently with the filing of any motion for final approval, authenticating a copy
19 of every objection form received by the administrator.

20 14. The Parties are ordered to carry out the Settlement Agreement according to the
21 terms of the Settlement Agreement.

22 15. Any class member who does not request exclusion from the settlement may
23 object to the Settlement Agreement.

24 16. Class Counsel is required to give notice to any objecting party of any
25 continuance of the hearing of the motion for final approval.

26 17. The Class is not enjoined from filing any actions or administrative claims or
27 proceedings pending the final hearing on the settlement, or for any other period.

28 18. The Court orders the following Implementation Schedule:

EXHIBIT A



<<PSA ID>>
<<First Last>>
<<Address>>
<<City, State, Zip, Country>>

Name/Address Changes (if any):

NOTICE OF CLASS ACTION SETTLEMENT

If you are or were a non-exempt, hourly California employee of Modular Metal Fabricators, Inc. at any time between November 17, 2016 to [the date of preliminary approval], you may be able entitled to receive money from a Class Action Settlement.

A court approved this notice. This is not a solicitation from a lawyer. You are not being sued.

PLEASE READ THIS NOTICE.

Your legal rights are affected whether you act or don't act. Your legal rights and options—and the deadlines to use them—are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING AND RECEIVE SETTLEMENT PAYMENT	You are not required to take action to receive a payment. If you do nothing, you will automatically receive a payment from the Settlement if the Court finally approves the Settlement. In exchange, you will be bound by the Settlement including the release of all claims covered by the Settlement.
REQUEST EXCLUSION	Request to be excluded and receive no benefits from the Settlement. If you submit a Request for Exclusion, you will not receive a settlement payment. However, if you are a PAGA Group Member, as defined below, you cannot opt-out of the PAGA Payment.
OBJECT	If you wish to object to the Settlement, you may submit a written objection and supporting papers to the Settlement Administrator. Any written objections will be provided to the Court. In order to object, you must not have excluded yourself from the Settlement.

1. Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in a class action lawsuit entitled *De Vielma v. Modular Metal Fabricators, Inc.* in the Superior Court of the County of Riverside, Case No. CVR12000226 (the "Action" or "Lawsuit"). The Defendant in the Action is Modular Metal Fabricators, Inc. (referred to in this Notice as "Defendant.")

The Court has granted preliminary approval of a “Settlement Class” defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Modular Metal Fabricators, Inc. at any time between November 17, 2017 to [the date of preliminary approval].

The Court has also granted preliminary approval of a “PAGA Group” defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Modular Metal Fabricators, Inc. at any time between November 17, 2019 to July 19, 2022.

“Non-exempt” means an individual who is not exempt from the overtime provisions of the California Labor Code or applicable Industrial Welfare Commission Orders, and therefore is entitled to overtime pay for all hours worked beyond 40 in a workweek and eight hours in a workday as well as all the benefits under the California Labor Code.

Defendant’s employment records indicate that you meet one or both of these definitions, which makes you a member of the Settlement Class (referred to in this Notice as a “Class Member”) and possibly a member of the PAGA Group (referred to in this Notice as a “PAGA Group Member”). The Court directed that this Notice be sent to all Class Members and PAGA Group Members to inform you about the case and your rights and options before the Court decides to approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to all Class Members who have not opted out of the Settlement and all PAGA Group Members.

This Notice explains the Lawsuit, the Settlement, your legal rights and options, what benefits are available and how to get them.

2. What is this Lawsuit about?

On November 17, 2020, Plaintiff Rhina Mendoza De Vielma filed a class action complaint against Defendant alleging several violations of California wage and hour laws. Plaintiff filed the Action on behalf of herself and on behalf of all current and former non-exempt, hourly employees. Plaintiff amended the class action complaint (referred to in this notice as the “Operative Complaint”) on July 2, 2021. In the Operative Complaint, Plaintiff alleges that Defendant committed the following violations: (1) Failure to Pay Minimum Wages [Cal. Lab. Code sections 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code sections 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code sections 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code sections 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code section 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code sections 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code section 226]; (8) Unfair Business Practices [Cal. Bus. & Prof. Code sections 17200]; and a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code section 2699.]. Defendant vigorously denies all the claims and contentions made in the Action and Operative Complaint and maintains it has fully complied with the law. However, Defendant has agreed to settle the Lawsuit to avoid the expense of litigation.

3. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a Settlement. This allows the Parties to avoid the risk and uncertainty of trial and any subsequent appeal, and all affected employees who

have not opted out of the Settlement will receive compensation. The Settlement is not an admission of liability by Defendant. Plaintiff and the attorneys believe the Settlement is fair, reasonable and adequate, and in the best interests of all Class Members.

The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing.

4. What are the terms of the Settlement?

Defendant will pay Six Hundred and Seventy-Eight Thousand and Ninety Dollars and Zero Cents (\$678,090.00) to settle the Action (the “Maximum Settlement Amount”). The Maximum Settlement Amount includes: (a) all Settlement Payments to Participating Class Members; (b) the Service Award to Plaintiff (“the Class Representative”); (c) the Class Counsel’s attorneys’ fees and costs; (d) a payment to the California Labor and Workforce Development Agency for civil penalties brought under PAGA; (e) all PAGA Payments to the PAGA Group Members; and (f) the reasonable fees and costs of the Settlement Administrator. Defendant will pay their portion of all payroll taxes resulting from the Settlement in addition to the Maximum Settlement Amount.

The Court has preliminarily approved the following payments from the Maximum Settlement Amount. Class Counsel will request that the Court award Class Counsel up to one-third (1/3) of the Maximum Settlement Amount (currently estimated to be Two Hundred Twenty-Six Thousand and Thirty Dollars (\$226,030.00) in attorneys’ fees and up to Eighteen Thousand Dollars and Zero Cents (\$18,000.00) in out-of-pocket litigation costs, up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) for Settlement Administration Costs for the third-party Settlement Administrator, and up to Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for the Service Award for the Class and PAGA Representative in recognition of his time and service to the Class in pursuing the Action and in fulfilling his obligations as the Class and PAGA Representative. Additionally, the Settlement provides for a payment of Thirty Thousand Dollars and Zero Cents (\$30,000.00) (the “LWDA Payment”) to resolve claims under PAGA, of which Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be distributed to the PAGA Group Members and Twenty-Two Thousand and Five Hundred Dollars and Zero Cents (\$22,500.00) will be paid to the California Labor and Workforce Development Agency (“LWDA”). This allocation of the PAGA Payment is required by California law. The final amounts of these various payments are all subject to Court approval.

After deductions of the preceding Court-approved payments, the remaining amount—the “Net Settlement Amount”—will be distributed to those Class Members who have not opted out of the Settlement (the “Participating Class Members”). No portion of the Maximum Settlement Amount will be returned to Defendant.

5. How much can I expect to receive?

Each Participating Class Member will receive a proportional share of the Net Settlement Amount based on the number of workweeks the person worked for Modular Metal Fabricators, Inc. as a non-exempt, hourly employee during the Class Period, defined as the period of time from November 17, 2016 to [the date of preliminary approval]. Any workweek in which a Class Member worked at least one day shall be counted as a workweek.

To calculate a Class Member’s Individual Settlement Payment, the Net Settlement Amount will be divided by the aggregate total number of workweeks of all Participating Class Members, resulting in the “Workweek Value.” Each Participating Class Member’s Individual Settlement Payment will be calculated by multiplying each individual Participating Class Member’s total number of workweeks by the Workweek Value.

Your Compensable Workweeks are: <<Workweeks>>

Your Estimated Individual Settlement Payment is: \$<<Est.SettlementAmt>>

All settlement payments are subject to taxation. Each Individual Settlement Payment will be allocated as follows: (a) 20% as wages that will be subject to deductions and withholdings for the **employee's** share of state and federal payroll taxes; and (b) 80% as penalties and interest that will not be subject to deductions and withholdings. Each Participating Class Member will receive an IRS Form W-2 with respect to the portion of the Settlement Payment allocated to wages and an IRS Form-1099 with respect to the portion of the Settlement Payment allocated to penalties and interest, unless said payment is less than or equal to \$600.00. **Prior** to mailing Settlement checks, the Settlement Administrator will calculate and deduct the employee's **required withholdings** and payroll taxes from the "wage" portion of the Settlement payment. Defendant will separately pay the **employer's** share of payroll taxes with respect to the "wage" portion of each Settlement payment.

Please note that each Participating Class Member will be responsible for his/her share of **taxes** attributable to the receipt of an Individual Settlement Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Each PAGA Group Member will receive a proportional share of the PAGA Payment based on the number of pay periods the person worked for Modular Metal Fabricators, Inc. as a non-exempt, hourly employee during the PAGA Period, defined as the period of time from November 17, 2019, to July 19, 2022. **Any** pay period in which a PAGA Group Member worked at least one day shall be counted as a pay period.

To calculate a PAGA Group Member's Individual PAGA Payment, the PAGA Payment will be divided by the aggregate total number of pay periods of all PAGA Group Members, resulting in the "Pay Period Value." Each PAGA Group Member's Individual Settlement Payment will be calculated by multiplying each individual PAGA Group Member's total number of pay periods by the Pay Period Value.

Your Compensable Pay Periods are: <<PayPeriods>>

Your Estimated Individual PAGA Payment is: \$<<Est.PAGAPaymentAmt>>

All settlement payments are subject to taxation. Each Individual PAGA Payment will be allocated as follows: 100% as penalties that will not be subject to deductions and withholdings. Each PAGA Group Member will receive an IRS Form-1099 for his or her Individual PAGA Payment, unless said payment is less than or equal to \$600.00.

Please note that each PAGA Group Member will be responsible for his/her **taxes** attributable to the receipt of an Individual PAGA Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. PAGA Group Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

6. What if I disagree with the number of workweeks and/or pay periods credited to me in this Notice?

The information concerning the number of workweeks and/or pay periods you worked as an hourly, non-exempt employee during the Class Period and/or PAGA Period is based on Defendant's records. To dispute this number of workweeks and/or pay periods credited to you, you must send written notice to the Settlement Administrator.

To be valid, your written dispute of weeks worked must: (1) include your full name, address, telephone number, and last four digits of the Social Security number; and (2) be accompanied by satisfactory evidence of the actual weeks worked as an hourly, non-exempt employee for Defendant during the Class Period and/or PAGA Period, including any supporting documentation (e.g., copies of your pay stubs). To be timely, your written dispute of workweeks and/or pay periods worked must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator *at the address provided below*, and be postmarked on or before _____, 2023.

The Parties and the Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member. The Settlement Administrator will make the final decision as to how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member and report the outcome to the Class Member and/or PAGA Group Member.

7. How and when will I get a payment? How do I update my address?

How do I receive money from the Settlement? You do not need to do anything to receive your Individual Settlement Payment and/or Individual PAGA Payment. Just watch your mail for a check and cash it when you get it. If you do not exclude yourself from the Settlement, you will automatically receive money from the Settlement. You do not need to make a claim or take any other action to receive your share of the Settlement.

When will I receive my Settlement payment? Class Members who do not opt out of the Settlement will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. PAGA Group Members will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. If there are appeals, resolving them can take time. Please be patient.

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. After 180 days, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Sections 1500 - 1582, in the names of those Participating Class Members and/or PAGA Group Members who did not cash their checks until such time they claim their property.

Change of address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure that you receive your Settlement payment. If you change your address, or if this notice was not mailed to your correct address, you should immediately provide your current address to the Settlement Administrator. The Settlement Administrator can be reached at (xxx) xxx-xxxx, or at the address provided below.

8. What claims are being released by the Settlement?

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all Participating Class Members shall release the Released Parties from the Released Claims for the Class Period, which is defined as the period of time between November 17, 2016, to [the date of preliminary approval].

The Released Claims are defined as all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Action, including all of the following claims for relief from November 17, 2016, to [the date of preliminary approval], including, but not limited to,

claims pursuant to *Labor Code* sections, 201, 202, 203, 204, 210, 226(a), 226.2, 226.3, 226.7, 510, 512, 1174(d), 1182.5, 1194, 1194.2, 1197, 1197.1, 2800, 2802, 2810.5, 2699, and the Industrial Welfare Commission Wage Orders, and also any claim for unpaid wages, including under any theory of rounding, unpaid minimum wage, off-the-clock work, meal and rest period violations, waiting time penalties, itemized wage statement penalties, expense reimbursements, safety equipment reimbursements, wages for unpaid time, other related wages, restitution, disgorgement, civil or statutory penalties, attorneys' fees, and/or costs and all claims under the Private Attorneys General Act of 2004, under the Unfair Competition Law, *Business & Professions Code* section 17200, and/or which are alleged in the Lawsuit within the Class Period as well as claims for Civil Penalties pursuant to the Private Attorney's General Act of 2004, Labor Code sections 2698, 2899. The Class Released Claims only covers the time period of November 17, 2016, to [the date of preliminary approval].

Other than for Plaintiff, claims of Participating Class Members, if any, for vested benefits, wrongful termination, unemployment insurance, disability benefits, social security, workers' compensation, claims while classified as exempt, and claims outside of the Class Period are not encompassed within the definition of "Class Released Claims."

Any Class Member who does not request exclusion by the applicable deadline will be considered to have accepted the release and to have waived any and all of the Released Claims against the Released Parties.

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, Plaintiff and the LWDA shall release the Released Parties from the PAGA Released Claims for the PAGA Period, which is defined as the period of time between November 17, 2019 to July 19, 2022.

The PAGA Released Claims are defined as all for claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 arising from November 17, 2019 to July 19, 2022 that were alleged in Plaintiff's LWDA Exhaustion Letter or to the extent alleged in Plaintiff's First Amended Complaint, including, but not limited to the following claims for relief: (1) Failure to Pay Minimum Wages [Cal. Lab. Code sections 204, 1194, 1194. 2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code sections 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code sections 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code sections 226. 7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code section 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code sections 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code section 226]; (8) Unfair Business Practices [Cal. Bus. & Prof. Code sections 17200] and (9). Civil Penalties pursuant to the Private Attorney's General Act of 2004. (collectively, the "PAGA Released Claims"). The PAGA Released Claims only covers the time period of November 17, 2019, to July 19, 2022.

PAGA Group Members cannot opt out of or object to the foregoing PAGA Released Claims.

Released Parties for both the Class and PAGA Released Claims include Defendant Modular Metal Fabricators, Inc. and its past, present, and/or future, officers, directors, employees and agents

9. What are my options?

a. **Participate in the Settlement and Receive a Settlement Payment**. If you want to participate in the Settlement, you do not have to do anything. You will receive your Individual Settlement Payment automatically if the Settlement is finally approved by the Court. If applicable, you will receive your Individual PAGA Payment automatically if the Settlement is finally approved by the Court.

b. **Exclude yourself from the Settlement.** If you do not want to be part of the Settlement, you can request to be excluded from the Settlement completing the enclosed Request for Exclusion Form and mailing it to the Settlement Administrator. If you exclude yourself, you will not receive your Individual Settlement Payment, you will not be subject to the terms of the Settlement, and you will retain whatever rights you may currently have. To be valid, your Request for Exclusion Form must include your signature and must be timely. You may use the Request for Exclusion Form, which is attached hereto as Exhibit A, to exclude yourself. If you elect to exclude yourself, but do not use the included form, your request for exclusion must : (1) include your full name, address, and last four digits of the Social Security number; (2) your approximate dates of employment with Defendant; and (3) a clear statement that you wish to be excluded from the Settlement in *Rhina Mendoza De Vielma v. Modular Metal Fabricators, Inc*, Superior Court of the County of Riverside, Case No. CVRI2000226. To be timely, a Request for Exclusion must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator at the address provided below and be postmarked on or before _____, 2023.

If applicable, you may not exclude yourself from the PAGA Group and you will receive your PAGA Payment even if you request exclusion.

c. **Object to the Settlement.** If you're a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. If the Court rejects your objection and finally approves the Settlement, you will still be bound by the terms of the Settlement, but you will also receive a monetary award.

To object, you may submit a written objection stating why you object to the Settlement using the included Objection Form, or you may simply appear at the Final Approval Hearing set for _____, 2023 at _____ a.m. in the Riverside County Superior Court and discuss your objection with the Court and the Parties at your own expense. Written objections must include: (i) your full name, current address, and last four digits of the Social Security number; (ii) the approximate dates of your employment at Defendants; (iii) the case name and number (*Rhina Mendoza De Vielma v. Modular Metal Fabricators, Inc*, Superior Court of the County of Riverside, Case No. CVRI2000226); (iii) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (iv) copies of any papers, briefs, or other documents on which the objection is based, if any; (v) your signature. You may use the Objection Form, which is attached hereto as Exhibit B, to object. To be timely, a written objection must be mailed by first-class U.S. Mail to the Settlement Administrator at the address provided below and be postmarked on or before _____, 2023.

Please note that you cannot both exclude yourself and object to the Settlement. In order for you to object to this Settlement, or any term of it, you may not submit a Request for Exclusion.

10. Who are the attorneys representing Plaintiff and the Settlement Class?

The Court has appointed the following lawyers as "Class Counsel" to represent all Class Members:

MOON & YANG, APC
Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Brett Gunther (SBN 306448)
Sohyun "Julie" Oh (SBN 341157)
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017

You will not be charged for these lawyers.

11. How will the attorneys for the Settlement Class be paid?

All payments for Class Counsel's attorneys' fees and costs will be made from the Maximum Settlement Amount. Class Counsel intends to request an award of attorneys' fees up to one-third (1/3) of the Maximum Settlement Amount (currently estimated to be Two Hundred Twenty-Six Thousand and Thirty Dollars (\$226,030.00)), plus reimbursement of reasonable, actual out-of-pocket costs incurred in the litigation, up to Eighteen Thousand Dollars and Zero Cents (\$18,000.00). Class Counsel has been prosecuting this Action on behalf of Plaintiff and the Settlement Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs. The Court will decide the amount of fees and expenses to award at the Final Approval Hearing.

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

The Court has preliminarily approved the Settlement and will hold a hearing, called a Final Approval Hearing, to decide whether to give Final Approval to the Settlement. The Court will hold the Final Approval Hearing on _____, 2023, at _____ a.m., in Department 10 of the Riverside County Superior Court located at 4050 Main Street, Riverside 92501, before the Honorable Harold Hopp. At the Final Approval Hearing, the Court will rule on Class Counsel's request for attorneys' fees and litigation costs, the Class Representative Service Award, and the Settlement Administration Costs.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If you did not submit a Request for Exclusion, you or your attorney may appear at the hearing at your own expense and request to be heard. The Final Approval Hearing may be postponed without further notice.

13. Will I be subject to discipline if I participate in the Settlement?

No. Defendant approves the Settlement and will not retaliate in any way against any Class Member for participating in the Settlement. Your decision to participate, not participate, or object to this Settlement will not affect your employment with Modular Metal Fabricators, Inc. or its treatment of you as a former employee.

14. What is the Settlement Administrator's address?

Any Request for Exclusion, Notice of Objection, address change request, and all other correspondence intended for the Settlement Administrator must be mailed to the Settlement Administrator at the following address:

De Vielma v. Modular Metal Fabricators, Inc.
c/o IYLM Group, Inc. Settlement Administrators
14771 Plaza Dr., Ste. L
Tustin, California 92780

15. How Can I Get Additional Information?

If you have questions, you can call the Settlement Administrator at (800) XXX-XXXX and/or Class Counsel at (213) 232-3128. For the precise terms and conditions of the settlement, you may review the detailed "Joint Stipulation of Class Settlement and Release of Claims" which is available for viewing online, free of charge, at

the Settlement Administrator's website: [WEBSITE URL]. The pleadings and other court records in the lawsuit are available online, free of charge, at [Settlement Administrator WEBSITE URL]. The records may also can be examined, free of charge, in person at any time during regular business hours at the Clerk's Office of the Superior Court of California, County of Riverside, 4050 Main Street, Riverside, California 92101, or online at <https://www.riverside.courts.ca.gov/OnlineServices/SearchCourtRecords/public-access.php>; or you may contact the Settlement Administrator at Tel: (XXX) XXX-XXX. To view the "Joint Stipulation of Class Settlement and Release of Claims" from the Court's website, it must be purchased and is available for purchase as part of the Declaration of Kane Moon, Exhibit 1, filed on [filing date]. Additionally, if you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is above, and they will provide you with a copy via e-mail free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S MANAGERS, SUPERVISORS,
OR ATTORNEYS ABOUT THIS SETTLEMENT
They will not be able to assist you.

EXHIBIT B

Rhina Mendoza De Vielma v. Modular Metal Fabricators, Inc.
Riverside County Superior Court Case No. CVR12000226



<<PSA ID>>

<<First Last>>

<<Address>>

<<City, State, Zip, Country>>

Last 4 digits of SSN

Name/Address Changes (if any):

REQUEST FOR EXCLUSION FORM

You are receiving this form because you may be entitled to receive money from a Class Action Settlement.

Use and return this form only if you wish to be excluded from the Class and do not wish to receive a settlement payment. If you exclude yourself from the Class by signing and returning this form, you will not receive your Individual Settlement Payment, you will not be subject to the terms of the Settlement, and you will retain whatever rights you may currently have.

If you wish to remain in the Class and receive a settlement payment, you may disregard this form. You do not need to do anything, and you will receive a check by U.S. Mail.

To be valid, your Exclusion Request Form must be signed by you, returned to the Settlement Administrator at the address provided below, and be postmarked on or before _____, ____.

I HEREBY CONFIRM THAT I HAVE RECEIVED NOTICE OF THE PROPOSED SETTLEMENT IN THE *De Vielma v. Modular Metal* ACTION AND WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS. I UNDERSTAND THAT I WILL NOT RECEIVE A SETTLEMENT PAYMENT OR OTHER SETTLEMENT BENEFITS AND WILL NOT BE BOUND BY THE CLASS SETTLEMENT INCLUDING THE RELEASE OF CLASS CLAIMS. HOWEVER, I WILL STILL RECEIVE MY PAGA PAYMENT AND BE SUBJECT TO THE PAGA RELEASE AND OTHER SETTLEMENT TERMS APPLICABLE TO PAGA

Dated: _____

Signature: _____

What is the Settlement Administrator's address?

De Vielama v. Modular Metal Fabricators, Inc.
c/o IYLM Group, Inc. Settlement Administrators
14771 Plaza Dr., Ste. L
Tustin, California 92780
(800) XXX-XXXX

Page 1 of 1

Request for Exclusion Form

Questions? Please call the Settlement Administrator at 1-800-XXX-XXXX

EXHIBIT C

Rhina Mendoza De Vielma v. Modular Metal Fabricators, Inc.
Riverside County Superior Court Case No. CVR12000226



<<PSA ID>>
<<First Last>>
<<Address>>
<<City, State, Zip, Country>>
Last 4 digits of SSN

Name/Address Changes (if any):

OBJECTION FORM

You are receiving this form because you may be entitled to receive money from a Class Action Settlement.

Use and return this form only if you wish to object to the settlement. If your objection is rejected by the Court, you will receive your Individual Settlement Payment, you will be subject to the terms of the Settlement, and you will release claims as set forth in the Settlement and Notice.

To be valid, your Objection Form must be signed by you, and returned to the Settlement Administrator at the address provided below and be postmarked on or before _____, ____.

I object to the settlement in *De Vielma v. Modular Metal* because

Dated: _____

Signature: _____

What is the Settlement Administrator's address?

De Vielma v. Modular Metal Fabricators, Inc.
c/o IYLM Group, Inc. Settlement Administrators
14771 Plaza Drive, Suite "L"
Tustin, California 92780
(800) XXX-XXXX