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Arash N. Alizadeh
Attorney at Law
aalizadeh@lawyerforemployees.com

ALIZADEH EMPLOYEES LAW, PROF. CORP.

December 5, 2018

VIA ONLINE PORTAL

Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Subject: **NOTICE OF PAGA SETTLEMENT**
Josue Uribe v. Crown Building Maintenance Co.
O.C.S.C. Case no. 30-2016-00839857-CU-OE-CXC
LWDA-CM-296711-17

Dear Representative:

The office of Alizadeh Employees Law, Prof. Corp., formerly Law Office of Arash N. Alizadeh, represents Josue Uribe, plaintiff in the above-referenced matter.

Employer, defendant Crown Building Maintenance Co., may be contacted through counsel at:

DOUGLAS J. FARMER, Cal. Bar No. 139646
douglas.farmer@ogletreedeakins.com
MICHAEL D. THOMAS, Cal. Bar No.
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Steuart Tower, Suite 1300
One Market Plaza
San Francisco, CA 94105
Telephone: 415.442.4810
Facsimile: 415.442.4870

On February 3, 2016, Plaintiff provided the LWDA with a PAGA representative action letter pursuant to Labor Code § 2699.3. **Attachment 1.**

On March 9, 2016, after exhausting the administrative requirements set forth in Labor Code § 2699.3(a), Plaintiff filed a PAGA representative action on behalf of himself and all “aggrieved” employees. **Attachment 2.**

The Parties subsequently reached a settlement on a class wide basis, including PAGA penalties, and obtained court approval of the settlement. As part of the Parties' Settlement Agreement and Release, Uribe agreed to file a second amended complaint. Uribe attached the second amended complaint to his declaration in support of preliminary approval. **Attachment 3** (second amended complaint).

The details of the procedural and factual background are set forth in the Motion for Preliminary Approval and supporting declarations attached. **Attachment 4**. The details of the terms of the Settlement Agreement and Release are set forth in **Attachment 5**.

On October 19, 2018, the Court granted Plaintiff's Motion for Preliminary Approval. **Attachment 6**.

Due to oversight, counsel for Plaintiff failed to give notice of the settlement to the LWDA prior to the court ruling approving the settlement.

Accordingly, Plaintiff hereby gives notice to the LWDA of the PAGA settlement in this case. Currently, the Superior Court has scheduled a status conference for March 1, 2019 in order to oversee the progress of settlement fund distributions. Plaintiff requests the LWDA notifies us within **30 days** if there is any objection to the PAGA settlement, so this issue can be brought to the attention of the Superior Court.

Please do not hesitate to contact me if you have any questions.

Dated: December 5, 2018

**ALIZADEH EMPLOYEES LAW, PROF.
CORP.**



ARASH N. ALIZADEH
Attorney for Employee

Exhibit 1

alizadeh

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Arash N. Alizadeh
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aalizadeh@lawyerforemployees.com

LAW OFFICE OF ARASH N. ALIZADEH

February 3, 2016

VIA CERTIFIED MAIL

Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Subject: *Josue Uribe v. Crown Building Maintenance Co.*

Dear Representative:

This office represents Josue Uribe (Employee), an employee of Crown Building Maintenance Co. (Employer).

Employer may be contacted directly at:

Crown Building Maintenance Co. d/b/a Able Services
868 Folsom Street
San Francisco, CA 94107

Employee intends to seek penalties on behalf of Employee and other current and former employees for violations of the California Labor Code, which are recoverable under California Labor Code §2699 et seq. Employee is seeking penalties on behalf of the State of California of which 75% will be kept by the state, while 25% will be available to aggrieved employees. This letter is sent in compliance with the reporting requirements of California Labor Code §2699.3.

At all times alleged herein, Employer was, and is, America's largest family-owned provider of Janitorial, Engineering, and Facility solutions. Employer was established in 1926 and serves customers at their facilities throughout California. Employee worked as a day porter at Employer's worksite in Costa Mesa, CA from approximately May 2013 through some time in November 2015 when Employee went on disability leave due to an on the job knee injury. Employee worked at an apartment complex site and his duties included sweeping, mopping, vacuuming, blowing leaves and other similar tasks. Employee used different chemicals, detergents, and cleaning supplies in performing his tasks and he always used a cart that held said cleaning material and equipment that he pushed around in his job site. Employee's job duties were essentially similar to a janitor. Employee was required to wear a uniform provided by the

company, but the company did not maintain the uniform. Due to heavy chemicals that came in contact with Employee's uniform, he had to wash the uniforms in separate wash loads to avoid damaging his personal clothes. Employer also required Employee to purchase his own slip-resistant shoes. Employer violated the following Labor Code sections:

- Labor Code § 204 by failing to pay all wages due to Employee and other current and former employees semimonthly. This violation is based on the theory that Employee was entitled to reimbursement of expenses incurred for maintaining his uniform and purchasing his own slip resistant shoe that he had no other use or need for other than to perform his job. These expenses are considered wages. *See Department of Industrial Relations etc. v. UI Video Stores, Inc.*, 55 Cal.App 4th 1084 (1997). By failing to reimburse Employee semimonthly, Employer failed to pay Employees all his wages semimonthly. Thus Employer violated section 204 by failing to reimburse him.

-Labor Code § 210 by violating section 204 as stated above. Section 210 entitles Employee to civil penalties for Employer's violation of section 204.

-Labor Code § 226 subsection (a)(1), by failing to provide Employee with his paycheck an itemized statement in writing showing gross wages earned. This is due to Employer's failure to reimburse Employee as explained above for section 204.

-Labor Code § 1198 by violating Wage Order No. 5, paragraphs 9 and 20. This is due to Employer's failure to reimburse Employee as explained above for section 204.

-Labor Code § 1199 by causing Employee to work under conditions prohibited by Wage Order No. 5, paragraphs 9 and 20. This is due to Employer's failure to reimburse Employee as explained above for section 204.

-Labor Code § 2802 by failing to reimburse Employee for Expenses incurred for purchasing slip resistant shoes and maintaining his uniform.

-Labor Code § 6401 by failing to provide Employee with slip-resistant shoes. Section 6401 imposes a duty on Employer to furnish safety devices and safeguard. Slip-resistant shoes are a safety device and safeguard necessary to render Employee's employment and place of employment safe and healthful. Employer failed to provide slip-resistant shoes to Employee in violation of section 6401.

-Labor Code § 6401.7 by failing to implement and maintain an injury prevention program because Employer failed to provide an occupational safety and training program, conduct periodic safety inspections, implement a system for correcting unsafe and unhealthy conditions, failure to provide a discipline system, among other omissions that violate section 6401.7.

-Labor Code § 6403 by failing to provide Employee with slip-resistant shoes. Section 6403 imposes a duty on Employer to furnish safety devices and safeguard. Slip-resistant shoes are a safety device and safeguard necessary to render Employee's employment and place of

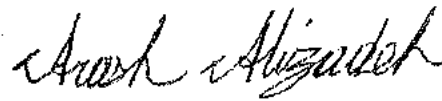
employment safe and healthful. Employer failed to provide slip-resistant shoes to Employee in violation of section 6403.

Therefore, on behalf of all affected employees, Employee seeks all applicable penalties related to these violations of the California Labor Code pursuant to California's "Labor Code Private Attorney General Act of 2004."

Thank you for your attention to this matter. If you have any questions, please contact me.

Dated: February 3, 2016

LAW OFFICE OF ARASH N. ALIZADEH

A handwritten signature in black ink, appearing to read "Arash Alizadeh", written in a cursive style.

ARASH N. ALIZADEH
Attorney for Employee

CC by Cert. mail:
Crown Building Maintenance Co.
Division of Occupational Safety and Health

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

Re: Crown Bldg. Maintenance

COMPLETE THIS SECTION ON DELIVERY

A. Signature: ☒ Addressee or ☐ Agent

X

FEB 08 2016

B. Received By: (Please Print Clearly)

LABOR STANDARDS DIVISION

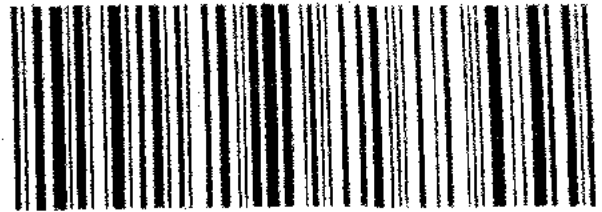
C. Date of Delivery: 02-08-2016

D. Addressee's Address (If Different From Address Used by Sender)

Secondary Address / Suite / Apt. / Floor (Please Print Clearly)

Delivery Address

City State ZIP + 4 Code



9414 7118 9956 3318 3372 80

RETURN RECEIPT REQUESTED

Article Addressed To:



Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland CA 94612-1463

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

Re: Crown Bldg. Maint.

COMPLETE THIS SECTION ON DELIVERY

A. Signature: ☒ Addressee or ☐ Agent

X *Parla Blaverde*

B. Received By: (Please Print Clearly)

Parla Blaverde

C. Date of Delivery

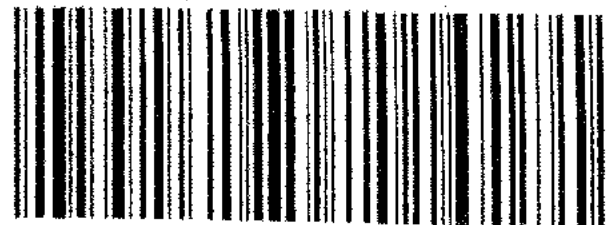
02-09-16

D. Addressee's Address (If Different From Address Used by Sender)

Secondary Address / Suite / Apt. / Floor (Please Print Clearly)

Delivery Address

City State ZIP + 4 Code



9414 7118 9956 3318 3192 17

RETURN RECEIPT REQUESTED

Article Addressed To:



Division of Occupational Safety and Health
1515 Clay Street, Ste. 1540
Oakland CA 94612-1499

UNITED STATES POSTAL SERVICE



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PS FORM 3811, 2/2004

RETURN TO:

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618



UNITED STATES POSTAL SERVICE



First-Class Mail
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Permit No.G-10

PS FORM 3811, 2/2004

RETURN TO:

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

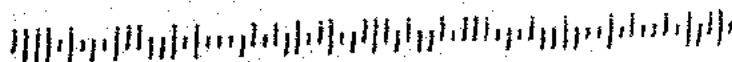


Exhibit 2

1 **LAW OFFICE OF ARASH N. ALIZADEH**
2 Arash N. Alizadeh, State Bar No. 302290
3 7545 Irvine Center Drive, Suite 200
4 Irvine, California 92618
5 Phone: (949) 606-2845
6 Fax: (949) 264-9345
7 Email: aalizadeh@lawyerforemployees.com

8 Attorneys for Plaintiff JOSUE URIBE

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

03/09/2016 at 07:02:24 PM
Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE**

10 **700 CIVIC CENTER DRIVE WEST, SANTA ANA, CA 92701**

11 JOSUE URIBE, on behalf of himself and other
12 current or former employees,

13 Plaintiff,

14 v.

15 CROWN BUILDING MAINTENANCE CO.;
16 and DOES 1 through 100, inclusive,

17 Defendants.

Case No.: 30-2016-00839857-CU-OE-CXC
Judge Gail A. Andler

COMPLAINT FOR DAMAGES

18 Plaintiff alleges:

19 **General Allegations**

20 1. This is an action for violation of California's wage and hour laws and the Labor
21 Code Private Attorneys General Act of 2004.

22 2. Venue is proper in this Court because Defendants do substantial business in Orange
23 County, California, and employed Plaintiff in Los Angeles County, California.

24 3. At all times alleged herein, Employer was, and is, America's largest family-owned
25 provider of Janitorial, Engineering, and Facility solutions. Employer was established in 1926 and
26 serves customers at their facilities throughout California. Employee worked as a day porter at
27 Employer's worksite in Costa Mesa, CA from approximately May 2013 through some time in
28 November 2015 when Employee went on disability leave due to an on the job knee injury.

1 Employee worked at an apartment complex site and his duties included sweeping, mopping,
2 vacuuming, blowing leaves and other similar tasks.

3 4. Employee used different chemicals, detergents, and cleaning supplies in performing
4 his tasks and he always used a cart that held said cleaning material and equipment that he pushed
5 around in his job site. Employee's job duties were essentially similar to a janitor. Employee was
6 required to wear a uniform provided by the company, but the company did not maintain the
7 uniform. Due to heavy chemicals that came in contact with Employee's uniform, he had to wash
8 the uniforms in separate wash loads to avoid damaging his personal clothes.

9 5. Defendants paid Plaintiff hourly at, or near, the minimum wage rate. Defendants
10 calculated and paid Plaintiff overtime, and premium pay for missed rest and meal-breaks using an
11 incorrect regular rate of pay without accounting for other remuneration paid to or on behalf of
12 Plaintiff such as the reimbursement for cost of maintenance of uniforms or purchasing slip
13 resistant shoes. Accordingly, Plaintiff was paid overtime, and premium pay for missed rest and
14 meal-breaks based on an incorrect "rate of pay", thus depriving him of wage earned and due to
15 him by Defendants.

14 Parties

15 6. Plaintiff is, and at all relevant times was, a competent adult residing in Orange
16 County, California.

17 7. Plaintiff is informed and believes, and on that basis alleges, that defendant
18 CROWN BUILDING MAINTENANCE CO is, and at all relevant times was, a business operating
19 in Orange County, California.

20 8. Plaintiff currently is unaware of the true names and capacities of the defendants
21 sued in this action by the fictitious names DOES 1 through 100, inclusive, and therefore sues those
22 defendants by those fictitious names. Plaintiff will amend this Complaint to allege the true names
23 and capacities of such fictitiously named defendants when they are ascertained.

24 9. Plaintiff is informed and believes, and on that basis alleges, that each defendant
25 sued in this action, including each defendant sued by the fictitious names DOES 1 through 100,
26 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged
27 below.

28 10. Plaintiff is informed and believes and on that basis alleges that there exists, and at
all relevant times there has existed, a unity of interest and ownership between DOES 1 through 10,

1 on the one hand, and CROWN BUILDING MAINTENANCE CO, on the other hand, such that
2 any separateness and individuality between them have ceased, and CROWN BUILDING
3 MAINTENANCE CO, is the alter-ego of DOES 1 through 10. Adherence to the fiction of the
4 separate existence of CROWN BUILDING MAINTENANCE CO as an entity distinct from
5 DOES 1 through 10 would permit abuse of any corporate privilege, sanction fraud and promote
6 injustice.

7 11. Plaintiff is informed and believes that each Defendant conspired with, aided and
8 abetted, ratified the conduct of, knowingly acquiesced in, acted with the consent and permission
9 of, and accepted the benefits of each other Defendant with respect to the matters alleged herein.

10 12. Plaintiff is informed and believes that, except as otherwise alleged herein, each
11 Defendant is, and at all times relevant to this Complaint was, the agent, joint-employer, partner,
12 joint venturer, alter ego, affiliate, and/or co-conspirator with or of each of the other Defendants,
13 and/or otherwise acted on the behalf of each other Defendant.

14 **First Cause of Action**

15 **For Failure to Pay Earned Wages**

16 **(Cal. Labor Code Section 204)**

17 **by Plaintiff Against All Defendants**

18 13. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as
19 though set forth fully herein.

20 14. Defendants failed to pay Plaintiff the wages that he earned, as required by the Code
21 and the Industrial Welfare Commission Wage Order no. 5-2001 ("Wage Order").

22 15. Plaintiff has been deprived of his rightfully earned wages as a direct and proximate
23 result of Defendants' failure to pay said compensation. Plaintiff is entitled to recover such
24 amounts, plus interest thereon, attorney's fees and costs.

25 **Second Cause of Action**

26 **For Failure to Pay State Minimum Wage, including Overtime Compensation**

27 **(Labor Code Sections 510, 1194, 1194.2, 1197, 1198; IWC Wage Order)**

28 **by Plaintiffs Against All Defendants**

16 16. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
17 though set forth fully herein.

18 17. The Code and the Wage Order provide that a workday consists of eight hours, a
19 workweek consists of 40 hours, and an employer must compensate an employee who works

1 overtime hours with either one-and-one-half times or double the employee's regular rate of
2 compensation. The Code and the Wage Order also provide that the employee's regular rate of
3 compensation equals one fortieth (1/40) of the employee's weekly salary.

4 18. Defendants employed Plaintiff for more than eight hours per day and more than 40
5 hours per workweek, but Defendants failed to pay Plaintiff minimum wage for his work, including
6 overtime compensation at the minimum wage rate for his overtime hours, as required by the Code
7 and the Wage Order.

8 19. Defendants thus required Plaintiff to work under conditions prohibited by order of
9 the IWC, in violation of those orders.

10 20. Defendants deprived Plaintiff of his rightfully earned minimum wage
11 compensation, including overtime compensation at the minimum wage rate, as a direct and
12 proximate result of Defendants' failure to pay said compensation. Under Code section 1194,
13 Plaintiff is entitled to recover such amounts, plus interest thereon, reasonable attorney's fees, and
14 costs.

15 21. In addition, under Code section 1194.2, Plaintiff is entitled to recover liquidated
16 damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon.

17 **Third Cause of Action**
18 **For Failure to Pay Overtime Compensation**
19 **(Labor Code Sections 510, 1194, 1194.2, 1198; Wage Order)**
20 **by Plaintiffs Against All Defendants**

21 22. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
22 though set forth fully herein.

23 23. The Code and the Wage Order provide that a workday consists of eight hours, a
24 workweek consists of 40 hours, and an employer must compensate an employee who works
25 overtime hours with either one-and-one-half times or double the employee's regular rate of
26 compensation. "The regular rate of pay includes many different kinds of remuneration, for
27 example: hourly earnings, salary, piece work earnings, commissions, certain bonuses, and the
28 value of meals and lodging." 2002 DLSE Enforcement Policies and Interpretations Manual
§49.1.1 (rev 2009) (DLSE Manual).

29 24. "In not defining the term 'regular rate of pay', the Industrial Welfare Commission
has manifested its intent to adopt the definition of "regular rate of pay" set out in the Fair Labor

1 Standards Act ("FLSA") 29 U SC § 207(e): "...the 'regular rate' at which an employee is
2 employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the
3 employee..." (29 USC § 207(e))." In determining what payments are to be included in or excluded
4 from the calculation of the regular rate of pay, California law adheres to the standards adopted by
5 the U.S. Department of Labor to the extent that those standards are consistent with California law.
(DLSE Manual §49.1.2).

6 25. Defendants employed Plaintiff for more than eight hours per day and more than 40
7 hours per workweek, but Defendants failed to pay Plaintiff the overtime compensation at the rate
8 required by the California Labor Code and the Wage Order because Defendants incorrectly
9 calculated Plaintiff's regular rate of pay by failing to account for all remunerations received by
10 Plaintiff.

11 26. Defendants thus required Plaintiff to work for longer hours than those fixed, or
12 under conditions prohibited, by order of the IWC, in violation of those orders.

13 27. Defendants deprived Plaintiff of his rightfully earned overtime compensation as a
14 direct and proximate result of Defendants' failure to pay said compensation. Under Code section
1194, Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

15 Fourth Cause of Action

16 For Failure to Reimburse for All Expenditures and Losses

17 (California Labor Code Sections 2802, 1198; IWC Wage Order No. 9-2001)

18 By Plaintiff Against All Defendants

19 28. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
though set forth fully herein.

20 29. Code section 2802(a) provides: "An employer shall indemnify his or her employee
21 for all necessary expenditures or losses incurred by the employee in direct consequence of the
22 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
23 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
unlawful."

24 30. Defendant failed to reimburse Plaintiff for the following expenditures incurred as a
25 result of discharging his duty: dry cleaning due to chemicals and oils; slip resistant shoes, and
26 other necessary expenditure and losses incurred by Plaintiff in direct consequence fo the discharge
27 of his duties.

31. Under Code section 2802(c), Plaintiff is entitled to recover all reasonable costs, including attorney's fees, incurred in enforcing his rights granted by Section 2802.

Fifth Cause of Action

For Failure to Provide Accurate Wage Statements

(California Labor Code Sections 226, 1198; IWC Wage Order No. 9-2001)

By Plaintiff Against All Defendants

32. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as though set forth fully herein.

33. Code section 226(a) and the Wage Order required Defendants, "semimonthly or at the time of each payment of wages," to furnish Plaintiff "an accurate itemized statement in writing" showing gross and net wages earned, total hours worked by the employee, rates of pay, and other information. Defendants knowingly and intentionally failed to provide Plaintiff with such timely and accurate wage and hour statements.

34. Defendants thus required Plaintiff to work for longer hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those orders.

35. Plaintiff suffered injury as a result of Defendants' knowing and intentional failure to provide him/her/them with the wage and hour statements required by law.

36. Under Code section 226, subsections (e) and (f), 1198, Wage Order § 20(A), and based on Defendants' conduct as alleged herein, Plaintiff is entitled to (a) fifty dollars (\$50) for the initial pay period in which a wage and hour statement violation occurred, and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and (b) injunctive relief to ensure Defendants' compliance with Labor Code Sections 226, 1198 and the Wage Order; and (c) an award of costs and reasonable attorney's fees.

37. Defendants' conduct also entitles Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to an order that Defendants issue wage and hour statements to Plaintiff that comply with Code section 226.

Sixth Cause of Action

For Conversion

(California Civil Code § 3336)

By Plaintiff Against All Defendants

1 38. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
2 though set forth fully herein.

3 39. At all relevant times herein, Defendants had and continue to have a legal obligation
4 imposed by statute to pay Plaintiff all earned wages due to him. Such wages belonged to Plaintiff
5 at the time the labor and services were provided to Defendants, and accordingly such wages are
6 the property of Plaintiff, not Defendants.

7 40. Defendants knowingly and intentionally failed to pay Plaintiff earned wages,
8 overtime compensation at the minimum wage rate for her overtime hours worked, overtime
9 compensation, missed meal period compensation, and missed rest period compensation. Instead,
10 Defendants converted Plaintiff's rightfully earned wages to Defendants' own use and benefit.
11 Defendants converted such wages as part of an intentional and deliberate scheme to maximize
12 their profits at Plaintiff's expense.

13 41. Plaintiff has been injured by Defendants' intentional conversion of such wages.
14 Plaintiff is entitled to immediate possession of all amounts converted by Defendants, with interest.
15 Before he filed this action, Plaintiff sent to Defendants a copy of this complaint and demanded that
16 Defendants pay the amounts owed, and offered to discuss a pre-litigation resolution of this matter.

17 42. Despite this demand, Defendants refuse to pay Plaintiff the unpaid wages they owe
18 him.

19 **Seventh Cause Of Action**

20 **(Violation of the Labor Code Private Attorneys General Act of 2004,**

21 **Lab. Code §§ 2698 et seq.)**

22 **(By Plaintiff, on behalf of himself and other former and current**
23 **Employees, Against All Defendants)**

24 43. The allegation set forth in the paragraphs above are realleged and incorporated
25 herein by reference.

26 44. Plaintiff brings this cause of action pursuant to PAGA on behalf of himself and
27 other current and former aggrieved employees. Plaintiff is an "aggrieved employee" as defined in
28 Labor Code § 2699(c) and brings this cause of action on behalf of himself and other current and
former employees ("Plaintiffs") against Defendants for the violation of the Labor Code sections
alleged in this pleading and the attached PAGA Notice, which is attached as Exhibit 1 and
incorporated herein by reference as if fully set forth in this pleading.

1 Dated: March 9, 2016

LAW OFFICE OF ARASH N. ALIZADEH

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3 *Arash N. Alizadeh*

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5 ARASH N. ALIZADEH, attorney for plaintiff
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Exhibit 3

LAW OFFICE OF ARASH N. ALIZADEH
Arash N. Alizadeh, State Bar No. 302290
7545 Irvine Center Drive, Suite 200
Irvine, California 92618
Phone: (949) 606-2845
Fax: (949) 264-9345
Email: aalizadeh@lawyerforemployees.com

Attorneys for Plaintiff JOSUE URIBE

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE
751 W. SANTA ANA BLVD., SANTA ANA, CA 92701

JOSUE URIBE, on behalf of himself and all
other similarly situated employees,

Plaintiff,

v.

CROWN BUILDING MAINTENANCE CO.;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2015-00839587

Assigned For All Purposes To:
Judicial Officer: Hon. Glenda Sanders
Dept: CX101

CLASS ACTION

Second Amended Complaint for:

- 1. Failure to Timely Pay Wages (LC 204)**
- 2. Failure to Pay Min. Wage**
- 3. Failure to Pay Overtime (LC 510, 1194)**
- 4. Failure to Reimburse (LC 2802)**
- 5. Wage Statement Violation (LC 226)**
- 6. Conversion (Civ. C. 3336)**
- 7. Unfair Competition (B&P 17200)**
- 8. PAGA (LC 2698 *et seq*)**

Complaint filed: March 9, 2016
First Amended Complaint: May 23, 2016

Plaintiff JOSUE URIBE ("Plaintiff" or "Employee") alleges against CROWN BUILDING
MAINTENANCE CO. ("defendant" or "Employer") the following:

General Allegations

1. This is a class action under California Code of Civil Procedure section 382, brought
by Plaintiff for violation of California's wage and hour laws and the Labor Code Private Attorneys
General Act of 2004 ("PAGA"). Plaintiff brings this action on behalf of himself and other current
and former employees of defendant.

///

2. Defendant requires their employees to maintain their own uniforms and provide their own slip resistant shoes. Defendant does not reimburse or indemnify employees for these work related expenses, which are a form of wages.

3. Plaintiff brings a claim on behalf of Class Members for Defendants' failure to reimburse such business expenses and wages. Plaintiff seeks to represent a class comprises of janitorial employees including day porters, janitors and foremen and similarly situated manual labor employees who were, are, or will be employed by Defendant in the State of California (hereinafter "Class Members") during the relevant time period.

4. Plaintiff also brings a claim under PAGA, Labor Code sections 2698 *et seq.*

5. This action seeks reimbursement of business expenses, wages, penalties, interest thereon, and reasonable attorneys' fees pursuant to Labor Code sections 226, 218.5, 1194, 2802, and 2698 *et seq.* and Code of Civil procedure section 1021.5. Plaintiff, on behalf of himself and Class Members, also seeks equitable and injunctive relief for these violations pursuant to Business and Professions Code sections 17200 *et seq.* (also referred to herein as the "UCL"). Plaintiff also seek statutory penalties pursuant to PAGA.

6. Venue is proper in this Court because Defendants do substantial business in Orange County, California, and employed Plaintiff in Orange County, California. Defendant employs or has employed Plaintiff and Class Members in Orange County.

7. On information and belief, Plaintiff's and the Class Members' monetary claims total more than \$25,000, but less than \$75,000.00 per person.

STATEMENT OF FACTS

8. Plaintiff and all Class Members are current or former janitorial employees including day porters, janitors and foremen and similarly situated manual labor employees, of Defendant who are, were, or will be employed in the State of California, at some time during the period beginning four years prior to the filing of the original complaint through the date of the final disposition of this action (the "Class Period").

9. At all times alleged herein, Defendant was, and is, America's largest family-owned provider of Janitorial, Engineering, and Facility solutions. Defendant was established in 1926 and

1 serves customers at their facilities throughout California. Plaintiff and other similarly situated day
2 porters, janitors and janitorial employees worked at Defendant's worksites in Costa Mesa, CA and
3 throughout California and their duties included sweeping, mopping, vacuuming, blowing leaves
4 and other similar tasks.

5 10. Plaintiff used different chemicals, liquid agents, detergents, and cleaning supplies
6 in performing his tasks and he always used a cart that held the cleaning supplies and equipment
7 that he pushed around in his job site. Plaintiff's job duties were essentially similar to a janitor.
8 Plaintiff was required to wear a uniform provided by the company, but the company did not
9 maintain the uniform. Due to heavy and harmful chemicals exposure to Plaintiff' uniform, he had
10 to regularly wash the uniforms in separate wash loads to avoid damaging his non-work clothes,
11 thus incurring additional expenses that Employer failed to reimburse. Defendant also required
12 Plaintiff to purchase his own slip-resistant shoes that he had no other use or need for other than to
13 perform his job. Plaintiff is informed and believes that the foregoing was, and is, a companywide
14 policy implemented by Defendant that similar impacted all of its day porters, janitorial and similar
15 type employees.

16 11. Plaintiff is informed and believes and thereon alleges that, through common
17 practices, policies and/or schemes, Defendant have systematically failed to reimburse employees
18 for out-of-pocket expenses for maintaining their uniform, purchasing slip-resistant shoes, and time
19 spent maintaining their uniform.

20 12. Defendant has not reimbursed or indemnified Plaintiff and the Class Members for
21 the out-of-pocket expense incurred as a result of work related expenses of maintaining their
22 uniforms and purchasing slip-resistant shoes, or for time spent maintaining the uniforms.

23 13. Because Defendant failed to reimburse Plaintiff and Class Members for cost of
24 maintaining their uniform, and purchase slip-resistant shoes, as well as not paying them for time
25 spent maintaining their uniform, they caused their wages to fall below minimum wages, failed to
26 pay their full overtime wages, failed to timely pay wages, and failed to provide accurate wage
27 statement, among other violations as a result. This is because the unreimbursed expenses and
28 uniform maintenance costs are considered "wages." (*In re Work Uniform Cases*, 133 Cal.App.4th

1 328 (2005) (holding that payment for uniform maintenance is compensation); *see also Sanchez v.*
2 *Aerogroup Retail Holdings, Inc.*, 12-CV-05445-LHK, Order On Motion to Dismiss at 12 (N.D.
3 Cal. May 8, 2013) (holding that Labor Code sections 1194, 1194.2, 1197, and 1197.1 permit an
4 action based on unreimbursed expenses because they are 'wages').

5 14. Moreover, Plaintiff is informed and believes and thereon allege that, through
6 common practices, policies and/or schemes, Defendants have systematically failed to reimburse
7 employees for out-of-pocket expenses for work-related use of their personal cell phones.

8 15. Defendants regularly require Plaintiff and the Class Members to use their personal
9 cell phones as a direct consequence of the discharge of their duties. Defendants through
10 supervisors and managers regularly call or text Plaintiff and the Class Members with work-related
11 communications and require that Plaintiff and the Class Members respond to these
12 communications.

13 16. Plaintiff and the Class Members are required to use their personal cell phones
14 frequently for calls and texts with their supervisors and with other janitorial employees in the
15 building(s) they supervise.

16 17. Defendants have not reimbursed or indemnified Plaintiff and the Class Members
17 for the out-of-pocket expenses incurred as a result of the work-related use of their personal cell
18 phones.

19 PARTIES

20 18. Plaintiff is, and at all relevant times was, a competent adult residing in Orange
21 County, California.

22 19. Plaintiff is informed and believes, and on that basis alleges, that defendant is, and at
23 all relevant times was, a business operating at worksites throughout California.

24 20. Plaintiff currently is unaware of the true names and capacities of the defendants
25 sued in this action by the fictitious names DOES 1 through 100, inclusive, and therefore sues those
26 defendants by those fictitious names. Plaintiff will amend this Complaint to allege the true names
27 and capacities of such fictitiously named defendants when they are ascertained.

28 ///

21. Plaintiff is informed and believes, and on that basis alleges, that each defendant sued in this action, including each defendant sued by the fictitious names DOES 1 through 100, inclusive, is responsible in some manner for the occurrences, controversies and damages alleged below.

22. Plaintiff is informed and believes and on that basis alleges that there exists, and at all relevant times there has existed, a unity of interest and ownership between DOES 1 through 10, on the one hand, and CROWN BUILDING MAINTENANCE CO, on the other hand, such that any separateness and individuality between them have ceased, and CROWN BUILDING MAINTENANCE CO, is the alter-ego of DOES 1 through 10. Adherence to the fiction of the separate existence of CROWN BUILDING MAINTENANCE CO as an entity distinct from DOES 1 through 10 would permit abuse of any corporate privilege, sanction fraud and promote injustice.

23. Plaintiff is informed and believes that each Defendant conspired with, aided and abetted, ratified the conduct of, knowingly acquiesced in, acted with the consent and permission of, and accepted the benefits of each other Defendant with respect to the matters alleged herein.

24. Plaintiff is informed and believes that, except as otherwise alleged herein, each Defendant is, and at all times relevant to this Complaint was, the agent, joint-employer, partner, joint venturer, alter ego, affiliate, and/or co-conspirator with or of each of the other Defendants, and/or otherwise acted on the behalf of each other Defendant.

CLASS ACTION ALLEGATIONS

25. For the First through Seventh Causes of Action, but not with respect to the Eighth Cause of Action under PAGA, Plaintiff brings this lawsuit as a class action pursuant to Code of Civil Procedure section 382 on behalf of himself and all similarly situated janitorial employees including day porters, janitors and foremen and similarly situated manual labor employees who were, are, or will be employed by Defendant in the State of California (hereinafter “Class Members”) during the relevant time period.

26. The class that Plaintiff seeks to represent is janitorial employees including day porters, janitors and foremen and similarly situated manual labor employees who were, are, or will

1 be employed by Defendant in the State of California (hereinafter "Class Members") during the
2 relevant Class Period ("Class").

3 27. The claims herein have been brought and may properly be maintained as a class
4 action under Code of Civil Procedure 382 because there is a well-defined community of interest
5 among Class Members with respect to the claims asserted herein, and the proposed class is easily
6 ascertainable.

7 a. Ascertainability and Numerosity: The potential members of the Class, as
8 defined herein, are so numerous that joinder would be impracticable. Plaintiff is
9 informed, believe, and allege that Defendants have employed thousands of
10 Class Members in California during the Class Period. The names and addresses
11 of Class Members are available to Defendants. Notice may be provided to Class
12 Members via first class mail using a form of notice similar to those customarily
used in class action lawsuits of this nature.

13 b. Commonality: There are questions of law and fact common to Plaintiff and
14 Class Members that predominate any questions affecting only individual
15 members of the Class. These common questions of law and fact include,
16 without limitation:

- 17 i. Whether Defendants have violated Labor Code sections 201, 203, 204,
18 226, 226.7, 510, 512, 558, 1174(d), 1194, and 2802, and Business and
19 Professions Code section 17200 by failing to reimburse or indemnify
20 employees for employment related expenses, including, but not
21 necessarily limited to, the costs incurred in maintaining work uniforms
22 and purchasing slip-resistant shoes I the course of performing their work
duties and for time spend maintaining their uniforms.
- 23 ii. Whether Defendant's failure to indemnify employees for their necessary
24 employment-related expenses and losses constitute an unlawful, unfair
25 and/or fraudulent business practice under Business and professions
Code sections 17200 *et seq*; and
- 26 iii. What relief is necessary to remedy Defendant's unfair and unlawful
27 conduct as herein alleged.

28 ///

- 1 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Plaintiff and
2 all Class Members have sustained injuries-in-fact and damages arising out of
3 and caused by Defendant's common course of unlawful conduct, as alleged
4 herein.
- 5 d. Adequacy of Representation: Plaintiff is a members of the Class that he seeks to
6 represent, and will fairly and adequately represent and protect the interest of the
7 Class Members. Counsel representing Plaintiff is a competent and experienced
8 in litigating wage and hour class actions.
- 9 e. Superiority of Class Action: A class action is superior to other available means
10 in order to obtain fair and efficient adjudication of this controversy. Individual
11 joinder of all putative Class Members is not practicable, and questions of law
12 and fact common to the proposed Class predominate over any questions
13 affecting only individual members of the proposed Class. Each Class Member
14 has suffered injury and is entitled to recover by reason of Defendant's unlawful
15 policies and practices alleged herein. Class action treatment will allow those
16 similarly situated persons to litigate their claims in the manner that is most
17 efficient and economical for the parties and the judicial system. Further, the
18 prosecution of separate actions against Defendant by individual members of the
19 proposed Class would create a risk of inconsistent or varying adjudications that
20 would establish incompatible standards of conduct for Defendant.

21 DAMAGES

22 28. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff and
23 similarly situated day porters, janitors, and other similarly situated employees are owed, among
24 other things, damages and statutory penalties, in an amount that exceeds \$25,000, the precise
25 amount of which will be proven at trial.

26 First Cause of Action

27 For Failure to Pay Earned Wages

28 (Cal. Labor Code Section 204)

by Plaintiff Against All Defendants

29. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf of themselves and all other Class Members.

30. Defendants failed to pay Plaintiff the wages that he and other Class Members earned, as required by Labor Code section 204 and the Industrial Welfare Commission Wage Order no. 5-2001 ("Wage Order").

31. Plaintiff and other Class Members have been deprived of their rightfully earned wages as a direct and proximate result of Defendant's failure to pay said compensation. Plaintiff, on behalf of himself and the proposed Class, requests payment of their withheld wages, plus interest thereon, attorney's fees and costs.

Second Cause of Action

For Failure to Pay State Minimum Wage, including Overtime Compensation

(Labor Code Sections 510, 1194, 1194.2, 1197, 1198; IWC Wage Order)

by Plaintiff Against All Defendants

32. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf of themselves and all other Class Members.

33. The Code and the Wage Order provide that a workday consists of eight hours, a workweek consists of 40 hours, and an employer must compensate an employee who works overtime hours with either one-and-one-half times or double the employee's regular rate of compensation. The Code and the Wage Order also provide that the employee's regular rate of compensation equals one fortieth (1/40) of the employee's weekly salary.

34. Defendants employed Plaintiff and other Class Members for more than eight hours per day and more than 40 hours per workweek during the Class Period, but Defendant failed to pay Plaintiff and other Class Members minimum wage for this work, including overtime compensation at the minimum wage rate for their overtime hours, as required by the Code and the Wage Order.

35. Defendants thus required Plaintiff and Class Members to work under conditions

1 prohibited by order of the IWC, in violation of those orders.

2 36. Defendants deprived Plaintiff and Class Members of their rightfully earned
3 minimum wage compensation, including overtime compensation at the minimum wage rate, as a
4 direct and proximate result of Defendants' failure to pay said compensation. Under Code section
5 1194, Plaintiff and Class Members are entitled to recover such amounts, plus interest thereon,
6 reasonable attorney's fees, and costs.

7 37. In addition, under Code section 1194.2, Plaintiff and Class Members are entitled to
8 recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and
9 interest thereon.

10 **Third Cause of Action**

11 **For Failure to Pay Overtime Compensation**

12 **(Labor Code Sections 510, 1194, 1194.2, 1198; Wage Order)**

13 **by Plaintiff Against All Defendants**

14 38. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as
15 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf
16 of themselves and all other Class Members.

17 39. The Code and the Wage Oder provide that a workday consists of eight hours, a
18 workweek consists of 40 hours, and an employer must compensate an employee who works
19 overtime hours with either one-and-one-half times or double the employee's regular rate of
20 compensation.

21 40. Defendant employed Plaintiff and other Class Members for more than eight hours
22 per day and more than 40 hours per workweek, but Defendant failed to pay Plaintiff and other
23 Class Members the overtime rate.

24 41. Defendant thus required Plaintiff and other Class Members to work for longer
25 hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those
26 orders.

27 42. Defendant thus deprived Plaintiff and other Class Members of their rightfully
28 earned overtime compensation as a direct and proximate result of Defendants' failure to pay said

1 compensation. Under Code section 1194, Plaintiff is entitled to recover such amounts, plus
2 interest thereon, attorney's fees, and costs.

3 **Fourth Cause of Action**

4 **For Failure to Reimburse for All Expenditures and Losses**

5 **(California Labor Code Sections 2802, 1198; IWC Wage Order No. 9-2001)**

6 **By Plaintiff Against All Defendants**

7 43. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
8 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf
9 of themselves and all other Class Members.

10 44. Code section 2802(a) provides: "An employer shall indemnify his or her employee
11 for all necessary expenditures or losses incurred by the employee in direct consequence of the
12 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
13 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
14 unlawful."

15 45. Defendant failed to reimburse Plaintiff and other Class Members for the following
16 expenditures incurred as a result of discharging his duty: dry cleaning and maintenance expenses
17 for his uniform and clothing; purchase cost of slip resistant shoes; and required personal cell
18 phone use.

19 46. Under Code section 2802(c), Plaintiff and other Class Members are entitled to
20 recover all reasonable costs, including attorney's fees, incurred in enforcing their rights granted by
21 Section 2802.

22 **Fifth Cause of Action**

23 **For Failure to Provide Accurate Wage Statements**

24 **(California Labor Code Sections 226, 1198; IWC Wage Order No. 9-2001)**

25 **By Plaintiff Against All Defendants**

26 47. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
27 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf
28 of themselves and all other Class Members.

1 48. Code section 226(a) and the Wage Order required Defendant, "semimonthly or at
2 the time of each payment of wages," to furnish Plaintiff and other Class Members "an accurate
3 itemized statement in writing" showing gross and net wages earned, total hours worked by the
4 employee, rates of pay, and other information. Defendant knowingly and intentionally failed to
5 provide Plaintiff and other Class Members with such timely and accurate wage and hour
6 statements.

7 49. Defendant thus required Plaintiff and other Class Members to work for longer
8 hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those
9 orders.

10 50. Plaintiff and other Class Members suffered injury as a result of Defendant's
11 knowing and intentional failure to provide them with the wage and hour statements required by
12 law.

13 51. Under Code section 226, subsections (e) and (f), 1198, Wage Order § 20(A), and
14 based on Defendant's conduct as alleged herein, Plaintiff and other Class Members are entitled to
15 (a) fifty dollars (\$50) for the initial pay period in which a wage and hour statement violation
16 occurred, and one hundred dollars (\$100) per employee for each violation in a subsequent pay
17 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and (b) injunctive
18 relief to ensure Defendants' compliance with Labor Code Sections 226, 1198 and the Wage Order;
19 and (c) an award of costs and reasonable attorney's fees.

20 52. Defendants' conduct also entitles Plaintiff to seek preliminary and permanent
21 injunctive relief, including but not limited to an order that Defendants issue wage and hour
22 statements to Plaintiff that comply with Code section 226.

23 **Sixth Cause of Action**

24 **For Conversion**

25 **(California Civil Code § 3336)**

26 **By Plaintiff Against All Defendants**

27 53. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
28 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf

1 of themselves and all other Class Members.

2 54. At all relevant times herein, Defendants had and continue to have a legal obligation
3 imposed by statute to pay Plaintiff and other Class Members all earned wages due to them. Such
4 wages belonged to Plaintiff and other Class Members at the time the labor and services were
5 provided to Defendants, and accordingly such wages are the property of Plaintiff and other Class
6 Members, not Defendants.

7 55. Defendant knowingly and intentionally failed to pay Plaintiff and other Class
8 Members earned wages, overtime compensation at the minimum wage rate for their overtime
9 hours worked, overtime compensation, missed meal period compensation, and missed rest period
10 compensation. Instead, Defendant converted Plaintiff's and other Class Members' rightfully
11 earned wages to Defendant's own use and benefit. Defendant converted such wages as part of an
12 intentional and deliberate scheme to maximize their profits at Plaintiff's and other Class Members'
13 expense.

14 56. Plaintiff and other Class Members have been injured by Defendant's intentional
15 conversion of such wages. Plaintiff and other Class Members are entitled to immediate possession
16 of all amounts converted by Defendant, with interest. Before he filed this action, Plaintiff sent to
17 Defendants a copy of this complaint and demanded that Defendants pay the amounts owed, and
18 offered to discuss a pre-litigation resolution of this matter.

19 57. Despite this demand, Defendants refuse to pay Plaintiff and other Class Members
20 the unpaid wages they owe him.

21 **Seventh Cause Of Action**

22 **(Unfair Competition (Business & Professions Code 17200))**

23 58. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
24 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf
25 of themselves and all other Class Members.

26 59. Defendant's failure to reimburse or indemnify employees for all business expenses
27 incurred and wages, in violation of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512,
28 558, 1174(d), 1194, and 2802, constitutes unlawful and unfair activities prohibited by Business

1 and Professions Code section 17200. Plaintiffs reserve the right to identify additional unfair and
2 unlawful practices by Defendants as further investigation and discovery warrants.

3 60. Business and Professions Code section 17203 provides that the Court may restore
4 to an aggrieved party any money or property acquired by means of unlawful and unfair business
5 practices. Plaintiffs seek a court order requiring an audit and accounting of work-related uniform
6 maintenance and slip-resistance shoes expenses to determine the amount of restitution of all
7 unreimbursed business expenses owed to him and Class Members, according to proof, as well as a
8 determination of the amount of funds to be paid to current and former employees that can be
9 identified and located pursuant to a court order and supervision.

10 61. Plaintiffs and all proposed Class Members are "persons" within the meaning of
11 Business and Professions Code section 17204 who have suffered injury in fact as a result of
12 Defendants' unfair competition, and who comply with requirements of Code of Civil Procedure
13 section 382, as set forth above, and therefore have standing to bring this claim for injunctive relief,
14 restitution and other appropriate equitable relief.

15 62. As a result of its unlawful and unfair acts, Defendants have reaped unfair benefits
16 and illegal profits at the expense of Plaintiffs and Class Members. Defendants should be enjoined
17 from this activity and made to restore to Plaintiffs and Class Members their necessary business
18 expenses, interest thereon and related statutory penalties, pursuant to Business and Professions
19 Code sections 17202 and 17203.

20 63. Private enforcement of these rights is necessary, as no other agency has raised a
21 claim to protect these workers. There is a financial burden incurred in pursuing this action that
22 would be unjust to place upon Plaintiffs, as the burden of enforcing workforce-wide rights is
23 disproportionately greater than that of enforcing only Plaintiffs individual claims. Additionally,
24 Plaintiffs and Class Members are low-income workers who cannot afford to spend part of their
25 wages on enforcing others' wage rights. Thus, it would be against the interests of justice to force
26 payment of attorneys' fees from Plaintiffs and Class Members' recovery in this action. Therefore,
27 attorneys' fees are appropriately sought pursuant to Code of Civil Procedure section 1021.5.

28 64. Plaintiffs, on behalf of themselves and Class Members, request restitution of

1 unreimbursed business expenses, wages, injunctive relief and other relief as described below.

2 **Eighth Cause Of Action**

3 **(Violation of the Labor Code Private Attorneys General Act of 2004,**

4 **Lab. Code §§ 2698 et seq.)**

5 **(By Plaintiff, on behalf of himself and other former and current**

6 **Employees, Against All Defendants)**

7 65. The allegation set forth in the paragraphs above are realleged and incorporated
8 herein by reference.

9 66. Plaintiff brings this cause of action pursuant to PAGA on behalf of himself and
10 other current and former aggrieved employees. Plaintiff is an "aggrieved employee" as defined in
11 Labor Code § 2699(c) and brings this cause of action on behalf of himself and other current and
12 former employees ("Plaintiffs") against Defendants for the violation of the Labor Code sections
13 alleged in this pleading and the attached PAGA Notice, which is attached as **Exhibit 1** and
14 incorporated herein by reference as if fully set forth in this pleading.

15 67. Plaintiff mailed the PAGA Notice to the Labor and Workforce Development
16 Agency (LWDA) and Division of Occupational Safety and Health (DOSH) by certified mail
17 notifying them of the specific provisions of the Labor Code alleged herein to have been violated,
18 including the facts and theories to support the alleged violations. More than 33 calendar days
19 lapsed since Plaintiff's postmarked its notice and neither LWDA nor DOSH have taken any action
20 nor given notice of its intention to take any action.

21 68. Due to the aforementioned conduct of Defendant, Plaintiffs are entitled to penalties
22 as set forth in each alleged Labor Code section that has been violated or if no penalties are
23 provided, then the default penalty set forth in Labor Code section 2699.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, plaintiff behalf of himself and the above-described Class of janitorial
26 employees including day porters, janitors and foremen and similarly situated manual labor
27 employees, request relief as follows:

28 a. Certification of this action as a class action, pursuant to Code of Civil Procedure section

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- 382;
- b. Declaratory judgment that Defendants have knowingly and intentionally violated Labor Code section 2802 for failure to reimburse or indemnify Plaintiff and the Class for work-related business expenses they have incurred in carrying out their job duties and/or the Defendants' instructions, and Business and Professions Code sections 1 7200 et seq., by the conduct set forth above;
 - c. Declaratory judgment that Defendants' violations as described above are unlawful; Injunctive relief requiring an equitable accounting to identify, locate and restore to all current and former janitorial employees the reimbursement for business expenses that are due;
 - d. An award of damages and restitution to be paid by Defendant, according to proof; Pre-judgment and post-judgment interest;
 - e. An award of civil penalties pursuant to Labor Code sections 2802(c) and 2698 et seq.;
 - f. An award of reasonable attorneys' fees and costs, pursuant to Labor Code sections 2699(g)(1) and 2802(c) and other applicable law; and
 - g. An award of such other and further relief as this Court deems just and proper.

Dated: November 9, 2017

LAW OFFICE OF ARASH N. ALIZADEH



ARASH N. ALIZADEH, attorney for plaintiff

Exhibit 1



7545 Irvine Center Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 606-2845
Facsimile: (949) 264-9345
www.lawyerforemployees.com

Arash N. Alizadeh
Attorney at Law
aalizadeh@lawyerforemployees.com

LAW OFFICE OF ARASH N. ALIZADEH

February 3, 2016

VIA CERTIFIED MAIL

Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Subject: *Josue Uribe v. Crown Building Maintenance Co.*

Dear Representative:

This office represents Josue Uribe (Employee), an employee of Crown Building Maintenance Co. (Employer).

Employer may be contacted directly at:

Crown Building Maintenance Co. d/b/a Able Services
868 Folsom Street
San Francisco, CA 94107

Employee intends to seek penalties on behalf of Employee and other current and former employees for violations of the California Labor Code, which are recoverable under California Labor Code §2699 et seq. Employee is seeking penalties on behalf of the State of California of which 75% will be kept by the state, while 25% will be available to aggrieved employees. This letter is sent in compliance with the reporting requirements of California Labor Code §2699.3.

At all times alleged herein, Employer was, and is, America's largest family-owned provider of Janitorial, Engineering, and Facility solutions. Employer was established in 1926 and serves customers at their facilities throughout California. Employee worked as a day porter at Employer's worksite in Costa Mesa, CA from approximately May 2013 through some time in November 2015 when Employee went on disability leave due to an on the job knee injury. Employee worked at an apartment complex site and his duties included sweeping, mopping, vacuuming, blowing leaves and other similar tasks. Employee used different chemicals, detergents, and cleaning supplies in performing his tasks and he always used a cart that held said cleaning material and equipment that he pushed around in his job site. Employee's job duties were essentially similar to a janitor. Employee was required to wear a uniform provided by the

company, but the company did not maintain the uniform. Due to heavy chemicals that came in contact with Employee's uniform, he had to wash the uniforms in separate wash loads to avoid damaging his personal clothes. Employer also required Employee to purchase his own slip-resistant shoes. Employer violated the following Labor Code sections:

- Labor Code § 204 by failing to pay all wages due to Employee and other current and former employees semimonthly. This violation is based on the theory that Employee was entitled to reimbursement of expenses incurred for maintaining his uniform and purchasing his own slip resistant shoe that he had no other use or need for other than to perform his job. These expenses are considered wages. *See Department of Industrial Relations etc. v. UI Video Stores, Inc.*, 55 Cal.App.4th 1084 (1997). By failing to reimburse Employee semimonthly, Employer failed to pay Employees all his wages semimonthly. Thus Employer violated section 204 by failing to reimburse him.

-Labor Code § 210 by violating section 204 as stated above. Section 210 entitles Employee to civil penalties for Employer's violation of section 204.

-Labor Code § 226 subsection (a)(1), by failing to provide Employee with his paycheck an itemized statement in writing showing gross wages earned. This is due to Employer's failure to reimburse Employee as explained above for section 204.

-Labor Code § 1198 by violating Wage Order No. 5, paragraphs 9 and 20. This is due to Employer's failure to reimburse Employee as explained above for section 204.

-Labor Code § 1199 by causing Employee to work under conditions prohibited by Wage Order No. 5, paragraphs 9 and 20. This is due to Employer's failure to reimburse Employee as explained above for section 204.

-Labor Code § 2802 by failing to reimburse Employee for Expenses incurred for purchasing slip resistant shoes and maintaining his uniform.

-Labor Code § 6401 by failing to provide Employee with slip-resistant shoes. Section 6401 imposes a duty on Employer to furnish safety devices and safeguard. Slip-resistant shoes are a safety device and safeguard necessary to render Employee's employment and place of employment safe and healthful. Employer failed to provide slip-resistant shoes to Employee in violation of section 6401.

-Labor Code § 6401.7 by failing to implement and maintain an injury prevention program because Employer failed to provide an occupational safety and training program, conduct periodic safety inspections, implement a system for correcting unsafe and unhealthy conditions, failure to provide a discipline system, among other omissions that violate section 6401.7.

-Labor Code § 6403 by failing to provide Employee with slip-resistant shoes. Section 6403 imposes a duty on Employer to furnish safety devices and safeguard. Slip-resistant shoes are a safety device and safeguard necessary to render Employee's employment and place of

employment safe and healthful. Employer failed to provide slip-resistant shoes to Employee in violation of section 6403.

Therefore, on behalf of all affected employees, Employee seeks all applicable penalties related to these violations of the California Labor Code pursuant to California's "Labor Code Private Attorney General Act of 2004."

Thank you for your attention to this matter. If you have any questions, please contact me.

Dated: February 3, 2016

LAW OFFICE OF ARASH N. ALIZADEH



ARASH N. ALIZADEH
Attorney for Employee

CC by Cert. mail:
Crown Building Maintenance Co.
Division of Occupational Safety and Health

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

Re: Crown Bldg. Maintenance

PS Form 3800



9414 7118 9956 3318 3372 80

RETURN RECEIPT REQUESTED

Article Addressed To:



Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland CA 94612-1463

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

Re: Crown Bldg. Maintenance

PS Form 3800



9414 7118 9956 3318 3372 80

RETURN RECEIPT REQUESTED

Article Addressed To:



Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland CA 94612-1463

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

Re: Crown Bldg. Maintenance

PS Form 3800



9414 7118 9956 3318 3372 80

RETURN RECEIPT REQUESTED

Article Addressed To:



Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland CA 94612-1463

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

Re: Crown Bldg. Maintenance

PS Form 3800



9414 7118 9956 3318 3372 80

RETURN RECEIPT REQUESTED

Article Addressed To:



Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland CA 94612-1463

UNITED STATES POSTAL SERVICE

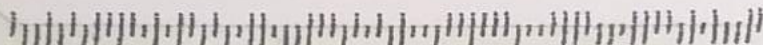


First-Class Mail
Postage & Fees Paid
USPS
Permit No.G-10

PS FORM 3811, 2/2004
USA CMF-134 06/14

RETURN TO:

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618



UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No.G-10

PS FORM 3811, 2/2004
USA CMF-134 06/14

RETURN TO:

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

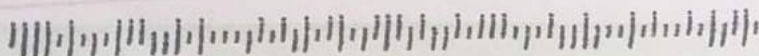


Exhibit 4

1 **LAW OFFICE OF ARASH N. ALIZADEH**
2 Arash N. Alizadeh, State Bar No. 302290
3 7545 Irvine Center Drive, Suite 200
4 Irvine, California 92618
5 Phone: (949) 606-2845
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JOSUE URIBE, on behalf of himself and other
current or former employees,

Plaintiff,

vs.

CROWN BUILDING MAINTENANCE CO.;
and DOES 1 through 100, inclusive,

Defendant.

Case No. 30-2016-00839857-CU-OE-CXC

[Assigned for all purposes to The Honorable
Hon. Glenda Sanders, Dept. CX101]

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: December 15, 2017
Time: 1:30 p.m.
Department: CX101

Filed: March 9, 2016
Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT**, on December 15, 2017 at 1:30 p.m., before the Hon.
3 Glenda Sanders, in Department CX101 of the above-referenced Court located at 751 W. Santa Ana
4 Blvd, California, Plaintiff Josue Uribe ("Plaintiff") will and hereby does move the Court for an
5 Order (1) preliminarily approving the class action and representative action settlement; (2)
6 provisionally certifying a settlement class and appointing Arash N. Alizadeh as Class Counsel; (3)
7 approving the settlement administrator ("Administrator") jointly selected by the Parties for the
8 purposes of this settlement; (4) approving and directing distribution to the Class the Class Notice
9 and Claim Form; and (5) setting a final fairness and approval hearing.

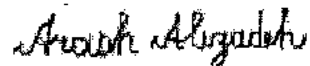
10 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
11 provides for court approval of the settlement of a purported class action and allows the Court to
12 preliminarily certify a class for settlement purposes.

13 The basis for this Motion, filed without any opposition from Defendant, is that the proposed
14 settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate
15 to ensure the opportunity of class members to participate in, opt out of, or object to the settlement.

16 This Motion will be based on the Memorandum of Points and Authorities included herein,
17 the Stipulation of Settlement of Class Action and Representative Action and Release of Claims, the
18 proposed Class Notice Packet, and the supporting Declarations of Plaintiff Josue Uribe, Arash N.
19 Alizadeh, counsel for Plaintiff, Michael D. Thomas, counsel for Defendant, and the exhibits
20 attached thereto, and upon the oral arguments of counsel (should there be any) and on the complete
21 records and file herein.

22 DATED: November 10, 2017

LAW OFFICE OF ARASH N. ALIZADEH



23 By: _____
24 ARASH N. ALIZADEH

25 Attorneys for Plaintiff
26 Josue Uribe

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND OF THE SETTLEMENT	2
A.	Plaintiff's Second Amended Complaint	2
B.	The Parties Investigation of Plaintiff's Claims.	5
C.	Resolution Through An Experienced Mediator.	7
1.	Class Wide Settlement.....	7
2.	Review of Settlement by Expert G. Michael Phillips.....	7
D.	Summary of Settlement.	8
E.	The Settlement is Fair, Reasonable, and Adequate	9
III.	LEGAL ANALYSIS	10
A.	The Class and Representative Group at Issue	10
B.	Two-Step Approval Process	10
C.	Procedures for Settlement Before Class Certification.....	10
D.	The Applicable Legal Standard	11
E.	The Risks Inherent in Plaintiff's Case.....	12
F.	The Amount Offered In Settlement.....	12
G.	The Arms' Length Settlement Achieved By Experienced Counsel and Reviewed by Expert	13
H.	Fees and Costs	13
I.	Incentive payments.....	14
J.	Costs of Administration.....	14
K.	Plaintiff requests that the Court approve the PAGA portion of the settlement.....	14
IV.	THE COURT SHOULD ORDER CONDITIONAL CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS.	15
A.	The Proposed Settlement Class Is Ascertainable	15

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

B. The Proposed Settlement Class Is Sufficiently Numerous..... 16

C. The Commonality Requirement Is Satisfied 16

D. Typicality and Adequacy Are Met. 16

E. Class-wide Resolution Through Settlement Is Superior To Other Methods..... 17

V. THE COURT SHOULD APPROVE THE CLASS NOTICE PACKET..... 17

VI. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION 20

TABLE OF AUTHORITIES

Page(s)

CASES

<i>7-Eleven Owners for Fair Franchising v. The Southland Corp.</i> (2000) 85 Cal. App. 4th 1135.....	11
<i>Acree v. General Motors Acceptance Corp.</i> , 92 Cal. App. 4th 385 (2001).....	16
<i>Bell v. Farmers Insurance Exchange</i> , 115 Cal. App. 4th 715 (2004).....	14
<i>Brown v. The Regents of the University of California</i> , 151 Cal.App.3d 982.....	16
<i>Caro v. Proctor & Gamble Co.</i> (1993) 18 Cal.App.4th 644.....	16
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	17, 19
<i>Cellphone Termination Fee Cases</i> , (2009) 180 Cal.App.4th 1110.....	13
<i>City of San Jose v. Superior Court</i> (1974) 12 Cal.3d 447	16
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	16
<i>Cochran v. Schwan's Home Service Inc.</i> , 228 Cal. App. 4th 1137 (2014).....	7
<i>Cooper v. Am. Savings</i> (1976) 55 Cal.App.3d 274	19
<i>Cummings v. Connell</i> (9th Cir. 2005) 402 F.3d 936	16
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal.2d 695	15
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794.....	11
<i>Gama v. Crown Building Maintenance Co.</i> , Case No. RG15773582 (2015).....	3

1	<i>Gattuso v. Harte-Hanks Shoppers, Inc.</i>	
2	(2007) 42 Cal.4th 554	6
3	<i>Gay v. Waiters' & Dairy Lunchmen's Union</i>	
4	(9th Cir. 1977) 549 F.2d 1330	16
5	<i>Hanlon v. Chrysler Corp.</i>	
6	(9th Cir. 1998) 150 F.3d 1011	11
7	<i>Hebbard v. Colgrove</i>	
8	(1972) 28 Cal.App.3d 1017	16
9	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i>	
10	(1980) 103 Cal. App. 3d 573	20
11	<i>McGhee v. Crocker-Citizens Nat. Bank,</i>	
12	60 Cal.App.3d 442 (1976)	17
13	<i>Nordstrom Com'n Cases</i> (2010)	
14	186 Cal.App.4th 576	14
15	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Svcs.</i>	
16	(1994) 27 Cal.App.4th 1085	11
17	<i>Phillips Petrol. Co. v. Schutts</i>	
18	(1985) 472 U.S.797	19
19	<i>Rose v. City of Hayward</i>	
20	(1981) 126 Cal.App.3d 926	15
21	<i>Serrano v. Priest,</i>	
22	20 Cal. 3d 25 (1977)	14
23	<i>In re Traffic Exec., Ass'n</i>	
24	(2nd Cir. 1980) 627 F.2d 631	11
25	<i>Wershba v. Apple Computer, Inc.</i>	
26	(2001) 91 Cal. App. 4th 224	11, 14
27	STATUTES	
28	Cal. Civ. Code § 1781(f)	20
	California Labor Code	
	§ 2802	1, 2, 3, 6, 7, 17
	§ 2699(1)	14, 15
	§ 2699(c)	10
	§ 2699.3(a)	2

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OTHER AUTHORITIES

Cal. Rule of Court 3.769.....11

Cal. Rule of Court 3.770.....11

4 *Newberg on Class Action*: § 11.24 10

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1 As defined in the Second Amended Complaint, the Settlement is on behalf of the following
2 Class: "all persons employed by Defendant as non-exempt janitorial employees including janitors,
3 day porters and foreman employees in California at any time between June 10, 2011 through the
4 date the court grants preliminary approval, regardless of whether such persons are currently
5 employed by Defendant."

6 Based on their own independent investigation and evaluation, formal and informal
7 discovery conducted by the Parties, review of expert reports and opinions, and such other review
8 and analysis necessary to an independent investigation and evaluation of this case, the Parties and
9 their respective counsel are of the opinion that Settlement for the consideration and on the terms in
10 the Stipulation of Settlement of Class Action and Representative Action and Release of Claims is
11 fair, reasonable, and adequate and is in the best interests of the Class and Defendant in light of all
12 known facts and circumstances, the expenses and risks of a Class not being certified, and such
13 expenses and risks that are inherent in litigation.

14 **II. BACKGROUND OF THE SETTLEMENT**

15 **A. Plaintiff's Second Amended Complaint**

16 Defendant provides janitorial services to businesses throughout California. Defendant
17 employed Plaintiff as an hourly, non-exempt employee performing cleaning services.

18 On March 9, 2016, after exhausting the administrative requirements set forth in Labor Code
19 § 2699.3(a), Plaintiff filed a PAGA representative action on behalf of himself and all "aggrieved"
20 employees. (Arash N. Alizadeh Decl. at ¶6, Exh. 1). Plaintiff alleged that Defendant, failed to
21 provide reimbursement for certain business expenses, including reimbursement for a required
22 uniform, clothing and slip-resistant shoes in violation of California Labor Code Section 2802.
23 Plaintiff further alleged that because the unreimbursed expenses for his uniform, clothing, and slip-
24 resistant shoes are considered "wages" or "compensation," he is entitled to damages based on these
25 causes of action for: (1) failure to pay all earned wages; (2) failure to pay minimum wages,
26 including overtime; (3) failure to pay overtime compensation; (4) failure to provide accurate wage
27 statements; (5) conversion; and (6) violation of PAGA. (*Id.*).

1 In March 2016, Defendant informed Plaintiff that Defendant intended to file a notice of
2 related cases because a separate action *Gama v. Crown Building Maintenance Co*, Case No.
3 RG15773582 (2015) was pending in the Alameda County Superior Court that also alleged
4 unreimbursed business expenses under California Labor Code section 2802, including claims for
5 required personal cell phone use on behalf of hourly employees performing janitorial work.
6 (Alizadeh Decl. at ¶ 7). On April 4, 2016, Plaintiff filed a Notice of Related cases. (Alizadeh Decl.
7 at ¶ 8, **Exh. 2**).

8 On April 1, 2016, Defendant notified Plaintiff of its intent to demur to Plaintiff's original
9 complaint. Plaintiff subsequently filed a First Amended Complaint ("FAC"). (Alizadeh Decl. at ¶
10 9, **Exh. 3**). Plaintiff's FAC modified his allegations, but retained the same causes of action for
11 unreimbursed business expenses as his original Complaint. (**Exh. 3** at ¶¶ 4, 5, 13-26 and 31-45).

12 In response, Defendant filed a Demurrer. (Alizadeh Decl. at ¶ 10, **Exh. 4**). Defendant
13 argued Plaintiff's generic "slip-resistant shoe" claim is preempted by federal OSHA and California
14 OSHA. (Alizadeh Decl. at ¶ 10, **Exh. 4** at pp 4-8). Moreover, Plaintiff failed to allege facts that his
15 generic "slip-resistant shoes" require compensation under either federal OSHA or Cal OSHA
16 because they are not specialty shoes. (Alizadeh Decl. at ¶ 10, **Exh. 4** at pp 4-8). Defendant also
17 argued Plaintiff's uniform reimbursement claim was uncertain. (Alizadeh Decl. at ¶ 10, **Exh. 4** at
18 pp 8-9). Defendant further argued that an expense reimbursement claim is not a wage and
19 therefore Plaintiff's claims for unpaid minimum wages and overtime fail. (Alizadeh Decl. at ¶ 10,
20 **Exh. 4** at pp 3-4). Finally, Plaintiff's remaining wage claims are derivative and therefore fail.
21 (Alizadeh Decl. at ¶ 10, **Exh. 4** at p.10).

22 The Court subsequently denied Defendant's Demurrer. (Alizadeh Decl. at ¶ 11, **Exh. 5**).

23 The Parties subsequently engaged in extensive written discovery. Plaintiff served formal
24 discovery, propounding numerous written discovery requests, including interrogatories, form
25 interrogatories and requests for production of documents. Defendant responded to those requests
26 and the Parties engaged in substantive meet and confer communications regarding certain
27 discovery disputes. Defendant produced documentation pertaining to its policies and practices
28 regarding expense reimbursement generally, policies and practices regarding uniform and safety

1 shoe requirements, policies and practices regarding personal cell phone use, and related
2 information and documentation. (Alizadeh Decl. at ¶ 17). Defendant also produced multiple
3 sources of documents governing the wages, hours and conditions of employment at properties
4 where putative class members are assigned to work, including collective bargaining agreements
5 and service agreements applicable to the property, (Alizadeh Decl. at ¶¶20, 30, **Exh. 14**),
6 documentation of individual manager's discretion to enforce policies at his or her property,
7 (Alizadeh Decl. at ¶ 31, **Exh. 15**), and Able policies prohibiting personal cell phone use signed by
8 Plaintiff, (Alizadeh Decl. at ¶ 32, **Exh. 16**).

9 On September 15, 2016, Defendant took Plaintiff's deposition. Plaintiff testified day
10 porters and janitors wore tennis shoes and not specialty shoes. (Alizadeh Decl. at ¶ 12, **Exh. 6**,
11 Josue Uribe Depo. at 74:8-75:8)¹. Moreover, Plaintiff testified Defendant instructs employees
12 during orientation they need only wear non-slip shoes which could include tennis shoes or shoes
13 worn for purposes other than work. (*Id.* at 31:3-19). Pictures of footwear worn by other day
14 porters and janitors exchanged in discovery revealed Plaintiff did not have to purchase special
15 shoes. (Alizadeh Decl. at ¶ 13, **Exh. 7**, (Crown-Uribe 0000110-111)).

16 In deposition, Plaintiff admitted that on most occasions he could wash his uniform with his
17 other clothes. (**Exh. 6** at 135:12-136:12). He also testified that whether he could wash his
18 uniform with his other clothes depended on the property/type of work. (*Id.*).

19 As to personal cell phone usage, Plaintiff testified he could perform his job without the use
20 of a personal cell phone but occasionally his manager left him a message on his cell phone. (*Id.* at
21 160:19-161:14). He testified he typically kept his cell phone in his car. (*Id.*). Moreover, at some
22 locations he communicated with his manager on a company provided radio. (*Id.* at 162:1-16).

23 Defendant also produced data regarding Plaintiff's potential claim of expense
24 reimbursement based on required cell phone use. Defendant provided Plaintiff with a sample of
25 cell phone records from company issued cell phones and the cell phone records of his own
26 managers to cross-reference with the cell phone numbers of class members and with Plaintiff's
27 own cell phone so Plaintiff's counsel could determine cell phone usage. (Alizadeh Decl. at ¶ 17-
28

¹ All deposition testimony referenced in the brief is from Josue Uribe.

1 18). Defendant also produced Plaintiff's signed copy of Defendant's prohibition on personal cell
2 phone use. (Alizadeh Decl. at ¶ 14, **Exh. 8**). Defendant further produced documentation
3 demonstrating that it does not require job applicants provide a phone number in its application for
4 employment or other new hire paperwork. (Alizadeh Decl. at ¶ 29, **Exh. 13**).

5 Based on the foregoing, Plaintiff filed concurrently with this Motion for Preliminary
6 Approval a Second Amended Complaint adding class action claims, a claim for expense
7 reimbursement for personal cell phone use, a claim under the Business and Professions Code.
8 (Alizadeh Decl. at ¶ 15, **Exh. 9** and ¶26 (Second Amended Complaint)).

9 **B. The Parties Investigation of Plaintiff's Claims.**

10 Defendant contends the documents and evidence established the following:

11 (1) There is minimal evidence of company policies uniformly applied to create class-wide
12 expense reimbursement liability. Multiple sources of evidence demonstrate support this position,
13 including the policies and practices applicable at each property regarding safety shoes, uniforms,
14 and personal cell phone use, including service agreements between Able and its customers,
15 collective bargaining agreements, (Alizadeh Decl. at ¶ 30, **Exh. 14**), individual manager's
16 discretion to enforce policies at his or her property, (Alizadeh Decl. at ¶ 31, **Exh. 15**), and Able
17 policies prohibiting personal cell phone use signed by Plaintiff and others (Alizadeh Decl. at ¶ 29,
18 **Exh. 16**). (Alizadeh Decl. at ¶ 32).

19 (2) Managers and foremen adapted Able policies to fit the needs of the property. The
20 question of what relevant directives each janitor received, and to what practices each Manager
21 adhered, varied based on the customer property where each individual was working, the
22 foreperson/manager issuing directives to whom each class member was reporting, the class
23 member's own unique understanding of the relevant policies and practices, and class member's
24 own highly individualized decision-making. (Alizadeh Decl. at ¶ 20).

25 (3) Class member cell phone records and company issued cell phone records demonstrate
26 janitors do not have to use a cell phone to perform their job duties. For example, Able does not
27 maintain a phone number for more than half of the class. (Alizadeh Decl. at ¶ 19). Moreover,
28 Plaintiff conceded he could perform his job without a cell phone.

1 (4) Documentary evidence demonstrates Plaintiff was not required to have a phone to
2 perform his job duties. Plaintiff was employed with Defendant from January 26, 2013 through
3 March 21, 2015, a period of just over two years. The cell phone records of his supervisors
4 demonstrate 67 instances where a call was made to Plaintiff or received from Plaintiff on a
5 company issued cell phone during that two year period. This amounts to a call two or three times a
6 month. (Alizadeh Decl. at ¶ 21).

7 (5) Finally, a randomly selected three-month sample of cell phone records revealed only 321
8 employees during this period out of 525 employees received or made a phone call to or from a
9 company issued cell phone, *i.e.*, only 61.14%. (Alizadeh Decl. at ¶ 22).

10 Plaintiff contends the documents and testimony establish the following:

11 (1) Able maintains uniform policies regarding safety shoes and uniforms. Able
12 uniformly informs janitors of its policies during orientation. Able uniformly does not provide
13 janitors with instructions regarding compensation for replacing safety shoes nor for maintaining a
14 clean uniform. Able knows janitors have to replace safety shoes and uniforms. Able therefore
15 knew that janitors incurred expenses for work-related purposes yet did nothing to ensure that
16 janitors were reimbursed for such expenses. (Alizadeh Decl. at ¶ 52(a)).

17 (2) Able supervisors and managers collected cell phone numbers from janitors on the
18 job and provided those cell phone numbers to Able supervisors and foremen. Those supervisors
19 and foremen use their company issued cell phones to communicate with janitors and provide them
20 with instructions on how to perform their job. Those supervisors and foremen communicate with
21 janitors on janitors' personal cell phones to communicate unique tasks, changes in assignments and
22 additional information directed from the client. Able knew janitors were incurring expenses for
23 work-related purposes, yet did nothing to ensure that janitors were reimbursed for such expenses.
24 (Alizadeh Decl. at ¶ 52(b)).

25 (3) The purpose of Labor Code Section 2802 is "to prevent employers from passing
26 their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42
27 Cal.4th 554, 562. Able has passed on the operating expenses to employees related to safety shoe
28 replacement, uniform maintenance and required cell phone use. (Alizadeh Decl. at ¶ 52(c)).

1 **C. Resolution Through An Experienced Mediator.**

2 After counsel's independent investigation and discovery was completed, and after multiple
3 informal attempts to reach a settlement, the Parties agreed to mediation before Alan Berkowitz,
4 Esq. of Judicate West, an experienced and highly regarded mediator with extensive mediation
5 experience in wage and hour class actions and representative actions under PAGA.

6 **1. Class Wide Settlement.**

7 As a result of mediation, the Parties reached a class-wide settlement resolving all claims
8 alleged in the Second Amended Complaint. (Alizadeh Decl. at ¶¶16, Exh. 10 (memorandum of
9 understanding reached at the mediation)). In addition, Defendant has begun a review of its policies
10 and practices regarding expense reimbursement, including revising its expense reimbursement
11 practices to reimburse employees for certain business expenses challenged in the Second Amended
12 Complaint. (Alizadeh Decl. at ¶25).

13 **2. Review of Settlement by Expert G. Michael Phillips.**

14 Defendant retained expert G. Michael Phillips, Ph.D. of Phillips, Fractor & Company LLC.
15 (Michael D. Thomas Decl. at ¶ 2, Exh. A (Containing Dr. Phillips' report and CV). Doctor
16 Phillips was the plaintiff's expert in *Cochran v. Schwan's Home Service Inc.*, 228 Cal. App. 4th
17 1137 (2014) (authorizing expense reimbursement for required personal cell phone use under Labor
18 Code section 2802), and has substantial experience conducting sampling and statistical analysis of
19 business phone records. Doctor Phillips reviewed the same cell phone evidence provided to
20 Plaintiff's counsel. Doctor Phillips found statistically credible a settlement range of between
21 \$448,960.47 and \$414,806.47 **without discounting** (Thomas Decl. at ¶ 2, Exh. A at p. 6).
22 Discounting 50% for class certification results in a settlement range of \$224,480.24 and
23 \$207,403.24, significantly less than the settlement amount here. Doctor Phillip further notes
24 additional adjustments that could be made to his numbers including reducing the number of calls
25 by the number of personal calls, and reductions based on the percent chance of prevailing at trial
26 and/or on class certification. (*Id.*).

27 Doctor Phillips also confirmed that the records revealed only 321 employees during this
28 period out of 525 employees received or made a phone call to or from a company issued cell

1 phone, *i.e.*, only 61.14%. (*Id.* at p. 2).

2 **D. Summary of Settlement.**

3 Around September 17, 2017, the Parties Signed the Stipulation of Settlement of Class
4 Action and Representative Action and Release of Claims (“Stipulation” or “Settlement
5 Agreement”). (Alizadeh Decl. at ¶ 27, **Exh. 11**). The Stipulation provides for \$370,000.00 as the
6 gross settlement amount. (**Exh. 11 at ¶51**). The settlement payments to each Class Member will
7 be determined based on the number of weeks worked by each Class Member. (**Exh. 11 at ¶61**).
8 The reason for such allocation is so that the Class Members who allegedly suffered higher damages
9 will be allocated greater recovery. (Alizadeh Decl. at ¶ 33).

10 Based upon Defendant’s records, the estimated number of Class Members is approximately
11 19,038. (Alizadeh Decl. at ¶ 19). However, only 9,240 putative class members have provided
12 Defendant a phone number (cell or land line). Class Members may opt-out of the Settlement.
13 (**Exh. 11 at ¶ 71**).

14 According to discovery performed, Plaintiff alleges that the realistic liability exposure for
15 Defendant was approximately \$500,000.00. (Alizadeh Decl. at ¶ 35). Defendant maintains this
16 figure is unrealistically high based on the evidence, Plaintiff’s own testimony, and the risk of
17 plaintiff failing to obtain certification. (*Id.*).

18 In agreeing to the Settlement, Plaintiff took into consideration the aforementioned formal
19 and informal discovery. Plaintiff also considered the potential defenses to both class certification
20 and the merits of the case, Defendant’s calculation of potential exposure in the case, and the
21 independent views on all of these topics expressed by the neutral mediator. (Alizadeh Decl. at ¶
22 36). Finally, Plaintiff took into consideration Defendant’s willingness review its expense
23 reimbursement policies and practices, and make reimbursement available for certain challenged
24 reimbursement practices. (*Id.*).

25 As part of the Settlement, Defendant does not oppose Plaintiff’s Counsel’s request for
26 attorney’s fees up to 21.5% of the total settlement sum, or an amount equal to \$80,000.00 including
27 litigation costs. (**Exh. 11 at ¶ 56**). Also as part of the Settlement, Defendant does oppose Named
28 Plaintiff’s request for an enhancement of \$10,000.00. (**Exh. 11 at ¶ 57**).

1 The Settlement calls for a \$10,000.00 payment to the California Labor and Workforce
2 Development Agency ("LWDA") for PAGA penalties. (Exh. 11 at ¶ 59). Finally, the Settlement
3 Agreement also provides for the payment of the claims administrator for settlement administration
4 in an amount not to exceed \$56,812.00. The parties have received a quote from RG2 Claims
5 Administration LLC to administer this current settlement for approximately \$56,812.00. (Alizadeh
6 Decl. at ¶ 28, Exh. 12).

7 **E. The Settlement is Fair, Reasonable, and Adequate**

8 Based on their own respective independent investigations and evaluations, the Parties and
9 their respective counsel are of the opinion that settlement for the consideration and on the terms set
10 forth in their Agreement is fair, reasonable, and adequate and is in the best interests of the Class
11 and the Defendant in light of all known facts and circumstances and the expenses and risks inherent
12 in litigation. (Alizadeh Decl. at ¶ 37).

13 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged
14 by Plaintiff, and further denies that, for any purpose other than that of settling this lawsuit, this
15 action is appropriate for class treatment. (Alizadeh Decl. at ¶ 38).

16 There are approximately 19,620 Class Members including only 9,240 who have provided
17 Defendant a phone number (cell or land line). (Exh. 11, at ¶84). The amount any particular Class
18 Member will be entitled to recover will depend on the number of weeks he or she worked during
19 the Class Period. (Alizadeh Decl. at ¶ 39). The amount will also depend on the number of Class
20 Members who participate in the Settlement. Defendant experiences on average around a 25%
21 return rate on W2's annually due to employee address changes. (Thomas Decl. at ¶ 3, Exh. B). No
22 settlement amount will revert to Defendant. (Alizadeh Decl. at ¶ 40).

23 For any unclaimed individual settlement payments, the claims administrator will
24 proportionately increase the individual settlement amount for each participating class member so
25 that the amount actually distributed to the Class equals 100% of the net settlement amount. (Exh.
26 11 at ¶ 61(c)).

27 This is fair, as it directly allocates greater recovery to individual Class Members who have
28 allegedly suffered greater harm. (Alizadeh Decl. at ¶ 41). Furthermore, Class Members may

1 choose to exclude themselves and not participate in the Settlement. (*Id.*).

2 **III. LEGAL ANALYSIS**

3 **A. The Class and Representative Group at Issue**

4 The proposed "Settlement Class" means "all janitorial employees including day porters,
5 janitors and foremen and similarly situated manual labor employees who were, are, or will be
6 employed by Defendant in the State of California at any time during the period from June 10, 2011
7 to the date on which the Court grants preliminary approval of the Settlement." (Exh. 11 at ¶ 8).
8 The Parties have agreed and stipulated that the Class be certified on a provisional, non-mandatory
9 basis for the purposes of this settlement only.

10 Plaintiff filed a PAGA representative action on behalf of himself and all "aggrieved"
11 employees. Labor Code § 2699(c) defines aggrieved employees as "any person who was employed
12 by the alleged violator and against whom one or more of the alleged violations was committed."

13 **B. Two-Step Approval Process**

14 Any settlement of class litigation must be reviewed and approved by the Court. This is
15 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
16 notice has been distributed to the Class for their comment or objections. Thus, the preliminary
17 approval by the trial court is simply a conditional finding that the settlement appears to be within
18 the range of acceptable settlements. The procedures for the parties' submission of a proposed
19 settlement for preliminary approval by the court also are discussed in 4 *Newberg on Class Actions*:

20 When the parties to an action reach a monetary settlement, they will usually
21 prepare and execute a joint stipulation of settlement, which is submitted to the
22 court for preliminary approval. The stipulation should set forth the central
23 terms of the agreement, including but not limited to, the amount of settlement,
form of payment, manner of determining the effective date of settlement and
any recapture clause.

24 *Id.* at § 11.24. Here, the Parties have reached such a Settlement Agreement and have submitted to
25 this Court in connection with this Motion a copy of the Settlement Agreement fully setting forth
26 the amount of payment and methodology of payment.

27 **C. Procedures for Settlement Before Class Certification**

28 The Parties also may, at the preliminary approval stage, request that the Court provisionally

1 approve certification of the class – conditional upon final approval of the settlement. “[P]re-
2 certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v.*
3 *Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 240. Accord *Dunk v. Ford Motor Co.* (1996)
4 48 Cal. App. 4th 1794, 1803 (although the settlement was reached before any “adversary
5 certification,” the court was satisfied that it was “fair, adequate and reasonable”).

6 **D. The Applicable Legal Standard**

7 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution.
8 This is especially true in complex class action litigation...” *7-Eleven Owners for Fair Franchising*
9 *v. The Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1151 (quoting *Officers for Justice v. Civil*
10 *Service Comm. of the City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625). A
11 class action may not be dismissed, compromised, or settled without the approval of the Court. Cal.
12 Rule of Court 3.769 and Cal. Rule of Court 3.770. The decision to approve or reject a proposed
13 settlement is committed to the trial court’s sound discretion. *Wershba*, 91 Cal.App.4th 224 at 234-
14 35. Accordingly, a court’s decision to approve a class action settlement may be reversed only upon
15 a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
16 1011, 1026.

17 At this stage in the proceeding, the Court need only determine whether the proposed
18 settlement is within the range of possible final approval, and thus whether notice to the class of the
19 settlement terms and conditions and the scheduling of a formal fairness hearing is worthwhile.
20 *Wershba*, 91 Cal.App.4th at 234-35; *North County Contractor’s Assn., Inc. v. Touchstone Ins. Svcs.*
21 (1994) 27 Cal.App.4th 1085, 1090; *In re Traffic Exec., Ass’n*, (2nd Cir. 1980) 627 F.2d 631, 633-34.

22 To make this fairness determination, courts must consider several relevant
23 factors, including “the strength of the plaintiffs’ case, the risk, expense,
24 complexity and likely duration of further litigation, the risk of maintaining
25 class action status through trial, the amount offered in settlement, the extent of
26 discovery completed and the stage of the proceedings, [and] the experience
27 and views of counsel...” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
28 1801 (1996); *Wershba*, 91 Cal.App.4th 244-45; *7-Eleven Owners*, 85
Cal.App.4th at 1146. “The list of factors is not exclusive and the court is free
to engage in a balancing and weighing of the factors depending on the
circumstances of each case,” *Wershba*, 91 Cal. App. 4th at 245. Furthermore,
courts must give: proper deference to the private consensual decision of the
parties, [since] the court’s intrusion upon what is otherwise a private
consensual agreement negotiated between the parties to a lawsuit must be
limited to the extent necessary to reach a reasoned judgment that the

1 agreement is not the product of fraud or overreaching by, or collusion
2 between, the negotiating parties, and the settlement, taken as a whole, is fair,
reasonable and adequate to all concerned. *Hanlon*, 150 F.3d at 1027.

3 As shown herein, the proposed Settlement is the result of hard bargaining between the
4 Parties through the assistance of an experienced mediator. In light of the substantial risks in
5 continued litigation, the proposed Settlement represents a good result for Class members who do
6 not opt out. The proposed Settlement should be preliminarily approved.

7 **E. The Risks Inherent in Plaintiff's Case**

8 One risk overshadowed all other risks in this case-the risk Plaintiff could not certify a class.
9 (Alizadeh Decl. at ¶ 42).

10 First, multiple sources dictate the policies and practices applicable at each property,
11 including Able policies, service agreements between Able and its customers, collective bargaining
12 agreements, individual manager's discretion to tailor policies to the property, and the individual
13 janitor's own decision making. (Alizadeh Decl. at ¶¶ 20). Second, Managers and foremen adapt
14 Able policies to fit the unique needs of the property or customer. (*Id.*).

15 Plaintiff also faces significant hurdles in establishing the merits of his claims.

16 In addition to the substantial risks and uncertainty inherent in continued litigation, the
17 Parties faced the *certainty* that further litigation would be expensive, complex, and time
18 consuming. (Alizadeh Decl. at ¶ 43). Both Plaintiff and Defendant have experience in
19 employment and wage and hour class action litigation. (Alizadeh Decl. at ¶¶ 2-4). Moreover,
20 Plaintiff's counsel conducted an extensive investigation of the factual allegations involved in this
21 case. Each side has apprised the other of their respective factual contentions, legal theories and
22 defenses, resulting in extensive arms-length negotiations taking place among the Parties. (Alizadeh
23 Decl. at ¶ 43).

24 **F. The Amount Offered In Settlement**

25 With the deft assistance of experienced mediator Berkowitz, the parties came up with the
26 \$370,000 figure. (Alizadeh Decl. at ¶ 44).

27 Based on Plaintiff's Counsel's analysis of the relevant California decisional law, and the
28 facts, Plaintiff's Counsel believes that the total value was properly discounted for the risks, and the

1 Settlement terms are reasonable and justified under these circumstances, especially where class
2 members could choose to opt out and Defendant has agreed to take corrective measures. (Alizadeh
3 Decl. ¶ 45).

4 Plaintiff's Counsel is keenly aware the estimated amount received per Class Member is
5 extremely low; however, the belief here is that the merits of the case and the strong likelihood of
6 not being certified justifies such a Settlement under these circumstances. (Alizadeh Decl. at ¶46).
7 Finally, Plaintiff believes strongly that Defendant's decision to conduct an audit and to provide
8 some Class Members with a monthly allowance further justifies settlement. (*Id.*).

9 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness
10 of the Settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
11 prevailing on one or more of the causes of action or theories alleged in his Second Amended
12 Complaint and in the possibility of non-certification. (Alizadeh Decl. at ¶ 47).

13 The Settlement for each participating Class Member is fair, reasonable and adequate, given
14 the inherent risk of litigation, the likelihood that most Class Members would recover nothing, the
15 risk relative to class certification and the costs of pursuing such litigation. (Alizadeh Decl. at ¶48).

16 **G. The Arms' Length Settlement Achieved By Experienced Counsel and Reviewed**
17 **by Expert**

18 There is an initial presumption that a proposed settlement is fair and reasonable when it is
19 the result of arm's length negotiations. *See Cellphone Termination Fee Cases*, (2009) 180
20 Cal.App.4th 1110, 1117-18. Here, counsel for the Parties have extensive experience in
21 employment law, particularly wage-and-hour class action litigation. In addition, the Parties reached
22 a Settlement with the assistance of a well-respected and experienced mediator, Alan Berkowitz,
23 Esq. of Judicate West. The arm's-length settlement negotiations demonstrate the fairness of
24 Settlement and the lack of collusion.

25 **H. Fees and Costs**

26 The attorneys' fee and cost request of 21.5% of the \$370,000 is preliminarily justified. "In
27 general, questions whether a settlement was fair and reasonable, whether certification of the class
28 was proper, and whether the attorney fee award was proper are matters addressed to the trial court's

1 broad discretion.” *Wershba*, 91 Cal.App.4th at 234-235.

2 California courts have long awarded attorneys’ fees as a percentage of the benefit created
3 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that “when a
4 number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or
5 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
6 plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano v. Priest*, 20 Cal. 3d 25, 34
7 (1977) (quoting *D’Amico v. Board of Medical Examiners*, 11 Cal. 3d 1 (1974)).

8 **I. Incentive payments**

9 An incentive payment of \$10,000.00 is justified. Plaintiff participated in discovery, was
10 deposed and travelled from Orange County to San Francisco to participate in mediation. (Alizadeh
11 Decl. at ¶ 49; Josue Uribe Decl. at ¶¶2-8). It is customary and appropriate to provide a payment to
12 a named plaintiff for services as a class representative. *See, e.g. Bell v. Farmers Insurance*
13 *Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs
14 for their efforts in bringing class action).

15 **J. Costs of Administration**

16 Administration costs are estimated at \$56,812.00. The administrator is a reputable class
17 action claims administrator that has successfully administered over a thousand class action
18 settlements. (Alizadeh, ¶ 27, **Exh. 11** at ¶58). This bid from RG2 Claims Administration LLC
19 represents what Plaintiff’s counsel believes is a highly competitive bid with extremely low margins
20 on the administrator’s side. *Id.* The costs will be paid out of the \$370,000 Gross Settlement
21 Amount prior to calculation of the Net Settlement Fund.

22 **K. Plaintiff requests that the Court approve the PAGA portion of the settlement.**

23 Labor Code § 2699(1) requires that the Court review and approve the settlement of
24 penalties sought under PAGA. The circumstances of the settlement, rather than the amount
25 allocated to PAGA claims, determine whether a PAGA settlement is appropriate. *Nordstrom*
26 *Com’n Cases* (2010) 186 Cal.App.4th 576, 589. In *Nordstrom Com’n Cases*, the appellate court
27 held that the court can approve a settlement even when the parties did not allocate any dollars to
28 the PAGA claims. *Id.* at 589. In the settlement in that case, the PAGA penalty claims at issue

1 were included in the release of claims as a part of the overall settlement. *Id.* The court found that
2 the settlement's allocation of zero dollars to the PAGA claims was not improper even in light of
3 the inclusion of PAGA liability in the settlement terms. *Id.*

4 In this case, as part of the settlement, Defendant has agreed to pay \$10,000.00 to settle the
5 PAGA penalty claims, of which a payment of \$7,500.00 will go to the LWDA. If the Parties had
6 agreed to allocate more settlement funds to the PAGA claims, they would have had to lessen the
7 funds available for the settlement of the class action claims. Because the Class Members receive
8 only 25% of the PAGA settlement funds, they gained greater benefits from the settlement dollars
9 allocated to the non-PAGA claims which form the underlying basis for the PAGA claims.

10 Weighing the Class Members' best interest Plaintiff found that the \$10,000.00 allocated to the
11 PAGA claims was sufficient to address those claims while preserving adequate funds for the
12 settlement of the class claims. Plaintiff requests that the Court preliminary approval of this portion
13 of the settlement.

14 **IV. THE COURT SHOULD ORDER CONDITIONAL CERTIFICATION OF THE**
15 **PROPOSED SETTLEMENT CLASS.**

16 The Parties request that the Court certify the following Class:

17 All janitorial employees including day porters, janitors and foremen and similarly
18 situated manual labor employees who were, are, or will be employed by Defendant
19 in the State of California at any time during the period from June 10, 2011 to the date
on which the Court grants preliminary approval of the Settlement. (Exh. 11 at ¶8).

20 In California, proposed classes are appropriate for class treatment: "[W]hen the question is
21 one of a common or general interest, of many persons, or when the parties are numerous, and it is
22 impracticable to bring them all before the court, one or more may sue or defend for the resulting in
23 common questions of law and fact." *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 706.

24 **A. The Proposed Settlement Class Is Ascertainable**

25 Here, the proposed Class members are ascertainable, as they have been identified through
26 Defendant's employee and payroll records. (Alizadeh Decl. at ¶ 50). *See Rose v. City of Hayward*
27 (1981) 126 Cal.App.3d 926, 932 ("Class Members are 'ascertainable' where they may be readily
28 identified without unreasonable expense or time by reference to official records.").

1 **B. The Proposed Settlement Class Is Sufficiently Numerous**

2 The numerosity requirement is met if a class is so large that joinder would be impracticable.
3 *See Gay v. Waiters' & Dairy Lunchmen's Union* (9th Cir. 1977) 549 F.2d 1330. Due to the
4 significant size of the class, joinder would be impracticable and a class-wide proceeding is
5 preferable. (Alizadeh Decl. at ¶ 51). *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030.

6 **C. The Commonality Requirement Is Satisfied**

7 The commonality requirement requires that there be questions of law or fact common to the
8 class. *See Brown v. The Regents of the University of California* (1984) 151 Cal.App.3d 982,989;
9 *Caro v. Proctor & Gamble Co.* (1993) 18 Cal.App.4th 644, 667-668. Plaintiff has made a credible
10 argument that Defendant's expense reimbursement practices are uniform, uniformly applied and
11 systematically deprived all class members of compensation for required safety shoes, washing a
12 uniform and required personal cell phone use. (Alizadeh Decl. ¶ 52(a-c)). The main individualized
13 differences between Class Members relate to the amount of compensation each is entitled to
14 receive. (Alizadeh Decl. ¶ 52). Differences as to the amount of damages among Class Members is
15 not sufficient to prevent certification. *Acree v. General Motors Acceptance Corp.*, 92 Cal. App. 4th
16 385, 387 (2001).

17 Moreover, that uniform policies and practices are at the core of Plaintiff's allegations that
18 Defendant violated PAGA and other provisions of the Labor Code, and create questions of law and
19 fact common to all Class Members.

20 **D. Typicality and Adequacy Are Met.**

21 The typicality requirement requires that the claims of the class representatives be "typical
22 of the claims or defenses of the class." *See Classen v. Weller* (1983) 145 Cal.App.3d 27, 45. Here,
23 the requisite nexus for typicality exists between Plaintiff and absent Class Members, as Plaintiff is
24 asserting the same claims and seeking the same remedies. (Alizadeh Decl. ¶ 53).

25 The representative parties must fairly and adequately protect the interests of the class. *See*
26 *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 463; *Cummings v. Connell* (9th Cir.
27 2005) 402 F.3d 936, 944. The adequacy of representation requirements is met by fulfilling two
28 conditions: first, a named plaintiff must be represented by counsel qualified to conduct the pending

1 litigation; second, a named plaintiff's interests cannot be antagonistic to those of the class. *McGhee*
2 *v. Crocker-Citizens Nat. Bank*, 60 Cal.App.3d 442, 451 (1976). Plaintiff here meets both of these
3 requirements. Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and
4 diligently reviewed the Settlement terms. (Alizadeh Decl. ¶ 54).

5 **E. Class-wide Resolution Through Settlement Is Superior To Other Methods**

6 Here, class wide resolution is superior to other methods because the amount sought in
7 recovery per Class Member is likely to be too small for an attorney to pursue and the issues are so
8 complicated that an individual Class Member might not pursue his or her claim.

9 Plaintiff believes the settlement for each Class Member to be fair, reasonable and adequate,
10 given the inherent risk of litigation and the costs of pursuing such litigation. The settlement shall
11 finally resolve the claims arising out of or related to the alleged violation of Labor Code 2802 and
12 related Labor Code and **PAGA** violations, (all as specified in the Settlement), as well as costs and
13 attorneys' fees.

14 **V. THE COURT SHOULD APPROVE THE CLASS NOTICE PACKET.**

15 The Class Notice Packet includes the Class Notice and Claim Form. The Class Notice is
16 attached as **Exhibit A** to the **Exh. 11** (the Parties Settlement Agreement) of the Alizadeh Decl. The
17 Claim Form is attached as **Exhibit B** to **Exh. 11**. Both satisfy due process.

18 California statutory and case law vests the court with broad discretion in fashioning an
19 appropriate notice program. *See Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. The
20 proposed Class Notice program here entails mailing individual notices to each known Class
21 Member based on Defendant's personnel records. The Notice will be provided in both English and
22 Spanish, as the overwhelming majority of the workforce is Spanish and provide the following:

- 23 • "Response Deadline" means the deadline by which Class Members must postmark or
24 fax to the Claims Administrator valid Claim Forms, Requests for Exclusion, or
25 postmark Notices of Objection to the Settlement. The Response Deadline will be
26 sixty (60) calendar days from the initial mailing of the Notice Packet by the Claims
27 Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which
28 case the Response Deadline will be extended to the next day on which the U.S.
Postal Service is open. The Response Deadline for Claim Forms or Requests for
Exclusion will be extended fifteen (15) calendar days for any Class Member who is
re-mailed a Notice Packet by the Claims Administrator, unless the 15th day falls on a
Sunday or Federal holiday, in which case the Response Deadline will be extended to
the next day on which the U.S. Postal Service is open. (**Exh. 11**, Settlement at ¶ 66).

- 1 • Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
2 Packet will provide: (a) information regarding the nature of the Action; (b) a
3 summary of the Settlement's principal terms; (c) the Settlement Class definition;
4 (d) the total number of Workweeks each respective Class Member worked for
5 Defendant during the Class Period; (e) each Class Member's estimated Individual
6 Settlement Payment and the formula for calculating Individual Settlement
7 Payments; (f) the dates which comprise the Class Period; (g) instructions on how to
8 submit valid Claim Forms, Requests for Exclusion, or Notices of Objection; (h) the
9 deadlines by which the Class Member must postmark or fax Claim Forms or
10 Requests for Exclusions, or postmark Notices of Objection to the Settlement; (i) the
11 claims to be released, as set forth herein; and (j) the date for the final approval
12 hearing. (Exh. 11, Settlement at ¶ 67).
- 13 • Claim Form Procedures (Plaintiff's Exception). To receive Individual Settlement
14 Payments, all Class Members will be required to submit a timely Claim Form by the
15 Response Deadline. However, Plaintiff is not required to submit Claim Forms to
16 receive his Individual Settlement Payment. All Claim Forms must be signed and
17 returned to the Claims Administrator via fax or first class mail postmarked by the
18 Response Deadline. The date of the postmark or fax on the return mailing envelope
19 will be the exclusive means to determine whether a Claim Form has been timely
20 submitted. However, it is not the intention of the Parties to exclude Class Members
21 from participating in the Settlement for technical reasons that do not interfere with
22 the orderly administration of the Settlement. Therefore, the Claims Administrator
23 will compile a list of claims rejected for (1) failure to cure an unsigned Claim Form
24 or (2) late submission of the Claim Form. As to the Class Members on that rejected
25 claims list, any Class Member who requests, in a signed letter, the ability to
26 participate in the Settlement will be included as a Participating Class Member so long
27 as that written request is received by the Effective Date. (Exh. 11, Settlement at ¶ 69).
- 28 • Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
Settlement Agreement must sign and postmark or fax a written Request for
Exclusion to the Claims Administrator within the Response Deadline. The date of
the postmark on the return mailing envelope or fax receipt confirmation will be the
exclusive means to determine whether a Request for Exclusion has been timely
submitted. All Requests for Exclusion will be submitted to the Claims Administrator,
who will certify jointly to Class Counsel and Defendant's Counsel the Requests for
Exclusion that were timely submitted. (Exh. 11, Settlement at ¶ 71).
- Objection Procedures. To object to the Settlement Agreement, a Class Member
must postmark a valid Notice of Objection to the Claims Administrator on or before
the Response Deadline. The Notice of Objection must be signed by the Class
Member and contain all information required by this Settlement Agreement. The
postmark date will be deemed the exclusive means for determining that the Notice
of Objection is timely. Class Members who fail to object in the specific and
technical manner specified above will be deemed to have waived all objections to
the Settlement and will be foreclosed from making any objections and seeking any
adjudication or review, whether by appeal or otherwise, to the Settlement
Agreement. Class Members who postmark timely Notices of Objection will have a
right to appear at the Final Approval Hearing in order to have their objections heard
by the Court. At no time will any of the Parties or their counsel seek to solicit or
otherwise encourage Class Members to submit written objections to the Settlement
Agreement or appeal from the Order and Judgment. Class Counsel will not
represent any Class Members with respect to any such objections to this Settlement.
(Exh. 11, Settlement at ¶ 73).
- Uncashed Settlement Checks. If there are any unclaimed Individual Settlement

1 Payments, the Claims Administrator will proportionately increase the Individual
2 Settlement Payment for each Participating Class Member so that the amount
3 actually distributed to Participating Class Members equals One Hundred Percent
4 (100%) of the Net Settlement Amount. (**Exh. 11**, Settlement at ¶ 76).

5 The Class Notice process described above is consistent with class certification notices
6 approved by numerous state and federal courts, this Court, and is, under the circumstances of this
7 case, the best notice practicable. Such notice satisfies all due process requirements. *See Carrt*, 50
8 Cal. App. 3d at 973-74. Moreover, the notice to the class must fairly apprise the class members of
9 the terms of the proposed compromise and of the options open to the dissenting class members.
10 The notice must be structured to enable class members rationally to decide whether to intervene or
11 object, 'opt out,' or accept the settlement. *Cooper v. Am. Savings* (1976) 55 Cal.App.3d 274, 285;
12 *Phillips Petrol. Co. v. Schutts* (1985) 472 U.S.797, 811-12. Here, the proposed Class Notice
13 provides complete information regarding the scope of the proposed Class, the terms and provisions
14 of the Settlement, the relief available to Class Members, the amount of the Fee Award, Incentive
15 Award, and the date, time, and place of the Final Approval Hearing, and the procedure and
16 deadline for objecting to and opting out of the Settlement. (**Exh. A to Exhibit 11.**)

17 The Class Notice also fulfills the requirement of neutrality in class notices. It summarizes
18 the proceedings to date and the terms and conditions of the Settlement in an informative, coherent
19 manner, in compliance with California's mandate that the notice should explain the settlement
20 "concisely and clearly...in plain, easily understood language." The Class Notice allows any Class
21 Member to request exclusion (i.e., opt out) from the settlement, pursuant to which the Class
22 Member would retain any claim he or she may have against Defendant. Moreover, Class Members
23 may attend the final fairness and approval hearing for the purpose of objecting to one or more of
24 the Settlement terms set forth in the Stipulation.

25 Moreover, the Claim Form satisfies due process. The Claim Form attached as **Exhibit B to**
26 **Exh. 11** of the Alizadeh declaration identifies the Class Members Share of the Net Settlement, the
27 dates of employment that serve as a basis for the individual Settlement Share, and provides an
28 opportunity to challenge the number of workweeks. Lastly, the Claim Form again provides the
29 Class Member with the opportunity to contact the Claims Administrator with Questions.

1 Accordingly, the Class Notice Packet complies with the standards of fairness,
2 completeness, and neutrality required of a class notice disseminated under authority of the Court.

3 **VI. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION**

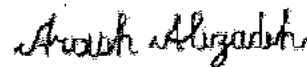
4 A court must approve the settlement or dismissal of a class action in order to prevent fraud,
5 collusion or unfairness to the class. *Malibu Outrigger Bd. of Governors v. Superior Court* (1980)
6 103 Cal. App. 3d 573, 578-579; Cal. Civ. Code § 1781(f). Here, the proposed Settlement is fair,
7 adequate, and reasonable. It will result in substantial monetary benefits to past, current and future
8 Class Members. It will result in reviewed policies to benefit current and future Class Members; it
9 is non-collusive; and it was achieved as the result of informed, extensive, and arms' length
10 negotiations and discovery conducted by counsel experienced in employment litigation. Plaintiff
11 respectfully requests this Court, as part of the preliminary approval process, do the following:

- 12 1. Review the proposed Settlement Agreement;
- 13 2. Consider whether the proposed settlement preliminarily appears to be fair and
14 adequate, and whether the proposed class of settling plaintiffs preliminarily appears to meet the
15 applicable certification criteria;
- 16 3. Review and approve the proposed Class Notice and Claim Form;
- 17 4. Direct notice to be given to the Class, and set a hearing for final review of the
18 proposed Settlement;
- 19 5. Confirm Named Plaintiff Josue Uribe as the Class Representative and confirm
20 Arash N. Alizadeh of the Law Office of Arash N. Alizadeh as Class Counsel; and
- 21 6. Approve RG2 Claims Administration LLC to serve as Claims Administrator to
22 handle the notice and settlement procedures.

23 Respectfully Submitted,

24 DATED: November 10, 2017

LAW OFFICE OF ARASH N. ALIZADEH

25 

26 By: _____
Arash N. Alizadeh

27 Attorneys for Plaintiff Josue Uribe
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Attorney for Plaintiff JOSUE URIBE

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE
CIVIL COMPLEX CENTER
751 SANTA ANA BLVD, SANTA ANA, CALIFORNIA 92701

JOSUE URIBE, on behalf of himself and
other current or former employees,

Plaintiff,

v.

CROWN BUILDING MAINTENANCE
CO.; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2016-00839857-CU-OE-CXC

ASSIGNED FOR ALL PURPOSED TO:
HON. GLENDA SANDERS
DEPARTMENT: CX101

DECLARATION OF ARASH N. ALIZADEH

Date: December 15, 2017
Time: 1:30 p.m.
Department: CX101

Complaint Filed: March 9, 2016
Trial Date: None set

I, ARASH N. ALIZADEH, declare:

1. I am attorney licensed to practice law before this Court. I am over 18 years of age. I have personal knowledge of the facts set forth in this declaration and could testify competently to them.

2. I am the founder of the Law Offices of Arash N. Alizadeh, attorney of record for Plaintiff Josue Uribe ("Plaintiff") and the proposed settlement class (the "Class") in the above-captioned matter.

1 3. I have practiced exclusively Plaintiff's employment law since January 2015, I
2 have been the attorney of record in over twenty-five employment cases and obtained settlements
3 in fifteen cases with recoveries of just over one million dollars.

4 a. *Fayyad v. Fletcher Jones Motor Cars* O.C.S.C. filed on May 6, 2015.

5 This case involved claims for sexual harassment and retaliation, as well as
6 typical wage and hour claims including PAGA. A confidential settlement
7 was reached in mediation pending court of approval on the PAGA
8 disbursements.

9 b. *Roman v. FedEx Freight, Inc.* CIVDS1506540 San Bernardino Superior
10 Court (S.B.S.C.) filed on May 8, 2015. This case involved claims for age
11 harassment/discrimination as well as claims for work place conditions that
12 relating to workplace temperature and heat. This case was settlement in
13 mediation under confidential terms.

14 c. *Singleton v. Harbor Distributing LLC* 30-2015-00808269 filed September
15 4, 2015. This cases involved disability discrimination and numerous wage
16 and hour claims. The case settled in mediation under confidential terms.

17 d. *Cruz v. General Tools* 30-2016-00837942 O.C.S.C. filed February 29,
18 2016. This case involved claims for retaliation and numerous wage and
19 hour violations. The case settled in mediation under confidential terms.

20 e. *Stump v. Rolling Frito Lays Sales, LLP* 37-2016-0011545 San Diego
21 Superior Court filed April 11, 2016. This case involved claims for
22 disability discrimination and related claims. The case settled in mediation
23 under confidential terms.

24 f. *Hamilton v. BlueYield, Inc.* 30-2015-00826139 O.C.S.C. filed December
25 21, 2015. This case involved numerous wage and hour claims due to
26 misclassification, PAGA, and fraud. The case settled through attorney
27 negotiations.

28 g. *Maixner v. Cap Diagnostics LLC*, 30-2016-00882099 O.C.S.C. filed on

1 October 18, 2016. This case involved claims for disability discrimination
2 and numerous wage and hour claims. The case settled for a confidential
3 sum in mediation.

4 h. *Ramirez v. My Fit Foods, LLC* BC616917 L.A.S.C. filed on April 12,
5 2016. This case involved sexual harassment and battery. The case was
6 settled for a confidential sum in mediation.

7 i. *Singleton v. Avcorp* BC634929 L.A.S.C. filed on September 20, 2016. This
8 case involved race discrimination and numerous wage and hour claims.
9 This case settled through attorney negotiations under confidential terms.

10 j. *Adams v. Machining Time Savers, Inc.* CIVDS1606579 filed April 27,
11 2016. This case involved race discrimination/harassment, PAGA, and
12 numerous wage and hour claims. This case settled through attorney
13 negotiations under confidential terms.

14 k. *Doe v. Citrus, LLC* BC643923 L.A.S.C. filed January 4, 2017. This case
15 involved misclassification of a nonexempt employee as well as wrongful
16 termination in violation of public policy. This case settled through
17 mediation under confidential terms.

18 l. *Ellsmore vs. Bazz Houston Co.* 30-2015-00802355 filed August 4, 2015.
19 This case involved battery, wrongful termination in violation of public
20 policy, wage/hour claims based on misclassification and PAGA. The case
21 settled a week before trial under confidential terms.

22 m. *Dabbah v. Dell Software Inc.* 30-2016-00875101 filed on September 14,
23 2016. This case involved numerous wage and hour claims based on
24 misclassification of nonexempt employee. This case settled through
25 mediation under confidential terms.

26 4. Besides the foregoing cases, I am currently attorney of record in eleven pending
27 case in state court, including this case and the *Fayyad* case mentioned above. All of these cases
28 involve wage and hour violations or wrongful termination claims. Five cases allege a PAGA

1 cause of action. I am co-counseled on four pending cases where in two of them I am lead counsel.

2 5. In 2017, I was named to the Super Lawyers Magazine Rising Stars list for
3 Employment Litigation: Plaintiff.

4 6. Attached as **Exhibit 1** is a true and correct copy of Plaintiff's originally filed
5 PAGA only action in state court on or about March 9, 2016.

6 7. In March 2016, Defense Counsel informed me that Defendant intended to file a
7 notice of related cases because a separate action *Gama v. Crown Building Maintenance Co*, Case
8 No. RG15773582 was pending in the Alameda County Superior Court that alleged unreimbursed
9 expenses for required cell phone use on behalf of hourly employees performing janitorial work.

10 8. Attached as **Exhibit 2** is a true and correct copy of Plaintiff's Notice of Related
11 Cases.

12 9. A true and correct copy of Plaintiff's First Amended Complaint is attached hereto
13 as **Exhibit 3**.

14 10. A true and correct copy of Defendant's Demurrer filed on June 21, 2016 is
15 attached hereto as **Exhibit 4**.

16 11. A true and correct copy of the Court's Order denying Defendant's Demurrer is
17 attached hereto as **Exhibit 5**.

18 12. Attached as **Exhibit 6** are relevant portions of the deposition testimony of Plaintiff
19 Josue Uribe.

20 13. Attached as **Exhibit 7** are documents produced in this matter bates labelled
21 Crown-Uribe 000110-111).

22 14. Attached as **Exhibit 8** are true and correct copies of Plaintiff's signed copy of
23 Defendant's prohibition on personal cell phone use.

24 15. Attached as **Exhibit 9** is a true and correct copy of Plaintiff's Second Amended
25 Complaint filed simultaneously with this Motion for Preliminary Approval.

26 16. Attached as **Exhibit 10** is a true and correct copy of the Parties stipulation of
27 settlement signed at mediation.

28 17. The parties subsequently engaged in written discovery. Plaintiff served formal

1 discovery, propounding numerous written discovery requests, including interrogatories, form
2 interrogatories and requests for production of documents. Defendant responded to those requests
3 and the Parties engaged in substantive meet and confer communications regarding certain
4 discovery disputes. Defendant produced a large number of documents including policies
5 regarding expense reimbursement, policies regarding uniform and safety shoe requirements, and
6 policies regarding personal cell phone use. Defendant also produced multiple sources of
7 documents governing the wages, hours and conditions of employment at various properties
8 throughout California including collective bargaining agreements and service agreements
9 applicable to a specific property only. Finally, Defendant provided Plaintiff with a sample of cell
10 phone records from company issued cell phones and the cell phone records of his own managers
11 to cross reference with the cell phone numbers of class members and with Plaintiff's own cell
12 phone.

13 18. Defendant provided extensive and detailed data regarding required safety shoes,
14 uniform requirements, Plaintiff's signed copy of Defendant's prohibition on personal cell phone
15 use and cell phone records from company issued cell phones including Plaintiff's supervisors
16 during the relevant time period. This data allowed Plaintiff's counsel to perform a comprehensive
17 damage analysis in preparation for mediation.

18 19. Plaintiff's claim for reimbursement for personal cell phone use also faces uphill
19 challenges. There is very little if any evidence to suggest a cell phone is required to perform
20 Plaintiff's job. First, based on the data provided by Defendant, Able employed approximately
21 19,068 hourly employees during the Class Period. Of the 19,068, Able maintains a record of a
22 phone number (cell or land line) for approximately 9,240 employees only. Second, Plaintiff
23 testified he frequently left his cell phone in his car during his shift.

24 20. First, there is no company policy uniformly applied to create class-wide liability.
25 Multiple sources dictate the policies and practices applicable at each property including Able
26 policies, service agreements between Able and its customers, collective bargaining agreements,
27 individual manager's discretion to tailor policies to the property, and the individual janitor's own
28 decision making. These are not questions susceptible of class wide proof or class wide answers.

1 Second, Managers and foremen adapt Able policies to fit the unique needs of the property or
2 customer. The question of what relevant directives each janitor received, and to what practices
3 each Manager adhered, varies based on where each individual is working, the
4 foreperson/manager issuing directives, to whom each individual was reporting, the individual's
5 own unique understanding of the relevant policies and practices, and their own highly
6 individualized decision-making.

7 21. Plaintiff was employed with Defendant from January 26, 2013 through March 21,
8 2015. The cell phone records of his supervisors reveal 67 instances where a call was made to
9 Plaintiff or received from Plaintiff. This amounts to a call two or three times a month.

10 22. Plaintiff analyzed a three month sample of cell phone records. The records
11 revealed only 321 employees during this period out of 525 employees received or made a phone
12 call to or from a company issued cell phone-only 61.14%.

13 23. Finally, company cell phone records and class cell phone records do not accurately
14 reveal the sender or recipient of a call, much less call content, imposing substantial requirements
15 of individualized proof on Plaintiff to establish liability. Able does not track the end user of
16 company issued cell phones. Some janitors share a cell phone. Moreover, there is no way to
17 determine whether the content of a call is personal or work related.

18 24. After all such investigation and discovery was completed, the Parties agreed to
19 mediation before Alan Berkowitz, Esq. of Judicate West, an experienced and highly regarded
20 mediator with extensive mediation experience in wage and hour class actions and representative
21 actions under PAGA. As a result, the Parties reached a class-wide settlement.

22 25. Defendant has begun a review of its policies and practices regarding expense
23 reimbursement, including revising its expense reimbursement practices to reimburse employees
24 for certain business expenses challenged in the Second Amended

25 26. As part of the Settlement, Plaintiff agreed to file concurrently with this Motion for
26 Preliminary Approval, a Second Amended Complaint adding a class action, a claim for expense
27 reimbursement for personal cell phone use and a claim under the Business and Professions Code.

28 27. Attached as **Exhibit 11** is a true and correct copy of the parties Stipulation of

1 Settlement of Class Action and Representative Action and Release of Claims signed by the
2 Parties ("Stipulation" or "Settlement Agreement").

3 28. Attached as **Exhibit 12** is a true and correct copy of quote of \$56,812.00 received
4 from RG2 Claims Administration LLC to administer this current settlement.

5 29. Attached as **Exhibit 13** are true and correct copies of Able applications without a
6 phone number.

7 30. Attached as **Exhibit 14** are true and correct copies for collective bargaining
8 agreements that apply at various Able properties throughout California with different terms
9 regarding personal cell phone use.

10 31. Attached as **Exhibit 15** are true and correct copies of individual manager write up
11 for cell phone use in the workplace.

12 32. Attached as **Exhibit 16** are true and correct copies of Able policies prohibiting
13 personal cell phone used signed by Plaintiff.

14 33. The Stipulation provides for \$370,000.00 as the gross settlement amount. The
15 settlement payments to each Class Member will depend on the number of weeks worked by each
16 Class Member. The reason for such allocation is so that the Class Members who allegedly
17 suffered higher damages will be allocated greater recovery.

18 34. Based upon Defendant's records, the estimated number of Class Members is
19 approximately 19,038. Class Members may opt-out of the Settlement if they so choose.

20 35. According to discovery performed, Plaintiff alleges that the realistic liability
21 exposure for Defendant was approximately \$500,000.00. Defendant maintains this figure is
22 unrealistically high based on the evidence, Plaintiff's own testimony, and the risk of certification.

23 36. In agreeing to the Settlement, Plaintiff took into consideration the aforementioned.
24 Plaintiff also took into consideration that the policies and practices regarding safety shoe, uniform
25 compensation and cell phone use vary throughout California and are governed by policies and
26 practices narrowly tailored for each property and property owner, various collective bargaining
27 agreements and agreements with each individual property. Plaintiff also considered the potential
28 defenses to both class certification and the merits of the case, Defendant's own calculation of

1 potential exposure in the case, and the independent views on all of these topics expressed by the
2 neutral mediator. Finally, Plaintiff took into consideration Defendant's willingness to review
3 policies to benefit the entire Class.

4 37. Based on their own respective independent investigations and evaluations, the
5 Parties and their respective counsel are of the opinion that settlement for the consideration and on
6 the terms set forth in their Agreement is fair, reasonable, and adequate and is in the best interests
7 of the Class and the Defendant in light of all known facts and circumstances and the expenses and
8 risks inherent in litigation.

9 38. Defendant denies any liability or wrongdoing of any kind associated with the
10 claims alleged by Plaintiff, and further denies that, for any purpose other than that of settling this
11 lawsuit, this action is appropriate for class treatment.

12 39. The amount any particular class member will be entitled to recover will depend on
13 the number of weeks he or she worked during the Class Period, with some entitled to receive
14 more, and others less.

15 40. No settlement amount will revert to Defendant.

16 41. This Settlement is fair, as it directly allocates greater recovery to individual Class
17 Members who have allegedly suffered greater harm. Furthermore, Class Members may choose to
18 exclude themselves and not participate in the Settlement.

19 42. One risk overshadowed all other risks in this case-the risk Plaintiff could not
20 certify a class.

21 43. In addition to the substantial risks and uncertainty inherent in continued litigation,
22 the Parties faced the certainty that further litigation would be expensive, complex, and time
23 consuming. Each side has apprised the other of their respective factual contentions, legal theories
24 and defenses, resulting in extensive arms-length negotiations taking place among the Parties.

25 44. With the deft assistance of experienced mediator Berkowitz, the parties came up
26 with the \$370,000 figure.

27 45. Based on Plaintiff's Counsel's analysis of the relevant California decisional law,
28 and the facts, and the strong likelihood a class would not be certified, Plaintiff's Counsel believes

1 that the total value was properly discounted for the risks, and the Settlement terms are reasonable
2 and justified under these circumstances, especially where class members could choose to opt out
3 and Defendant has agreed to review policies and practices..

4 46. Plaintiff's Counsel is keenly aware the estimated amount received per Class
5 Member may be low; however, the belief here is that the merits of the case and the strong
6 likelihood of not being certified justifies such a Settlement under these circumstances. Finally,
7 Plaintiff believes strongly that Defendant's decision to conduct an audit and to provide some
8 Class Members with a monthly allowance for required cell phone use further justifies settlement.

9 47. Plaintiff believes that a class can be certified; however, Plaintiff also believes in
10 the fairness of the Settlement that is based on factoring in the uncertainty and risks to Plaintiff
11 involved in not prevailing on one or more of the causes of action or theories alleged in his Second
12 Amended Complaint and in the possibility of non-certification. Defendant adamantly disputes
13 the ability of Plaintiff to certify a class and disputes liability.

14 48. The Settlement for each participating Class Member is fair, reasonable and
15 adequate, given the inherent risk of litigation, the risk relative to class certification and the costs
16 of pursuing such litigation. Settlement is the result of extensive arms-length negotiations
17 between counsel for the Parties, including having the assistance of a highly regarded mediator
18 with significant experience in wage and hour class actions. The Settlement has also been
19 reviewed by an expert.

20 49. Plaintiff participated in discovery, was deposed and travelled from Orange County
21 to San Francisco to participate in mediation.

22 50. The proposed Class members are ascertainable, as they have been identified
23 through Defendant's employee and payroll records.

24 51. Due to the significant size of the class, joinder of all Class Members would be
25 impracticable and a class-wide proceeding is preferable.

26 52. Plaintiff has made a credible argument that Defendant's expense reimbursement
27 practices systematically deprived all class members of compensation for required safety shoes,
28 washing a uniform and required personal cell phone use.

- 1 a. Able maintains uniform policies regarding safety shoes and uniforms.
2 Able uniformly informs janitors of its policies during orientation. Able
3 uniformly does not provide janitors with instructions regarding
4 compensation for replacing safety shoes nor for maintaining a clean
5 uniform. Able knows janitors have to replace safety shoes and uniforms.
6 Able therefore knew that janitors incurred expenses for work-related
7 purposes yet did nothing to ensure that janitors were reimbursed for such
8 expenses.
- 9 b. Able supervisors and managers collected cell phone numbers from janitors
10 on the job and provided those cell phone numbers to Able supervisors and
11 foremen. Those supervisors and foremen use their company issued cell
12 phones to communicate with janitors and provide them with instructions on
13 how to perform their job. Those supervisors and foremen communicate
14 with janitors on janitors' personal cell phones to communicate unique
15 tasks, changes in assignments and additional information directed from the
16 client. Able knew janitors were incurring expenses for work-related
17 purposes, yet did nothing to ensure that janitors were reimbursed for such
18 expenses.
- 19 c. The purpose of Labor Code Section 2802 is "to prevent employers from
20 passing their operating expenses on to their employees." *Gattuso v. Harte-*
21 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562. Able has passed on the
22 operating expenses to employees related to safety shoe replacement,
23 uniform maintenance and required cell phone use.

24 The main individualized differences between Class Members relate to the amount of
25 compensation each is entitled to receive.

26 53. Here, the requisite nexus for typicality exists between the named Plaintiff and
27 absent Class Members, as Plaintiff is asserting the same claims and seeking the same remedies as
28 the absent Class Members.

1 54. Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and
2 diligently reviewed the Settlement terms.

3 55. Here, class wide resolution is superior to other methods because the amount
4 sought in recovery per Class Member is likely to be too small for an attorney to pursue and the
5 issues are so complicated that an individual Class Member might not pursue his or her claim.

6 I declare under the penalty of perjury of the laws of the State of California that the
7 foregoing is true and correct.

8
9 November 10, 2017

Arash Alizadeh

Arash N. Alizadeh

EXHIBIT 1

1 **LAW OFFICE OF ARASH N. ALIZADEH**
2 Arash N. Alizadeh, State Bar No. 302290
3 7545 Irvine Center Drive, Suite 200
4 Irvine, California 92618
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8 Attorneys for Plaintiff JOSUE URIBE

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

03/09/2016 at 07:02:24 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE**

10 **700 CIVIC CENTER DRIVE WEST, SANTA ANA, CA 92701**

11 JOSUE URIBE, on behalf of himself and other
12 current or former employees,

13 Plaintiff,

14 v.

15 CROWN BUILDING MAINTENANCE CO.,
16 and DOES 1 through 100, inclusive,

17 Defendants.

Case No.: 30-2016-00839857-CU-OE-CXC
Judge Gail A. Andler

COMPLAINT FOR DAMAGES

18 Plaintiff alleges:

19 **General Allegations**

- 20 1. This is an action for violation of California's wage and hour laws and the Labor
21 Code Private Attorneys General Act of 2004.
- 22 2. Venue is proper in this Court because Defendants do substantial business in Orange
23 County, California, and employed Plaintiff in Los Angeles County, California.
- 24 3. At all times alleged herein, Employer was, and is, America's largest family-owned
25 provider of Janitorial, Engineering, and Facility solutions. Employer was established in 1926 and
26 serves customers at their facilities throughout California. Employee worked as a day porter at
27 Employer's worksite in Costa Mesa, CA from approximately May 2013 through some time in
28 November 2015 when Employee went on disability leave due to an on the job knee injury.

1 Employee worked at an apartment complex site and his duties included sweeping, mopping,
2 vacuuming, blowing leaves and other similar tasks.

3 4. Employee used different chemicals, detergents, and cleaning supplies in performing
4 his tasks and he always used a cart that held said cleaning material and equipment that he pushed
5 around in his job site. Employee's job duties were essentially similar to a janitor. Employee was
6 required to wear a uniform provided by the company, but the company did not maintain the
7 uniform. Due to heavy chemicals that came in contact with Employee's uniform, he had to wash
8 the uniforms in separate wash loads to avoid damaging his personal clothes.

9 5. Defendants paid Plaintiff hourly at, or near, the minimum wage rate. Defendants
10 calculated and paid Plaintiff overtime, and premium pay for missed rest and meal-breaks using an
11 incorrect regular rate of pay without accounting for other remuneration paid to or on behalf of
12 Plaintiff such as the reimbursement for cost of maintenance of uniforms or purchasing slip
13 resistant shoes. Accordingly, Plaintiff was paid overtime, and premium pay for missed rest and
14 meal-breaks based on an incorrect "rate of pay", thus depriving him of wage earned and due to
15 him by Defendants.

14 Parties

15 6. Plaintiff is, and at all relevant times was, a competent adult residing in Orange
16 County, California.

17 7. Plaintiff is informed and believes, and on that basis alleges, that defendant
18 CROWN BUILDING MAINTENANCE CO is, and at all relevant times was, a business operating
19 in Orange County, California.

20 8. Plaintiff currently is unaware of the true names and capacities of the defendants
21 sued in this action by the fictitious names DOES 1 through 100, inclusive, and therefore sues those
22 defendants by those fictitious names. Plaintiff will amend this Complaint to allege the true names
23 and capacities of such fictitiously named defendants when they are ascertained.

24 9. Plaintiff is informed and believes, and on that basis alleges, that each defendant
25 sued in this action, including each defendant sued by the fictitious names DOES 1 through 100,
26 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged
27 below.

28 10. Plaintiff is informed and believes and on that basis alleges that there exists, and at
all relevant times there has existed, a unity of interest and ownership between DOES 1 through 10,

1 on the one hand, and CROWN BUILDING MAINTENANCE CO, on the other hand, such that
2 any separateness and individuality between them have ceased, and CROWN BUILDING
3 MAINTENANCE CO, is the alter-ego of DOES 1 through 10. Adherence to the fiction of the
4 separate existence of CROWN BUILDING MAINTENANCE CO as an entity distinct from
5 DOES 1 through 10 would permit abuse of any corporate privilege, sanction fraud and promote
6 injustice.

7 11. Plaintiff is informed and believes that each Defendant conspired with, aided and
8 abetted, ratified the conduct of, knowingly acquiesced in, acted with the consent and permission
9 of, and accepted the benefits of each other Defendant with respect to the matters alleged herein.

10 12. Plaintiff is informed and believes that, except as otherwise alleged herein, each
11 Defendant is, and at all times relevant to this Complaint was, the agent, joint-employer, partner,
12 joint venturer, alter ego, affiliate, and/or co-conspirator with or of each of the other Defendants,
13 and/or otherwise acted on the behalf of each other Defendant.

14 **First Cause of Action**

15 **For Failure to Pay Earned Wages**

16 **(Cal. Labor Code Section 204)**

17 **by Plaintiff Against All Defendants**

18 13. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as
19 though set forth fully herein.

20 14. Defendants failed to pay Plaintiff the wages that he earned, as required by the Code
21 and the Industrial Welfare Commission Wage Order no. 5-2001 ("Wage Order").

22 15. Plaintiff has been deprived of his rightfully earned wages as a direct and proximate
23 result of Defendants' failure to pay said compensation. Plaintiff is entitled to recover such
24 amounts, plus interest thereon, attorney's fees and costs.

25 **Second Cause of Action**

26 **For Failure to Pay State Minimum Wage, including Overtime Compensation**

27 **(Labor Code Sections 510, 1194, 1194.2, 1197, 1198; IWC Wage Order)**

28 **by Plaintiffs Against All Defendants**

16. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
though set forth fully herein.

17. The Code and the Wage Order provide that a workday consists of eight hours, a
workweek consists of 40 hours, and an employer must compensate an employee who works

1 overtime hours with either one-and-one-half times or double the employee's regular rate of
2 compensation. The Code and the Wage Order also provide that the employee's regular rate of
3 compensation equals one fortieth (1/40) of the employee's weekly salary.

4 18. Defendants employed Plaintiff for more than eight hours per day and more than 40
5 hours per workweek, but Defendants failed to pay Plaintiff minimum wage for his work, including
6 overtime compensation at the minimum wage rate for his overtime hours, as required by the Code
7 and the Wage Order.

8 19. Defendants thus required Plaintiff to work under conditions prohibited by order of
9 the IWC, in violation of those orders.

10 20. Defendants deprived Plaintiff of his rightfully earned minimum wage
11 compensation, including overtime compensation at the minimum wage rate, as a direct and
12 proximate result of Defendants' failure to pay said compensation. Under Code section 1194,
13 Plaintiff is entitled to recover such amounts, plus interest thereon, reasonable attorney's fees, and
14 costs.

15 21. In addition, under Code section 1194.2, Plaintiff is entitled to recover liquidated
16 damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon.

17 Third Cause of Action

18 For Failure to Pay Overtime Compensation

19 (Labor Code Sections 510, 1194, 1194.2, 1198; Wage Order)

20 by Plaintiffs Against All Defendants

21 22. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as
22 though set forth fully herein.

23 23. The Code and the Wage Order provide that a workday consists of eight hours, a
24 workweek consists of 40 hours, and an employer must compensate an employee who works
25 overtime hours with either one-and-one-half times or double the employee's regular rate of
26 compensation. "The regular rate of pay includes many different kinds of remuneration, for
27 example: hourly earnings, salary, piece work earnings, commissions, certain bonuses, and the
28 value of meals and lodging." 2002 DLSE Enforcement Policies and Interpretations Manual
§49.1.1 (rev 2009) (DLSE Manual).

24. "In not defining the term 'regular rate of pay', the Industrial Welfare Commission
has manifested its intent to adopt the definition of "regular rate of pay" set out in the Fair Labor

1 Standards Act ("FLSA") 29 U SC § 207(e): "...the 'regular rate' at which an employee is
2 employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the
3 employee..." (29 USC § 207(e))." In determining what payments are to be included in or excluded
4 from the calculation of the regular rate of pay, California law adheres to the standards adopted by
5 the U.S. Department of Labor to the extent that those standards are consistent with California law.
(DLSE Manual §49.1.2).

6 25. Defendants employed Plaintiff for more than eight hours per day and more than 40
7 hours per workweek, but Defendants failed to pay Plaintiff the overtime compensation at the rate
8 required by the California Labor Code and the Wage Order because Defendants incorrectly
9 calculated Plaintiff's regular rate of pay by failing to account for all remunerations received by
10 Plaintiff.

11 26. Defendants thus required Plaintiff to work for longer hours than those fixed, or
12 under conditions prohibited, by order of the IWC, in violation of those orders.

13 27. Defendants deprived Plaintiff of his rightfully earned overtime compensation as a
14 direct and proximate result of Defendants' failure to pay said compensation. Under Code section
1194, Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

15 Fourth Cause of Action

16 For Failure to Reimburse for All Expenditures and Losses

17 (California Labor Code Sections 2802, 1198; IWC Wage Order No. 9-2001)

18 By Plaintiff Against All Defendants

19 28. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
though set forth fully herein.

20 29. Code section 2802(a) provides: "An employer shall indemnify his or her employee
21 for all necessary expenditures or losses incurred by the employee in direct consequence of the
22 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
23 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
unlawful."

24 30. Defendant failed to reimburse Plaintiff for the following expenditures incurred as a
25 result of discharging his duty: dry cleaning due to chemicals and oils; slip resistant shoes, and
26 other necessary expenditure and losses incurred by Plaintiff in direct consequence fo the discharge
27 of his duties.

31. Under Code section 2802(c), Plaintiff is entitled to recover all reasonable costs, including attorney's fees, incurred in enforcing his rights granted by Section 2802.

Fifth Cause of Action

For Failure to Provide Accurate Wage Statements

(California Labor Code Sections 226, 1198; IWC Wage Order No. 9-2001)

By Plaintiff Against All Defendants

32. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as though set forth fully herein.

33. Code section 226(a) and the Wage Order required Defendants, "semimonthly or at the time of each payment of wages," to furnish Plaintiff "an accurate itemized statement in writing" showing gross and net wages earned, total hours worked by the employee, rates of pay, and other information. Defendants knowingly and intentionally failed to provide Plaintiff with such timely and accurate wage and hour statements.

34. Defendants thus required Plaintiff to work for longer hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those orders.

35. Plaintiff suffered injury as a result of Defendants' knowing and intentional failure to provide him/her/them with the wage and hour statements required by law.

36. Under Code section 226, subsections (e) and (f), 1198, Wage Order § 20(A), and based on Defendants' conduct as alleged herein, Plaintiff is entitled to (a) fifty dollars (\$50) for the initial pay period in which a wage and hour statement violation occurred, and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and (b) injunctive relief to ensure Defendants' compliance with Labor Code Sections 226, 1198 and the Wage Order; and (c) an award of costs and reasonable attorney's fees.

37. Defendants' conduct also entitles Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to an order that Defendants issue wage and hour statements to Plaintiff that comply with Code section 226.

Sixth Cause of Action

For Conversion

(California Civil Code § 3336)

By Plaintiff Against All Defendants

38. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as though set forth fully herein.

39. At all relevant times herein, Defendants had and continue to have a legal obligation imposed by statute to pay Plaintiff all earned wages due to him. Such wages belonged to Plaintiff at the time the labor and services were provided to Defendants, and accordingly such wages are the property of Plaintiff, not Defendants.

40. Defendants knowingly and intentionally failed to pay Plaintiff earned wages, overtime compensation at the minimum wage rate for her overtime hours worked, overtime compensation, missed meal period compensation, and missed rest period compensation. Instead, Defendants converted Plaintiff's rightfully earned wages to Defendants' own use and benefit. Defendants converted such wages as part of an intentional and deliberate scheme to maximize their profits at Plaintiff's expense.

41. Plaintiff has been injured by Defendants' intentional conversion of such wages. Plaintiff is entitled to immediate possession of all amounts converted by Defendants, with interest. Before he filed this action, Plaintiff sent to Defendants a copy of this complaint and demanded that Defendants pay the amounts owed, and offered to discuss a pre-litigation resolution of this matter.

42. Despite this demand, Defendants refuse to pay Plaintiff the unpaid wages they owe him.

Seventh Cause Of Action

(Violation of the Labor Code Private Attorneys General Act of 2004,

Lab. Code §§ 2698 et seq.)

(By Plaintiff, on behalf of himself and other former and current
Employees, Against All Defendants)

43. The allegation set forth in the paragraphs above are realleged and incorporated herein by reference.

44. Plaintiff brings this cause of action pursuant to PAGA on behalf of himself and other current and former aggrieved employees. Plaintiff is an "aggrieved employee" as defined in Labor Code § 2699(c) and brings this cause of action on behalf of himself and other current and former employees ("Plaintiffs") against Defendants for the violation of the Labor Code sections alleged in this pleading and the attached PAGA Notice, which is attached as Exhibit 1 and incorporated herein by reference as if fully set forth in this pleading.

1 Dated: March 9, 2016

LAW OFFICE OF ARASH N. ALIZADEH

Arash N. Alizadeh

ARASH N. ALIZADEH, attorney for plaintiff

EXHIBIT 2

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Arash N. Alizadeh, SBN 302291 LAW OFFICE OF ARASH N. ALIZADEH 7545 Irvine Center Drive, Suite 200 Irvine CA 92618 TELEPHONE NO.: 949-606-2845 FAX NO. (Optional): 949-264-9345 E-MAIL ADDRESS (Optional): aalizadeh@lawyerforemployees.com ATTORNEY FOR (Name): plaintiff JOSUE URIBE	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: 700 Civic Center Drive West CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center	
PLAINTIFF/PETITIONER: JOSUE URIBE DEFENDANT/RESPONDENT: Crown Building Maintenance	CASE NUMBER: 30-2016-00839857
NOTICE OF RELATED CASE	JUDICIAL OFFICER: Gail Andler
	DEPT.: CX101

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: **Carmen Gama et al. v. Crown Building Maintenance Co.**
 b. Case number: **RG15773582**
 c. Court: ☐ same as above
☒ other state or federal court (name and address): **California Superior Court, County of Alameda**
 d. Department: **Dept. 17**
 e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
 f. Filing date: **June 10, 2015**
 g. Has this case been designated or determined as "complex?" ☒ Yes ☐ No
 h. Relationship of this case to the case referenced above (check all that apply):
☒ Involves the same parties and is based on the same or similar claims.
☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
☐ Involves claims against, title to, possession of, or damages to the same property.
☒ Is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
☐ Additional explanation is attached in attachment 1h
 i. Status of case:
☒ pending
☐ dismissed ☐ with ☐ without prejudice
☐ disposed of by judgment
2. a. Title:
 b. Case number:
 c. Court: ☐ same as above
☐ other state or federal court (name and address):
 d. Department:

PLAINTIFF/PETITIONER: JOSUE URIBE	CASE NUMBER:
DEFENDANT/RESPONDENT: Crown Building Maintenance	30-2016-00839857

2. (continued)

- e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No
- h. Relationship of this case to the case referenced above (check all that apply):
- ☐ involves the same parties and is based on the same or similar claims.
- ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 2h
- i. Status of case:
- ☐ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

3. a. Title:

b. Case number:

c. Court: ☐ same as above☐ other state or federal court (name and address):

d. Department:

e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

h. Relationship of this case to the case referenced above (check all that apply):

- ☐ involves the same parties and is based on the same or similar claims.
- ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 3h

i. Status of case:

- ☐ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

4. ☐ Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: 4/1/16

Arash Alizadeh

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: JOSUE URIBE	CASE NUMBER:
DEFENDANT/RESPONDENT: Crown Building Maintenance	30-2016-00839857

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):
7545 Irvine Center Drive, Suite 200
Irvine, CA 92618
2. I served a copy of the Notice of Related Case by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):
 - a. ☐ deposited the sealed envelope with the United States Postal Service.
 - b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
3. The Notice of Related Case was mailed:
 - a. on (date): 4/1/16
 - b. from (city and state): Aliso Viejo, California
4. The envelope was addressed and mailed as follows:

a. Name of person served: Hunter Pyle Street address: 428 Thirteenth St, Eight Floor City: Oakland State and zip code: CA, 94612	c. Name of person served: Michael Thomas Street address: Steuart Tower, Ste 1300, One Market Plaza City: San Francisco State and zip code: CA, 94105
b. Name of person served: Todd Jackson Street address: 476 Ninth Street City: Oakland State and zip code: CA, 94607	d. Name of person served: Street address: City: State and zip code:

☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 4/1/16

Arash Alizadeh

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

EXHIBIT 3

1 **LAW OFFICE OF ARASH N. ALIZADEH**
2 Arash N. Alizadeh, State Bar No. 302290
3 7545 Irvine Center Drive, Suite 200
4 Irvine, California 92618
5 Phone: (949) 606-2845
6 Fax: (949) 264-9345
7 Email: aalizadeh@lawyerforemployees.com

8 Attorneys for Plaintiff JOSUE URIBE

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

05/23/2016 at 09:21:00 AM
Clerk of the Superior Court
By Georgina Ramirez, Deputy Clerk

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE**
11 **751 W. SANTA ANA BLVD., SANTA ANA, CA 92701**

12 JOSUE URIBE, on behalf of himself and other
13 current or former employees,

14 Plaintiff,

15 v.

16 CROWN BUILDING MAINTENANCE CO.;
17 and DOES 1 through 100, inclusive,

18 Defendants.

Case No.: 30-2016-00839857-CU-DE-CXC

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

CX-101

Complaint filed: March 9, 2016

19 Plaintiff JOSUE URIBE ("Plaintiff" or "Employee") alleges against CROWN BUILDING
20 MAINTENANCE CO. ("defendant" or "Employer") the following:

General Allegations

21 1. This is an action for violation of California's wage and hour laws and the Labor
22 Code Private Attorneys General Act of 2004 ("PAGA"). Plaintiff brings this action on behalf of
23 himself and other current and former employees of defendant.

24 2. Venue is proper in this Court because Defendants do substantial business in Orange
25 County, California, and employed Plaintiff in Orange County, California.

26 3. At all times alleged herein, Employer was, and is, America's largest family-owned
27 provider of Janitorial, Engineering, and Facility solutions. Employer was established in 1926 and
28 serves customers at their facilities throughout California. Employee worked as a day porter at
Employer's worksite in Costa Mesa, CA from approximately May 2013 through some time in

1 November 2015 when Employee went on disability leave due to an on the job knee injury.

2 Employee worked at an apartment complex site and his duties included sweeping, mopping,
3 vacuuming, blowing leaves and other similar tasks.

4 4. Employee used different chemicals, liquid agents, detergents, and cleaning supplies
5 in performing his tasks and he always used a cart that held the cleaning supplies and equipment
6 that he pushed around in his job site. Employee's job duties were essentially similar to a janitor.
7 Employee was required to wear a uniform provided by the company, but the company did not
8 maintain the uniform. Due to heavy and harmful chemicals exposure to Employee's uniform, he
9 had to regularly wash the uniforms in separate wash loads to avoid damaging his non-work
10 clothes, thus incurring additional expenses that Employer failed to reimburse. Employer also
11 required Employee to purchase his own slip-resistant shoes that he had no other use or need for
12 other than to perform his job. The foregoing was, and is, a companywide policy implemented by
13 defendant that impacted all of its employees.

14 5. Because defendant failed to reimburse plaintiff and other employees for cost of
15 maintaining their uniform and purchase slip-resistant shoes, they caused their wages to fall below
16 minimum wages, failed to pay their full overtime wages, failed to timely pay wages, and failed to
17 provide accurate wage statement, among other violations as a result. This is because the
18 unreimbursed expenses and uniform maintenance costs are considered "wages." (*In re Work*
19 *Uniform Cases*, 133 Cal.App.4th 328 (2005) (holding that payment for uniform maintenance is
20 compensation); *see also Sanchez v. Aerogroup Retail Holdings, OInc.*, 12-CV-05445-LHK, Order
21 On Motion to Dismiss at 12 (N.D. Cal. May 8, 2013) (holding that Labor Code sections 1194,
22 1194.2, 1197, and 1197.1 permit an action based on unreimbursed expenses because they are
23 'wages').

24 Parties

25 6. Plaintiff is, and at all relevant times was, a competent adult residing in Orange
26 County, California.

27 7. Plaintiff is informed and believes, and on that basis alleges, that defendant is, and at
28 all relevant times was, a business operating in Orange County, California.

8. Plaintiff currently is unaware of the true names and capacities of the defendants
sued in this action by the fictitious names DOES 1 through 100, inclusive, and therefore sues those

1 defendants by those fictitious names. Plaintiff will amend this Complaint to allege the true names
2 and capacities of such fictitiously named defendants when they are ascertained.

3 9. Plaintiff is informed and believes, and on that basis alleges, that each defendant
4 sued in this action, including each defendant sued by the fictitious names DOES 1 through 100,
5 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged
6 below.

7 10. Plaintiff is informed and believes and on that basis alleges that there exists, and at
8 all relevant times there has existed, a unity of interest and ownership between DOES 1 through 10,
9 on the one hand, and CROWN BUILDING MAINTENANCE CO, on the other hand, such that
10 any separateness and individuality between them have ceased, and CROWN BUILDING
11 MAINTENANCE CO, is the alter-ego of DOES 1 through 10. Adherence to the fiction of the
12 separate existence of CROWN BUILDING MAINTENANCE CO as an entity distinct from
13 DOES 1 through 10 would permit abuse of any corporate privilege, sanction fraud and promote
14 injustice.

15 11. Plaintiff is informed and believes that each Defendant conspired with, aided and
16 abetted, ratified the conduct of, knowingly acquiesced in, acted with the consent and permission
17 of, and accepted the benefits of each other Defendant with respect to the matters alleged herein.

18 12. Plaintiff is informed and believes that, except as otherwise alleged herein, each
19 Defendant is, and at all times relevant to this Complaint was, the agent, joint-employer, partner,
20 joint venturer, alter ego, affiliate, and/or co-conspirator with or of each of the other Defendants,
21 and/or otherwise acted on the behalf of each other Defendant.

22 **First Cause of Action**

23 **For Failure to Pay Earned Wages**

24 **(Cal. Labor Code Section 204)**

25 **by Plaintiff Against All Defendants**

26 13. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as
27 though set forth fully herein.

28 14. Defendants failed to pay Plaintiff the wages that he earned, as required by the Code
and the Industrial Welfare Commission Wage Order no. 5-2001 ("Wage Order").

15. Plaintiff has been deprived of his rightfully earned wages as a direct and proximate
result of Defendants' failure to pay said compensation. Plaintiff is entitled to recover such
amounts, plus interest thereon, attorney's fees and costs.

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Second Cause of Action

For Failure to Pay State Minimum Wage, including Overtime Compensation
(Labor Code Sections 510, 1194, 1194.2, 1197, 1198; IWC Wage Order)
by Plaintiffs Against All Defendants

16. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as though set forth fully herein.

17. The Code and the Wage Order provide that a workday consists of eight hours, a workweek consists of 40 hours, and an employer must compensate an employee who works overtime hours with either one-and-one-half times or double the employee's regular rate of compensation. The Code and the Wage Order also provide that the employee's regular rate of compensation equals one fortieth (1/40) of the employee's weekly salary.

18. Defendants employed Plaintiff for more than eight hours per day and more than 40 hours per workweek, but Defendants failed to pay Plaintiff minimum wage for his work, including overtime compensation at the minimum wage rate for his overtime hours, as required by the Code and the Wage Order.

19. Defendants thus required Plaintiff to work under conditions prohibited by order of the IWC, in violation of those orders.

20. Defendants deprived Plaintiff of his rightfully earned minimum wage compensation, including overtime compensation at the minimum wage rate, as a direct and proximate result of Defendants' failure to pay said compensation. Under Code section 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, reasonable attorney's fees, and costs.

21. In addition, under Code section 1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon.

Third Cause of Action

For Failure to Pay Overtime Compensation
(Labor Code Sections 510, 1194, 1194.2, 1198; Wage Order)
by Plaintiffs Against All Defendants

22. Plaintiffs incorporate by reference and re-allege paragraphs set forth above as though set forth fully herein.

1 23. The Code and the Wage Order provide that a workday consists of eight hours, a
2 workweek consists of 40 hours, and an employer must compensate an employee who works
3 overtime hours with either one-and-one-half times or double the employee's regular rate of
4 compensation.

5 24. Defendants employed Plaintiff for more than eight hours per day and more than 40
6 hours per workweek, but Defendants failed to pay Plaintiff the overtime rate.

7 25. Defendants thus required Plaintiff to work for longer hours than those fixed, or
8 under conditions prohibited, by order of the IWC, in violation of those orders.

9 26. Defendants deprived Plaintiff of his rightfully earned overtime compensation as a
10 direct and proximate result of Defendants' failure to pay said compensation. Under Code section
11 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

12 **Fourth Cause of Action**

13 **For Failure to Reimburse for All Expenditures and Losses**

14 **(California Labor Code Sections 2802, 1198; IWC Wage Order No. 9-2001)**

15 **By Plaintiff Against All Defendants**

16 27. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
17 though set forth fully herein.

18 28. Code section 2802(a) provides: "An employer shall indemnify his or her employee
19 for all necessary expenditures or losses incurred by the employee in direct consequence of the
20 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
21 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
22 unlawful."

23 29. Defendant failed to reimburse Plaintiff for the following expenditures incurred as a
24 result of discharging his duty: dry cleaning and maintenance expenses for his uniform and
25 clothing; purchase cost of slip resistant shoes.

26 30. Under Code section 2802(c), Plaintiff is entitled to recover all reasonable costs,
27 including attorney's fees, incurred in enforcing his rights granted by Section 2802.

28 **Fifth Cause of Action**

For Failure to Provide Accurate Wage Statements

(California Labor Code Sections 226, 1198; IWC Wage Order No. 9-2001)

By Plaintiff Against All Defendants

1 39. Defendants knowingly and intentionally failed to pay Plaintiff earned wages,
2 overtime compensation at the minimum wage rate for her overtime hours worked, overtime
3 compensation, missed meal period compensation, and missed rest period compensation. Instead,
4 Defendants converted Plaintiff's rightfully earned wages to Defendants' own use and benefit.
5 Defendants converted such wages as part of an intentional and deliberate scheme to maximize
6 their profits at Plaintiff's expense.

7 40. Plaintiff has been injured by Defendants' intentional conversion of such wages.
8 Plaintiff is entitled to immediate possession of all amounts converted by Defendants, with interest.
9 Before he filed this action, Plaintiff sent to Defendants a copy of this complaint and demanded that
10 Defendants pay the amounts owed, and offered to discuss a pre-litigation resolution of this matter.

11 41. Despite this demand, Defendants refuse to pay Plaintiff the unpaid wages they owe
12 him.

13 **Seventh Cause Of Action**

14 **(Violation of the Labor Code Private Attorneys General Act of 2004,**

15 **Lab. Code §§ 2698 et seq.)**

16 **(By Plaintiff, on behalf of himself and other former and current**
17 **Employees, Against All Defendants)**

18 42. The allegation set forth in the paragraphs above are realleged and incorporated
19 herein by reference.

20 43. Plaintiff brings this cause of action pursuant to PAGA on behalf of himself and
21 other current and former aggrieved employees. Plaintiff is an "aggrieved employee" as defined in
22 Labor Code § 2699(c) and brings this cause of action on behalf of himself and other current and
23 former employees ("Plaintiffs") against Defendants for the violation of the Labor Code sections
24 alleged in this pleading and the attached PAGA Notice, which is attached as **Exhibit 1** and
25 incorporated herein by reference as if fully set forth in this pleading.

26 44. Plaintiff mailed the PAGA Notice to the Labor and Workforce Development
27 Agency (LWDA) and Division of Occupational Safety and Health (DOSH) by certified mail
28 notifying them of the specific provisions of the Labor Code alleged herein to have been violated,
including the facts and theories to support the alleged violations. More than 33 calendar days
lapsed since Plaintiff's postmarked its notice and neither LWDA nor DOSH have taken any action
nor given notice of its intention to take any action.

1 45. Due to the aforementioned conduct of Defendant, Plaintiffs are entitled to penalties
2 as set forth in each alleged Labor Code section that has been violated or if no penalties are
3 provided, then the default penalty set forth in Labor Code section 2699.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, plaintiff prays the following against defendants:

- 6 1. For unpaid wages in the amount in an amount to be determined at trial;
7 2. For payment of state minimum wages, including overtime compensation at the
8 minimum wage rate;
9 3. For liquidated damages for failure to pay Plaintiff minimum wage rate;
10 4. For overtime compensation;
11 5. For payment of amounts Defendants required Payment to incur to cover
12 Defendants' necessary expenditures/losses;
13 6. For injunctive relief to ensure Defendants' compliance with Labor Code Section
14 226;
15 7. For Labor Code Section 226(e) penalties in the amount of \$4,000.00;
16 8. For prejudgment interest on the foregoing at the legal rate;
17 9. For reasonable attorney;
18 10. For costs of suit incurred herein;
19 11. For penalties for violation of PAGA (L.C. 2698 et seq.)
20 12. In the event of default, for judgment in an amount not less than \$100,000;
21 13. For such further relief as the Court may deem appropriate.

22 Dated: May 18, 2016

LAW OFFICE OF ARASH N. ALIZADEH

23 *Arash N. Alizadeh*

24 ARASH N. ALIZADEH, attorney for plaintiff

EXHIBIT

“1”

alizadeh

7545 Irvine Center Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 606-2845
Facsimile: (949) 264-9345
www.lawyerforemployees.com

Arash N. Alizadeh
Attorney at Law
aalizadeh@lawyerforemployees.com

LAW OFFICE OF ARASH N. ALIZADEH

February 3, 2016

VIA CERTIFIED MAIL

Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Subject: *Josue Uribe v. Crown Building Maintenance Co.*

Dear Representative:

This office represents Josue Uribe (Employee), an employee of Crown Building Maintenance Co. (Employer).

Employer may be contacted directly at:

Crown Building Maintenance Co. d/b/a Able Services
868 Folsom Street
San Francisco, CA 94107

Employee intends to seek penalties on behalf of Employee and other current and former employees for violations of the California Labor Code, which are recoverable under California Labor Code §2699 et seq. Employee is seeking penalties on behalf of the State of California of which 75% will be kept by the state, while 25% will be available to aggrieved employees. This letter is sent in compliance with the reporting requirements of California Labor Code §2699.3.

At all times alleged herein, Employer was, and is, America's largest family-owned provider of Janitorial, Engineering, and Facility solutions. Employer was established in 1926 and serves customers at their facilities throughout California. Employee worked as a day porter at Employer's worksite in Costa Mesa, CA from approximately May 2013 through some time in November 2015 when Employee went on disability leave due to an on the job knee injury. Employee worked at an apartment complex site and his duties included sweeping, mopping, vacuuming, blowing leaves and other similar tasks. Employee used different chemicals, detergents, and cleaning supplies in performing his tasks and he always used a cart that held said cleaning material and equipment that he pushed around in his job site. Employee's job duties were essentially similar to a janitor. Employee was required to wear a uniform provided by the

company, but the company did not maintain the uniform. Due to heavy chemicals that came in contact with Employee's uniform, he had to wash the uniforms in separate wash loads to avoid damaging his personal clothes. Employer also required Employee to purchase his own slip-resistant shoes. Employer violated the following Labor Code sections:

- Labor Code § 204 by failing to pay all wages due to Employee and other current and former employees semimonthly. This violation is based on the theory that Employee was entitled to reimbursement of expenses incurred for maintaining his uniform and purchasing his own slip resistant shoe that he had no other use or need for other than to perform his job. These expenses are considered wages. *See Department of Industrial Relations etc. v. UI Video Stores, Inc.*, 55 Cal.App.4th 1084 (1997). By failing to reimburse Employee semimonthly, Employer failed to pay Employees all his wages semimonthly. Thus Employer violated section 204 by failing to reimburse him.

- Labor Code § 210 by violating section 204 as stated above. Section 210 entitles Employee to civil penalties for Employer's violation of section 204.

- Labor Code § 226 subsection (a)(1), by failing to provide Employee with his paycheck an itemized statement in writing showing gross wages earned. This is due to Employer's failure to reimburse Employee as explained above for section 204.

- Labor Code § 1198 by violating Wage Order No. 5, paragraphs 9 and 20. This is due to Employer's failure to reimburse Employee as explained above for section 204.

- Labor Code § 1199 by causing Employee to work under conditions prohibited by Wage Order No. 5, paragraphs 9 and 20. This is due to Employer's failure to reimburse Employee as explained above for section 204.

- Labor Code § 2802 by failing to reimburse Employee for Expenses incurred for purchasing slip resistant shoes and maintaining his uniform.

- Labor Code § 6401 by failing to provide Employee with slip-resistant shoes. Section 6401 imposes a duty on Employer to furnish safety devices and safeguard. Slip-resistant shoes are a safety device and safeguard necessary to render Employee's employment and place of employment safe and healthful. Employer failed to provide slip-resistant shoes to Employee in violation of section 6401.

- Labor Code § 6401.7 by failing to implement and maintain an injury prevention program because Employer failed to provide an occupational safety and training program, conduct periodic safety inspections, implement a system for correcting unsafe and unhealthy conditions, failure to provide a discipline system, among other omissions that violate section 6401.7.

- Labor Code § 6403 by failing to provide Employee with slip-resistant shoes. Section 6403 imposes a duty on Employer to furnish safety devices and safeguard. Slip-resistant shoes are a safety device and safeguard necessary to render Employee's employment and place of

February 3, 2016
Page 3 of 3

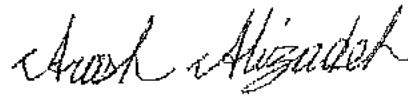
employment safe and healthful. Employer failed to provide slip-resistant shoes to Employee in violation of section 6403.

Therefore, on behalf of all affected employees, Employee seeks all applicable penalties related to these violations of the California Labor Code pursuant to California's "Labor Code Private Attorney General Act of 2004."

Thank you for your attention to this matter. If you have any questions, please contact me.

Dated: February 3, 2016

LAW OFFICE OF ARASH N. ALIZADEH



ARASH N. ALIZADEH
Attorney for Employee

CC by Cert. mail:
Crown Building Maintenance Co.
Division of Occupational Safety and Health

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

Re: Crown Bldg Maintenance

COMPLETE THIS SECTION ON DELIVERY

A. Signature: ☒ Addressee ☐ Agent

X

FEB 08 2016

B. Received By: (Please Print Clearly)

C. Date of Delivery: **1555 STANDARD ENFORCEMENT**

D. Addressee's Address (If Different From Address Used by Sender)

Secondary Address / Suite / Apt. / Floor (Please Print Clearly)

Delivery Address

City

State

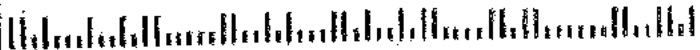
ZIP + 4 Code



9414 7118 9956 3318 3372 80

RETURN RECEIPT REQUESTED

Article Addressed To:



Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland CA 94612-1463

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

Re: Crown Bldg Maint.

COMPLETE THIS SECTION ON DELIVERY

A. Signature: ☒ Addressee ☐ Agent

X *Parla Claverde*

B. Received By: (Please Print Clearly)

Parla Claverde

C. Date of Delivery

02-09-16

D. Addressee's Address (If Different From Address Used by Sender)

Secondary Address / Suite / Apt. / Floor (Please Print Clearly)

Delivery Address

City

State

ZIP + 4 Code

CERTIFIED MAIL



9414 7118 9956 3318 3192 17

RETURN RECEIPT REQUESTED

Article Addressed To:



Division of Occupational Safety and Health
1515 Clay Street, Ste. 1540
Oakland CA 94612-1499

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

PS FORM 3811, 2/2004

PS FORM 3811, 2/2004

RETURN TO:

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618



UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

PS FORM 3811, 2/2004

PS FORM 3811, 2/2004

RETURN TO:

ARASH ALIZADEH, ESQ.
7545 IRVINE CENTER DRIVE, SUITE 200
IRVINE, CA 92618

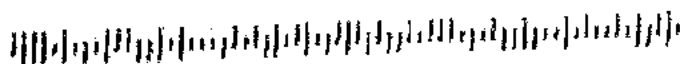


EXHIBIT 4

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

06/21/2016 at 08:40:00 PM

Clerk of the Superior Court
By Olga Lopez, Deputy Clerk

1 DOUGLAS J. FARMER, Cal. Bar No. 139646
douglas.farmer@ogletreedeakins.com
2 MICHAEL D. THOMAS, Cal. Bar No. 226129
michael.thomas@ogletreedeakins.com
3 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
Steuart Tower, Suite 1300
4 One Market Plaza
San Francisco, CA 94105
5 Telephone: 415.442.4810
Facsimile: 415.442.4870

6 Attorneys for Defendant
7 Crown Building Maintenance Co.
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**

12 JOSUE URIBE, on behalf of himself and other
13 current or former employees,

14 Plaintiff,

15 vs.

16 CROWN BUILDING MAINTENANCE CO.;
and DOES 1 through 100, inclusive,

17 Defendant.
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Case No. 30-2016-00839857-CU-OE-CXC

[Assigned for all purposes to The Honorable
Hon. Gail A. Andler, Dept. CX101]

**DEFENDANT'S NOTICE OF DEMURRER
AND DEMURRER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Date: July 25, 2016
Time: 1:30 pm
Location: CX101

Action Filed: March 9, 2016
Trial Date: None Set

Case No. 30-2016-00839857-CU-OE-CXC

NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

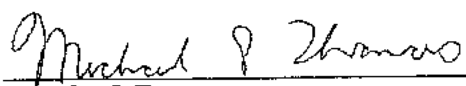
1 cause of action as it is a derivative claim of Plaintiff's Fourth Cause of Action, which also fails on
2 the grounds that it fails to state facts sufficient to constitute a cause of action and is uncertain.
3 (*Code of Civil Procedure* section 430.10(e), (f).)

4 7. The Seventh Cause of Action pursuant to the Private Attorneys General Act of
5 2004, Labor Code Section 2698, failure to provide accurate wage statements, fails to state facts
6 sufficient to constitute a cause of action as it is a derivative claim of Plaintiff's Fourth Cause of
7 Action, which also fails on the grounds that it fails to state facts sufficient to constitute a cause of
8 action and it is uncertain. (*Code of Civil Procedure* section 430.10(e), (f).)

9 The Demurrer is based upon this Notice, the Complaint, the Memorandum of Points and
10 Authorities, the Request for Judicial Notice filed concurrently and the exhibits attached, and all
11 pleadings, papers, and records on file with the Court in this action; and any other argument and
12 evidence as may be presented in connection with the hearing on this motion.

13
14 DATED: June 21, 2016

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

15
16
17 By: 

Douglas J. Farmer
Michael D. Thomas

18
19 Attorneys for Defendant
20 Crown Building Maintenance Co.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Josue Uribe ("Plaintiff") alleges in his First Amended Complaint for Damages
4 ("FAC") that all claims in this case stem from his former employer's failure to provide him
5 compensation for necessary business expenses for a required uniform, clothing and slip resistant
6 shoes in violation of Labor Code section 2802 and Labor Code section 2698 et seq., the Private
7 Attorneys General Act of 2004 ("PAGA"). To this end, Plaintiff speciously asserts seven causes of
8 action against his former employer and Defendant Crown Building Maintenance ("Defendant" or
9 "Able" used interchangeably) centered on his failure to receive "compensation" for necessary
10 business expenses.

11 Plaintiff's FAC, however, is disingenuous. As discussed below, Plaintiff's generic "slip-
12 resistant shoes" are preempted by federal OSHA and California OSHA and not California Labor
13 Code section 2802. Plaintiff fails to allege facts that his generic "slip-resistant shoes" require
14 compensation under either federal OSHA or Cal. OSHA.

15 Plaintiff further fails to identify what specific wearable items are included in the terms
16 "uniform" and "clothing." Without basic facts identifying the items or articles of clothing at issue,
17 there no reimbursement claim under California Labor Code section 2802 is at issue. From a
18 practical perspective, Defendant is unable to affirm or deny the allegations, or plead accurate
19 affirmative defenses. Instead, Defendant is left to surmise. Therefore, demurrer is proper.

20 Plaintiff's remaining causes of action are derivative of Plaintiff's Fourth Cause of Action.
21 Because the Fourth Cause of Action is subject to demurrer for failure to state a cause of action,
22 these claims too are subject to demurrer without leave to amend.

23 Prior to filing this demurrer Defendant met and conferred with Plaintiff's counsel as
24 required by California Code of Civil Procedure § 430.41.

25 **FACTUAL BACKGROUND**

26 On May 23, 2016, Plaintiff filed his FAC.

27 Defendant provides janitorial services to businesses throughout California. Defendant
28 employed Plaintiff as a "day porter," who performed such services during the workday. Plaintiff

1 alleges in the FAC that his former employer, Defendant, failed to provide reimbursement for
2 expenses and losses for a required uniform and clothing and slip-resistant shoes in violation of
3 California Labor Code Section 2802. (FAC ¶¶ 4, 5, and 29). Plaintiff further alleges that because
4 the unreimbursed expenses for his uniform and clothing, and slip-resistant shoes are considered
5 "wages" or "compensation", he is entitled to damages based on the following additional causes of
6 action: (1) failure to pay all earned wages; (2) failure to pay minimum wages, including overtime;
7 (3) failure to pay overtime compensation; (4) failure to provide accurate wage statements; (5)
8 conversion; and (6) violation of Labor Code section 2698 et seq., the Private Attorneys General
9 Act of 2004 ("PAGA"). (FAC ¶¶ 4, 5, 13-26 and 31-45).

10 Plaintiff's causes of action in the FAC are based on the following factual allegations:

11 Employee worked as a day porter at Employer's worksite in Costa Mesa, CA from
12 approximately May 2013 through sometime in November 2015 when Employee
13 went on disability leave due to an on the job knee injury. Employee worked at an
apartment complex site and his duties included sweeping, mopping, vacuuming,
blowing leaves and other similar tasks.

14 Employee used different chemicals, liquid agents, detergents, and cleaning supplies
15 in performing his tasks and he always used a cart that held the cleaning supplies and
equipment that he pushed around in his job site. Employee's job duties were
16 essentially similar to a janitor. Employee was required to wear a uniform provided
by the company, but the company did not maintain the uniform. Due to heavy and
17 harmful chemicals exposure to Employee's uniform, he had to regularly wash the
uniforms in separate wash loads to avoid damaging his non-work clothes, thus
18 incurring additional expenses that Employer failed to reimburse. Employer also
required Employee to purchase his own slip-resistant shoes that he had no other use
19 or need for other than to perform his job. The foregoing was, and is, a
companywide policy implemented by defendant that impacted all of its employees.

20 Because defendant failed to reimburse plaintiff and other employees for cost of
maintaining their uniform and purchase slip-resistant shoes, they caused their wages
21 to fall below minimum wages, failed to pay their full overtime wages, failed to
timely pay wages, and failed to provide accurate wage statement, among other
22 violations as a result. This is because the unreimbursed expenses and uniform
maintenance costs are considered "wages." (emphasis added)(FAC ¶¶ 3-5).

23 Plaintiff's FAC is subject to Demurrer.

24 25 **II. LEGAL ARGUMENT**

26 A demurrer may be taken to an entire complaint or to any of the causes of action stated
27 therein. Code Civ. Proc. § 430.50(a). A demurrer must be sustained when a complaint is
28 uncertain, ambiguous, or unintelligible. Cal. Civ. Proc. Code ("CCP") § 430.10(f); *Zumbrun v.*

1 *Univ. of S. Cal.*, 25 Cal. App. 3d 1, 9 (Cal. Ct. App. 1972).

2 "Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show the
3 complaint alleges facts sufficient to establish every element of each cause of action." *Rakestraw v.*
4 *Cal. Physicians' Serv.*, 81 Cal. App. 4th 39, 43 (2000). Not only should "the essential facts upon
5 which a determination of the controversy depends . . . be stated with clearness and precision so that
6 nothing is left to surmise," the "recitals, references to, or allegations of material facts which are left
7 to surmise are subject to special demurrer for uncertainty." *Ankeny v. Lockheed Missiles & Space*
8 *Co.*, 88 Cal. App. 3d 531, 537 (1979); *see also* CCP § 430.10(f). Furthermore, a demurrer should
9 be sustained without leave to amend where the nature of the claim is clear but "there is no liability
10 as a matter of law." *Schonfeldt v. State of California*, 61 Cal. App. 4th 1462, 1465 (1998).

11 A. **Demurrer is Proper on Plaintiff's Fourth Cause of Action Because A Claim for**
12 **Unpaid Expenses is Not a Wage Under the California Labor Code.**

13 California Labor Code section 200 defines wages and states the following:

14 (a) "Wages" includes all amounts for labor performed by employees of every
15 description, whether the amount is fixed or ascertained by the standard of time, task,
16 piece, commission basis, or other method of calculation.

17 (b) "Labor" includes labor, work, or service whether rendered or performed under
18 contract, subcontract, partnership, station plan, or other agreement if the labor to be
19 paid for is performed personally by the person demanding payment.

20 Based on the direct language of the Labor Code, wages include "all amounts for labor
21 performed by employees of every description." Whereas payments under section 2802 are
22 reimbursement for work-required expenses the employee has incurred. Because a claim under
23 section 2802 is not for "labor performed" it is not a wage. *See Hagin v. Pac. Gas & Elec.* 152
24 Cal.App.2d 93 (wages do not include expenses); DLSE Enforcement manual section 4.3.4.

25 Moreover, the California Supreme Court in *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.
26 4th 554, 572 (2007), analyzed whether an expense reimbursement is a wage. In ruling that an
27 expense reimbursement is not a wage, the Supreme Court ruled as follows:

28 Section 200 highlights a valid and important distinction between wages (as payment
for labor performed) and business expense reimbursement. The amount payable as
wages is subject to various statutory restrictions, including minimum wage laws,
which operate independently of, and in addition to, section 2802's obligation of an
employer to fully reimburse an employee's necessary business expenses. The

1 amount payable as wages may also be fixed by a contract of employment, and
2 contractual agreements regarding employee compensation may or may not include
3 specific terms governing business expense reimbursement. Because wages and
4 expense reimbursement are conceptually distinct and subject to different statutory
5 and sometimes also contractual constraints, an employer may not combine the
6 payments for both in a way that would seriously hamper or effectively preclude
7 enforcement of the various statutory and contractual obligations.

8 Accordingly demurrer is proper on Plaintiff's Fourth Cause of Action for failure to
9 reimburse necessary business expenses.

10 Plaintiff cites *Uniform Cases*, 133 Cal.App.4th 328 (2005) and *Sanchez v. Aerogroup Retail*
11 *Holdings, Inc.*, 2013 WL 1942166 *6 (N.D. Cal. May 8, 2013) to support the proposition that an
12 expenditure is a wage. These cases are inapplicable here. First *Aerogroup* involves deductions
13 from wages to purchase a uniform because Defendant required plaintiff and other class members to
14 purchase shoes from Defendant which effectively reduced plaintiff's compensation below the
15 minimum wage. Plaintiff here does not allege that he was required to purchase shoes or clothing
16 from Defendant or that any deductions were made from wages. Similarly, the *Uniform Cases*
17 involve public employees who are subject to a collective bargaining agreement. Plaintiff here is
18 neither a public employee nor subject to an agreement that determines wages, hours and conditions
19 of employment.

20 Because reimbursement for expenses is not a recoverable wage under Section 2802,
21 demurrer is proper on Plaintiff's Fourth Amended Complaint.

22 **B. Demurrer is Proper on Plaintiff's Fourth Cause of Action For Failure to**
23 **Provide Reimbursement for Expenses and Losses for a Required Uniform,**
24 **Clothing and Slip-Resistant Shoes Because Plaintiff Fails To Allege Facts**
25 **Sufficient to Bring a Cause of Action.**

26 **1. Plaintiff May Not Evade Federal or Cal OSHA By Pursuing His Claim**
27 **Under Labor Code Section 2802.**

28 Plaintiff's reliance on Section 2802 is misplaced. As discussed below, whether or not an
employer is required to reimburse employees for safety shoes is governed exclusively by
regulations adopted pursuant to the federal OSHA and/or the California OSHA ("Cal. OSHA").
See Lemus v. Denny's Inc., 2013 WL 10730259*4 (S.D. Cal. March 21, 2013) (granting summary
judgment in favor of defendant and ruling "to the extent Labor Code § 2802 may be read to require

1 employers to reimburse employees for generic slip-resistant shoes, this is clearly preempted by
2 OSHA's specific directive.). Plaintiff has not alleged facts sufficient to establish his "slip-resistant"
3 shoes require compensation under federal OSHA or Cal. OSHA.

4 The Supremacy Clause of the United States Constitution declares that "the Laws of the
5 United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws
6 of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. The United States
7 Supreme Court in *Gade* held that the only way for a state to enact regulations that impact or affect
8 occupational safety is by first obtaining approval from OSHA. *Gade v. National Solid Wastes*
9 *Management Association*, 505 U.S. 88, 97 (1992). In *Gade*, the state of Illinois enacted a special
10 licensing requirement for waste equipment operators and their employees. *Id.* at 91. A trade
11 association representing waste management companies sought to enjoin these licensing
12 requirements on the grounds that they are preempted by the federal OSHA and state OSHA
13 regulations. *Id.* at 93-94. The district court found the Illinois statutes were not preempted. *Id.* at
14 94-95. On appeal, the Seventh Circuit reversed, finding that the federal OSHA preempts state laws
15 that regulate worker health and safety. *Id.* at 95. On certiorari, the Supreme Court affirmed,
16 concluding that without prior approval from the federal government, states may not enact laws that
17 regulate occupational safety and health, even where the law serves a "dual-impact"--i.e. it regulates
18 occupational safety as well as another area of a state's police power, such as public health. *Id.* at
19 96-109.

20 Should California want to mandate that employers such as Able pay for generic slip-
21 resistant shoes--i.e. enforce more stringent reimbursement requirements than those established by
22 federal OSHA--it could do so through the formal amendment of the Cal OSHA. Any other attempt
23 to mandate an employer's reimbursement for generic slip-resistant shoes is preempted. *See Gade*,
24 505 U.S. 88; *Industrial Truck Association, Inc. v. Mitsubishi Caterpillar Forklift America Inc.*, 125
25 F. 3d 1305, 1313 (9th Cir. 1997) ("Federal standards . . . preempt more than those state standards
26 directly covering the same 'issue' as the federal standard; rather, they preempt the broader category
27 of state laws 'relating to' the federal issue."). As such, by attempting to impose fines on Able
28 based on an alleged violations of Section 2802, Plaintiff is asking the Court to eviscerate the

1 federal OSHA, thereby abrogating Congress' authority and the Supreme Court's ruling in *Gade*.

2 2. **Federal OSHA Regulations Unambiguously State That Able Is Not**
3 **Required To Reimburse Plaintiff for Slip-Resistant Shoes.**

4 Plaintiff alleges that Able "required Employee to purchase his own slip-resistant shoes..."
5 (FAC ¶ 4). Plaintiff alleges "[e]mployee worked at an apartment complex site and his duties
6 included sweeping, mopping, vacuuming, blowing leaves and other similar tasks." (FAC ¶ 3).
7 Plaintiff further alleges that he uses "chemicals, liquid agents, detergents and cleaning supplies" in
8 performing his duties. (FAC ¶ 4).

9 Federal law is clear that employers are not required to pay for shoes of the type worn by
10 Plaintiff. 29 C.F.R. § 1910.132(h)(2). Specifically, Federal OSHA's Directive Number CPL 02-
11 01-050, dated February 10, 2011, states at page 36:

12 Question: In some situations, employees are required to wear shoes with a slip-
13 resistant sole that are uniform in color. The employees wear the shoes to and from
14 work and in other places outside of the work environment. These shoes are
15 indistinguishable from ordinary "street" shoes and many different types of shoes
16 with rubber soles. These employees are not exposed to hazards such as crushing or
penetrating injuries or falling or rolling objects, requiring safety shoes with steel
toes or metatarsal protection. In such cases, would the slip-resistant shoes required
here rise to the level of safety footwear with additional protection or more
specialized protection, and, therefore, must be provided at no cost?

17 Answer: No. The employer is not required to pay for non-specialty shoes that offer
18 some slip-resistant characteristics, but are otherwise ordinary clothing in nature.¹

19 The shoes worn by Plaintiff as alleged are "indistinguishable from ordinary 'street' shoes
20 and many different types of shoes with rubber soles." See OSHA Directive Number CPL 02-01-
21 050 at 36. Accordingly, pursuant to federal OSHA's regulations, Plaintiff has failed to allege
22 sufficient facts that Able is required to reimburse him for slip-resistant shoes.

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27 ¹ Defendant's request for judicial notice is filed concurrently. A true and correct copy of the Federal Occupational
28 Safety and Health Act, Federal Directive Number CPL 02-01-050, is attached to the Request for Judicial Notice as
Exhibit A. Pursuant to Evidence Code sections 451 and 452, the Court should take judicial notice of Exhibit A because
it is a directive from a federal agency and is therefore subject to judicial notice as a form of regulation or statute, and
official act of the legislature. Cal. Evid. Code § 452 (a) and (c). Moreover, Exhibit A is not subject to dispute. *Id.*

1 3. **The Cal OSHA Does Not Require Able to Reimburse Plaintiff For**
2 **Generic Slip-Resistant Shoes.**

3 Federal OSHA generally preempts any state law that addresses an area covered by an
4 OSHA regulation or that effects occupational safety. *Gade*, 505 U.S. at 102; *Industrial Truck*
5 *Association, Inc. v. Mitsubishi Caterpillar Forklift America, Inc.*, 125 F.3d 1305 (9th Cir.1997).

6 With approval, however, states may enact laws and operate their own occupational safety
7 plan to enforce OSHA's regulations. *See Gade, supra*, 505 U.S. at 102. *Lemus, supra*, 2013 WL
8 10730259 at *3 Importantly, the California's Department of Industrial Relations, Division of
9 Occupational Safety and Health ("Cal/OSHA") has not adopted any regulations that would require
10 Able to pay for Plaintiff's generic slip-resistant shoes.

11 Like federal OSHA, Cal. OSHA only requires that employers provide/pay for protective
12 footwear in hazardous industries where employees are "exposed to foot injuries from electrical
13 hazards, hot, corrosive, poisonous substances, falling objects, crushing or penetrating actions,
14 which may cause injuries or who are required to work in abnormally wet locations." 8 CCR §
15 3385; 29 CFR § 1910.136. In the event any of these hazardous conditions are present, employers
16 are required to furnish employees with shoes that meet either the ANSI Z41-1999 or the American
17 Society for Testing and Materials ("ASTM") F2412-05 and ASTM F2413-5 standards which
18 requires shoes that provide impact and compression protection to protect the wearer from heavy
19 falling (i.e. "impact") and rolling (i.e. "compression") objects, and thus are constructed with steel
20 or composite reinforcements that protect the toes and metatarsal bones. *See, e.g.*, 8 CCR § 3380;
21 Appendix A, ¶ 10 ("Selection guidelines for foot protection").²

22 Plaintiff does not allege that Able requires him to purchase shoes to address any of the
23 hazards identified in the Cal OSHA regulations. Demurrer is proper.

24 Because the law is clear regarding generic-slip-resistant shoes, demurrer should be
25

26 ² A true and correct copy of California Occupational Safety and Health Act, 8 CCR § 3380; Appendix A, ¶ 10
27 ("Selection guidelines for foot protection") is attached to the Request for Judicial Notice as Exhibit B. Pursuant to
28 Evidence Code sections 451 and 452, the Court should take judicial notice of Exhibit B because it is a set of guidelines
from a state agency and is therefore subject to judicial notice as a form of regulation or statute and official act of the
legislature. Cal. Evid. Code § 452 (a) and (c). Moreover, Exhibit B is not subject to dispute. *Id.*

1 sustained without leave to amend. *Schonfeldt*, 61 Cal. App. 4th at 1465 (a claim should be
2 dismissed without leave to amend where "there is no liability as a matter of law.").

3 4. **Section 2802 Excludes Safety Apparel Regulated by OSHA and**
4 **Cal/OSHA.**

5 Because Plaintiff may not argue that Able is required to reimburse employees for generic
6 slip-resistant shoes under the federal OSHA and/or the Cal. OSHA, he may attempt to amend to
7 allege that safety shoes are a "uniform" under Section 2802. Such an argument is equally deficient.
8 First, the broad reach of federal OSHA preempts any unauthorized state law that impacts or affects
9 occupational safety, including any law that dictates reimbursement of safety shoes. *See Lemus*,
10 *supra*, 2013 WL 10730259*4 (granting summary judgment in favor of defendant and ruling "to the
11 extent Labor Code § 2802 may be read to require employers to reimburse employees for generic
12 slip-resistant shoes, this is clearly preempted by OSHA's specific directive.). And second,
13 California law explicitly excludes safety shoes from the description of the articles of clothing and
14 apparel that constitute a "uniform" or "equipment" for reimbursement purposes. Wage Order No.
15 5, which governs public housekeeping industry employers such as Able, establishes the
16 circumstances in which an employer is obligated to reimburse employees for "uniforms." 8 CCR §
17 11050(9)(A). Cognizant of the preemptive effect of the OSH Act, Wage Order No. 5 states, "[t]his
18 section shall not apply to protective apparel regulated by the Occupational Safety and Health
19 Standards Board." *Id.*³ As set forth above, it is undisputed that Plaintiff fails to allege that he is
20 required to purchase shoes covered by Federal OSHA or Cal OSHA. Thus, pursuant to the
21 unambiguous language of the Wage Order, there is no merit to Plaintiff's claim that Able is
22 required to reimburse him for slip resistant shoes pursuant to Section 2802.

23 5. **Plaintiffs Claim for Unreimbursed Expenses for His Uniform and**
24 **Clothing Is Subject to Demurrer Because Plaintiff Does Not Give**
25 **Defendant Notice As to What Articles of His Uniform and Clothing Are**
26 **At Issue.**

27 ³ A true and correct copy of California Wage Order No. 5 which applies to the Public Housekeeping Industry is
28 attached to the Request for Judicial Notice as Exhibit C. Pursuant to Evidence Code sections 451 and 452, the Court
should take judicial notice of Exhibit C because it is a state regulation and is therefore subject to judicial notice as a
form of regulation and act of a state legislature. Cal. Evid. Code § 452(a). Moreover, Exhibit C is not subject to
dispute. *Id.*

1 A demurrer on Plaintiff's Fourth Causes of Action must also be sustained because the claim
2 is uncertain, ambiguous, or unintelligible. Cal. Civ. Proc. Code § 430.10(f); *Zumbrun v. Univ. of S.*
3 *Cal.*, 25 Cal. App. 3d 1, 9 (Cal. Ct. App. 1972).

4 Plaintiff Fourth Cause of Actions seeks reimbursement for "his uniform and clothing,"
5 (FAC ¶¶ 4 and 29), but fails to identify what wearable items are included in the terms "uniform"
6 and "clothing." Instead, Plaintiff alleges conclusions of fact. Not only should "the essential facts
7 upon which a determination of the controversy depends . . . be stated with clearness and precision
8 so that nothing is left to surmise," the "recitals, references to, or allegations of material facts which
9 are left to surmise are subject to special demurrer for uncertainty." *Id.*; see also CCP § 430.10(f).

10 Without basic facts identifying the items or articles at issue, Defendant is unable to defend
11 itself or provide a meaningful response. Defendant is unable to determine whether to fold or fight.
12 Instead, Defendant is left to surmise. Therefore, demurrer is proper or at best Plaintiff's claim is
13 alleged with uncertainty.

14 6. **Plaintiff's Fourth Cause of Action is Subject to Demurrer Because it is**
15 **Not Properly Pled.**

16 Plaintiff's Fourth Cause of Action improperly combines multiple claims into one cause of
17 action. See California Rules of Court Rule 2.112 (provides in relevant part that: "[e]ach separately
18 stated cause of action, count or defense must specifically state . . . [i]ts nature."); *Craig v. City of*
19 *Los Angeles*, 44 Cal. App. 2d 71, 73. At the very least, separate theories of liability should be set
20 forth in separate counts of a complaint "to facilitate the adjudication of their validity." *Zumbrun v.*
21 *University of Southern California*, 25 Cal.App.3d 1, 9 (1972).

22 Plaintiff's Fourth Cause of Action entitled "Failure to Reimburse for All Expenditures and
23 Losses" alleges the following: "Defendant failed to reimburse Plaintiff for the following
24 expenditures incurred as a result of discharging his duty: **dry cleaning and maintenance**
25 **expenses for his uniform and clothing; purchase cost of slip resistant shoes.**" (FAC ¶ 29)
26 (emphasis added). Plaintiff is alleging two or three separate causes of action of-unreimbursed
27 expenses for the following: 1) uniform, 2) clothing and 3) slip resistant shoes. Each separate cause
28 of action has a unique set of facts. Plaintiff's improper combination of claims that are separate and

1 distinct renders Plaintiff's Fourth Cause of Action fatally unclear, confusing and prejudices
2 Defendant's ability to respond to the Complaint and otherwise defend itself in this action.

3 Moreover, Plaintiff references Wage Order No. 9-2001 as one of the legal grounds for his
4 Fourth and Fifth Causes of Action (FAC at p. 5). Wage Order No. 9-2001 applies to the Trucking
5 Industry.⁴ Plaintiff does not allege any facts to support a claim that Wage Order No. 9-2001
6 applies to Defendant or Plaintiff. Instead, Defendant provides janitorial services. Plaintiff alleges
7 he performed work similar to a janitor. Defendant and Plaintiff are therefore governed by Wage
8 Order No. 5 which applies to the "Public Housekeeping Industry." Demurer is therefore proper.

9 **C. Plaintiff's First, Second, Third, Fifth, Sixth, and Seventh Causes of Action Fail**
10 **Because They are Derivative of Plaintiff's Fourth Cause of Action.**

11 Plaintiff's remaining causes of action are derivative of Plaintiff's Fourth Cause of Action.
12 Because the Fourth Cause of Action is subject to demurrer for failure to state a cause of action,
13 these claims too are subject to demurrer for failure to state a cause of action and uncertainty.

14 **D. Demurrer Without Leave to Amend is Proper.**

15 A demurrer should be sustained without leave to amend where the nature of the claim is
16 clear but "there is no liability as a matter of law." *Schonfeldt*, 61 Cal. App. 4th at 1465. Because
17 Plaintiff's Fourth Cause of Action is deficient as a matter of law and Plaintiff's remaining claims
18 are derivative, demurrer without leave to amend is proper.

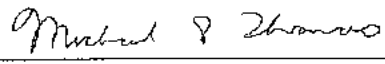
19 **III. CONCLUSION**

20 Based on the aforementioned, Defendant respectfully requests that demurrer to Plaintiff's
21 complaint in its entirety be granted without leave to amend.

22 DATED: June 21, 2016

OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.

23
24 By:



Douglas J. Farmer
Michael D. Thomas
Attorneys for Defendant Crown Building Maintenance Co.

25
26
27 ⁴ A true and correct copy of California Wage Order No. 9, which applies to the Trucking Industry is attached to the
28 Request for Judicial Notice as Exhibit D. Pursuant to Evidence Code sections 451 and 452, the Court should take
judicial notice of Exhibit D because it is a state regulation and is therefore subject to judicial notice as a form of
regulation and act of a state legislature. Cal. Evid. Code § 452(a). Moreover, Exhibit D is not subject to dispute. *Id.*

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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California; I am over the age of 18 years and not a party to this action. My business address is Steuart Tower, One Market Plaza, Suite 1300, San Francisco, California 94105.

On June 21, 2016, I served the following document described as:

**DEFENDANT'S NOTICE OF DEMURRER AND DEMURRER TO
PLAINTIFF'S FIRST AMENDED COMPLAINT**

on the parties below as follows:

Arash N. Alizadeh, Esq.
LAW OFFICE OF ARASH N. ALIZADEH
7545 Irvine Center Drive, Suite 200
Irvine, CA 92618

Attorneys for Plaintiff Josue Uribe

BY OVERNIGHT DELIVERY: I placed the sealed envelope(s) or package(s) designated by the express service carrier for collection and overnight delivery by following the ordinary business practices of Ogletree, Deakins, Nash, Smoak & Stewart P.C., Los Angeles, California. I am readily familiar with Ogletree, Deakins, Nash, Smoak & Stewart P.C.'s practice for collecting and processing of correspondence for overnight delivery, said practice being that, in the ordinary course of business, correspondence for overnight delivery is deposited with delivery fees paid or provided for at the carrier's express service offices for next-day delivery.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 21, 2016, at San Francisco, California.

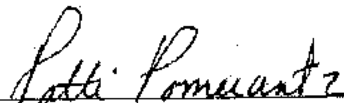

Patti Pomerantz

EXHIBIT 5

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Uribe vs. Crown Building Maintenance Co.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:

30-2016-00839857-CU-OE-CXC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 07/26/16, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from email address on July 26, 2016, at 4:14:15 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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Clerk of the Court, by: Mary L. Lehto, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 07/26/2016

TIME: 02:04:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Gail A. Andler

CLERK: Mary White

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2016-00839857-CU-OE-CXC CASE INIT.DATE: 03/09/2016

CASE TITLE: Uribe vs. Crown Building Maintenance Co.

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 72416553

EVENT TYPE: Chambers Work

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court adopts its tentative ruling, making it the order of the court.

Defendant Crown Building Maintenance Co. to Plaintiff's First Amended Complaint ("FAC") is overruled.

The Demurrer fails to comply with C.C.P. § 430.41 as no meet and confer declaration was filed with the Demurrer.

The Demurrer, which is premised on asserted defects in the Fourth Cause of Action, also fails on the merits. Defendant argues that the Fourth Cause of Action fails because a claim for reimbursement is not a claim for "wages." But the Fourth Cause of Action is not framed as a claim for wages – it asserts a claim for reimbursement under Lab. Code §2802(a).

Defendant also argues that Plaintiff cannot support a Lab. Code §2802 cause of action based on "slip-resistant shoes," because federal and state OSHA requirements preempt any such claim. However, the cause of action is also directed to uniform maintenance expenses. (See FAC ¶29.) A demurrer does not lie as to only a part of a cause of action or to a particular type of damage or remedy. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047.) Therefore, regardless of the merits of Plaintiff's shoe claim, the Demurrer fails if the uniform claim is adequately pled.

Under Lab. Code §2802(a), an employer shall indemnify an employee for all necessary expenditures or

Under Lab. Code §2802(a), an employer shall indemnify an employee for all necessary expenditures or losses he/she incurs in direct consequence of discharge of his/her duties. Under 8 C.C.R. §11070(9)(a), uniform maintenance costs are within the scope of such necessary expenditures, except as to protective apparel regulated by OSHA. Nothing in the FAC suggests that the uniform Plaintiff was allegedly required to wear was protective apparel regulated by OSHA. Plaintiff thus has stated a cognizable claim based on uniform maintenance costs.

Defendant argues that the claim as to shoes should be pled separately from any claim as to uniforms and clothing. But there is no requirement that Plaintiff parse his §2802 claims for pleading purposes.

Defendant also argues that the FAC lacks specificity as to what the uniform claim entails and is thus uncertain. But a demurrer for uncertainty should be sustained only where the pleading is so poorly pled that defendant cannot reasonably respond. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 615-16.) Here, the FAC is sufficiently pled to allow Defendant to respond: any ambiguities can be addressed in discovery. The Demurrer to the Fourth Cause of Action is therefore overruled.

The Demurrer as to all of the other causes of action argues only that they are derivative and thus fail as well. But the Fourth Cause of Action is sufficiently pled to withstand demurrer. And although the other causes of action include wage claims, uniform maintenance costs can be characterized as wages. (8 C.C.R. §11070(9)(A); *Dept. of Indus. Relations v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 1091-92.) The Demurrer is therefore also overruled as to the other causes of action (Nos. 1-3 and 5-7).

Defendant is to Answer within 10 days after service of notice of this ruling. Plaintiff is to give notice.

Clerk to give notice to plaintiff and plaintiff to give notice to all other parties.

It is so ordered.



Hon. Gail Andler

EXHIBIT 6

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

- - -

JOSUE URIBE, ON BEHALF OF
HIMSELF AND OTHER CURRENT
OR FORMER EMPLOYEES,

Plaintiffs,

vs.

CROWN BUILDING MAINTENANCE
COMPANY; AND DOES 1 THROUGH
100, INCLUSIVE,

Defendants.

No.: 30-2016-00839857
CU-OE-CXC

DEPOSITION OF

JOSUE URIBE

COSTA MESA, CALIFORNIA

SEPTEMBER 15, 2016

Atkinson-Baker, Inc.
Court Reporters
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(800) 288-3376

REPORTED BY: ANGELIQUE MELODY FERRIO, CSR NO. 6979

FILE NO: AA09835

1 Q. So, around possibly the same week?

2 A. Around the same week, yeah.

3 Q. And I just want to get clear as to what you
4 were told about the shoes that you were supposed to
5 wear.

6 So, is it accurate that Yvonne Torres told you
7 that you had to wear boots or shoes that were non-slip;
8 is that correct?

9 A. Yes.

10 Q. Did Yvonne Torres give you any other
11 instructions about shoes or footwear?

12 A. No.

13 Q. And then the maintenance person, did he also
14 tell you that the boots or shoes that you wore had to be
15 non-slip?

16 A. Yeah.

17 Q. Did he give you any other instructions about
18 footwear?

19 A. No.

20 Q. And then I believe that you testified that's
21 the reason that you would purchase shoes every three to
22 four months was because the shoes would get wet from
23 when you were cleaning the pool or cleaning the sidewalk
24 and they would start falling apart; is that correct?

25 A. Yeah, and like for the back from the heel, it

1 And the only shoes that I had was my tennis
2 shoes and so I took them to work. And Yvonne showed up
3 so that I could fill out the -- so that I could sign the
4 timesheet for the month.

5 And when she saw me with the tennis shoes, she
6 saw me and she told me that. And I said that I have
7 them at home and I'll bring them tomorrow.

8 Q. Could you do the job wearing tennis shoes?

9 A. Yeah.

10 Q. Do you know if other employees -- excuse me.

11 Do you know if other day porters wore tennis
12 shoes to work?

13 A. Yes.

14 Q. Did they?

15 A. Yes.

16 Q. Were there day porters that wore tennis shoes
17 every day?

18 A. Yes.

19 Q. And were these tennis shoes that you could wear
20 out on the street?

21 A. Yes.

22 Q. Why didn't you just wear, buy tennis shoes that
23 you could wear anywhere?

24 A. Because they already told me that we can't use
25 tennis shoes.

1 that correct?

2 A. Correct.

3 Q. So, I'm going to ask you one more time, other
4 than the occasion where Imelda told you to keep them
5 clean and she can't be ordering more shirts, and on the
6 occasion where Imelda told you that you have to keep the
7 pants black, did Imelda provide you with any other
8 information or instructions about your uniform?

9 A. No.

10 Q. So, on these two occasions when Imelda had
11 these conversations with you about your uniform, was she
12 just talking to you one-on-one?

13 A. Yes.

14 Q. Do you know what instructions or information
15 other day porters were told about their uniform?

16 A. No.

17 Q. Do you know if other day porters were expected
18 or required to wash their uniform?

19 A. No.

20 MR. THOMAS: Did you ask -- are you okay going
21 five more minutes?

22 MR. ALIZADEH: Sure.

23 MR. THOMAS: Because I know that we talked
24 about 12:30.

25 MR. ALIZADEH: That's fine.

1 BY MR. THOMAS:

2 Q. Did you ask anyone at Able if they have a
3 service that will wash your uniform for you?

4 A. No.

5 Q. Why not?

6 A. Because I was the only one working right there
7 at the property. I was the only one working from Able.

8 Q. And so did you feel you didn't have anyone to
9 ask --

10 A. Yes.

11 Q. -- is that why?

12 A. Yes.

13 Q. Did you ask -- why didn't you ask your
14 mother-in-law?

15 A. Because we don't live in the same place. We
16 didn't have a lot of communication at that time.

17 Q. Why didn't you ask Imelda?

18 A. Because I didn't tell her until she told me
19 when she gave me the uniforms, that's when we're
20 supposed to wash our uniforms, when she took the
21 uniforms to the property, when she told me that you need
22 to have, keep the shirt, try to keep the white shirt
23 clean and the pants.

24 And you guys, we don't have no one to wash
25 uniforms, so, you wash it on your own.

1 Q. How many other employees were there?

2 A. There were like seven.

3 Q. Do you know title of any of those employees?

4 A. No.

5 Q. Do you know if any of those employees were
6 going to work at other parts of the State of California?

7 A. No.

8 Q. Do you know anything about any of the other
9 employees that were there?

10 A. No.

11 Q. The orientation that you went through the
12 second time that you worked at Able, did it consist of
13 the same thing as the first time?

14 A. Yes.

15 Q. So, you watched a video on safety; is that
16 right?

17 A. Yes.

18 Q. Okay. And then did you fill out some forms on
19 safety?

20 A. Yes.

21 Q. Did you receive policies on safety?

22 A. Yes.

23 Q. During the second orientation, were you
24 provided with any instruction regarding what clothing or
25 uniforms that you were supposed to wear?

1 Q. Did you ever change your shoes when you were at
2 the Triangle Square location?

3 A. No.

4 Q. So, is it true that the number of times you
5 have to clean or that you would have to spend washing --
6 strike that.

7 Is it true that the number of times that you
8 have to wash your own personal laundry is different
9 depending on the location where you work?

10 A. I still wash the same, separate from my regular
11 clothes to work clothes.

12 Q. At the Triangle Ridge location could you wash
13 your white T-shirts with your regular clothes?

14 A. No.

15 Q. Why not?

16 A. I don't like washing my work clothes with my
17 regular clothes.

18 Q. So, at the Triangle Square location, you did
19 not wash your work clothes with your regular clothes
20 just because of your personal choice; is that right?

21 A. Yes, yes.

22 Q. And at the Triangle Square location, could you
23 wash or did you wash your black pants with your regular
24 clothes?

25 A. No.

1 Q. Why not?

2 A. I don't like mixing my clothes, my regular
3 pants with my work pants.

4 Q. And that was your personal choice?

5 A. Personal choice, yes.

6 Q. Whereas, at the Ridge location it was because
7 of the chemicals; is that correct?

8 A. Yes.

9 Q. So, is it true that the reason why you washed
10 your personal clothes and work clothes separately is
11 different depending on the location?

12 A. Yes.

13 Q. And is it also true that the number of times
14 that you have to purchase new boots or shoes differs
15 depending on the location where you worked?

16 A. Yes.

17 Q. So, you were at the Triangle Square location
18 for four to five months; is that correct?

19 A. Right.

20 Q. And then after the Triangle Square location,
21 you worked at The Cape?

22 A. The Cape.

23 Q. And The Cape is also apartments?

24 A. Yes.

25 Q. And you worked at The Cape until you got

1 A. Imelda told me.

2 Q. And did she just tell you verbally?

3 A. Yes.

4 Q. Did she give you a written schedule?

5 A. She wrote it on the paper and she showed it to
6 me.

7 Q. Did you communicate with your supervisors on a
8 daily basis?

9 A. Yes, for the time sheets and, yeah, the time
10 sheets only.

11 Q. When you were at the Cinnamon location, let's
12 focus there for a little bit, you communicated with your
13 supervisors just for the time sheets; is that right?

14 A. Yeah, for me to fax it to them.

15 Q. And how often would you communicate with your
16 supervisor at the Cinnamon location about your time
17 sheets?

18 A. Like two or three times a month.

19 Q. And other than those two or three times a
20 month, did you communicate with your supervisors at all
21 at the Cinnamon location?

22 A. No.

23 Q. And when you would communicate with them two or
24 three times a month for work, was that a face-to-face
25 conversation?

1 A. Sometimes it was face-to-face and sometimes it
2 was over the phone.

3 Q. And was that -- and when you would talk to them
4 on the phone, was that you using your personal cell
5 phone?

6 A. Yes.

7 Q. Were you required to have a cell phone to do
8 your job?

9 A. I just would leave it in the car sometimes when
10 I see calls on my break times, that's when I returned
11 the call.

12 Q. Okay. So, could you do your job without a cell
13 phone?

14 A. Yes.

15 Q. And if a supervisor or a manager calls you on
16 the cell phone, were you required to answer it?

17 A. You're talking about the maintenance or talking
18 about Able?

19 Q. Well, if they called you, you wouldn't know why
20 they were calling, but like you left your phone in the
21 car a lot; right?

22 A. Yes.

23 Q. So, you wouldn't know if they were calling you
24 during your shift; right?

25 A. Right.

1 Q. So, if you did see a manager call you on your
2 cell phone, were you required to answer it?

3 A. They used to call me through the radio because
4 we used to carry a radio.

5 Q. Did you have a radio at the Cinnamon Ridge
6 location?

7 A. Yes.

8 Q. Did you have a radio at the Triangle Square
9 location?

10 A. At first I didn't have one, but the last month,
11 the last month that I was there they gave me a radio
12 just for a couple of hours until the lead person comes
13 in.

14 Q. Okay. And did you have a radio when you were
15 at The Cape?

16 A. Yes.

17 MR. THOMAS: All right. And I'll mark this
18 document as Exhibit 11.

19
20 (Deposition Exhibit 11 was
21 marked for identification
22 and is attached hereto.)

23
24 BY MR. THOMAS:

25 Q. So, I'm handing you a document marked as

1 A. No, continue.

2 Q. Okay. So, do you know if other Able employees
3 have to wash their uniform?

4 A. Excuse me.

5 Q. Do you know if other Able employees are
6 required to wash their uniform?

7 A. I don't know.

8 Q. Do you know if other Able employees are allowed
9 to wear tennis shoes to their job?

10 A. I don't know.

11 Q. So, is the only information that you can
12 testify to is what you personally have experienced?

13 A. Yes.

14 Q. Are you aware of any company policies regarding
15 footwear that applies to both you and other Able
16 employees?

17 A. Yes.

18 Q. What company policy are you aware of that
19 applies, regarding footwear that applies to both you and
20 other Able employees?

21 A. Was the question -- I'm sorry about that.

22 Q. That's fine. Are you aware of any company
23 policies that applies to both you and other Able
24 employees?

25 A. No.

1 Q. Are you aware of any company policies that
2 involve what footwear you're required to wear that
3 applies to both you and other Able employees?

4 A. No.

5 Q. Are you aware of any company policies regarding
6 employees being required to clean or to maintain their
7 uniform that apply to both you and other Able employees?

8 A. No.

9 MR. THOMAS: Okay. Let's take a five-minute
10 break. I might be done.

11 MR. ALIZADEH: It's up to you.

12
13 (Discussion held off the record.)

14
15 MR. THOMAS: Back on the record.

16 BY MR. THOMAS:

17 Q. Do you understand that you're still under oath?

18 A. Yes.

19 Q. Are you able to continue to provide truthful
20 testimony here today?

21 A. What?

22 Q. Are you able to provide truthful testimony?

23 A. Yes.

24 Q. Is your workers' compensation claim still
25 pending or has it been resolved?

1 REPORTER'S CERTIFICATE

2
3 I, ANGELIQUE MELODY FERRIO, C.S.R. NO. 6979, a
4 Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were taken
6 before me at the time and place therein set forth, at
7 which time the witness was put under oath by me;

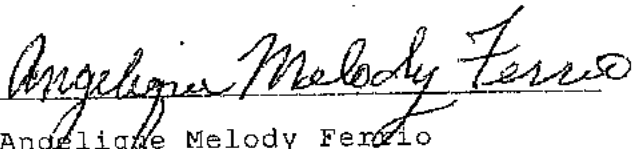
8 That the testimony of the witness and all
9 objections made at the time of the examination were
10 recorded stenographically by me and were thereafter
11 transcribed;

12 That the foregoing is a true and correct
13 transcript of my shorthand notes so taken.

14 I further certify that I am not a relative or
15 employee of any attorney or of any of the parties, nor
16 financially interested in the action.

17 I declare under penalty of perjury under the
18 law of the State of California that the foregoing is
19 true and correct.

20 Dated this 15th day of September, 2016.

21
22
23 
24 Angelique Melody Ferrio
25 CSR No. 6979

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

2
3
4 I, ANGELIQUE MELODY FERRIO, CSR No. 6979, a
5 Certified Shorthand Reporter in the State of California,
6 certify that the foregoing pages are a true and correct
7 copy of the original deposition of JOSUE URIBE, taken on
8 Thursday, September 15, 2016.

9 I declare under penalty of perjury under the
10 laws of the State of California that the foregoing is
11 true and correct.

12 Dated this 15th day of September, 2016.

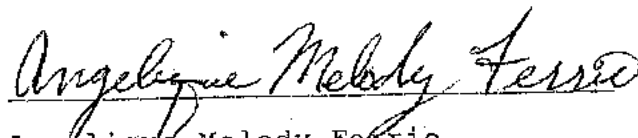
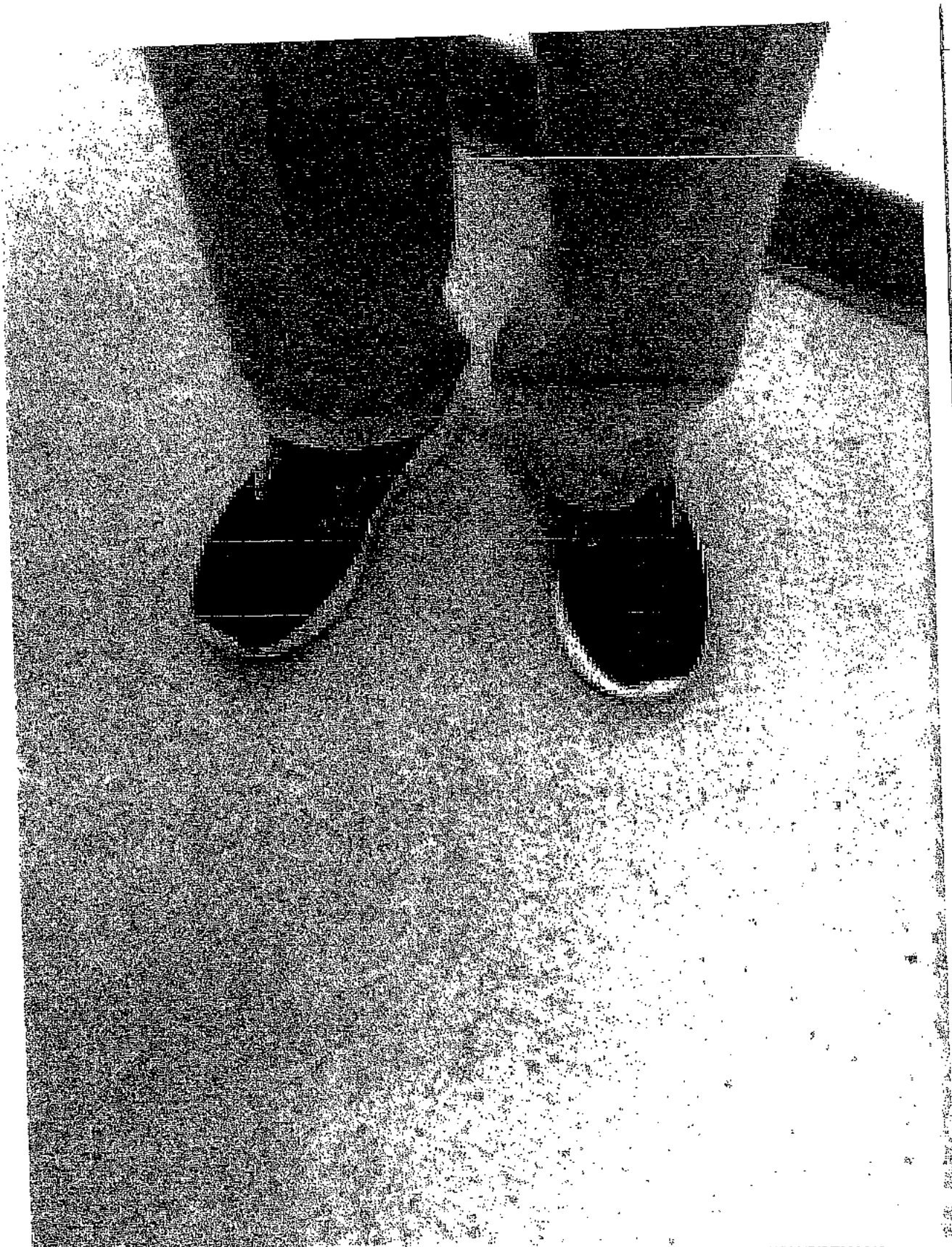
13
14
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17 
18 Angelique Melody Ferrio
19 CSR No. 6979
20
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24
25

EXHIBIT 7



CROWN-URIBE000111



CROWN-URIBE000112

EXHIBIT 8



868 Folsom Street, San Francisco, CA 94107 | T: 415.981.8070 | F: 415.546.5170

CELL PHONE USAGE ACKNOWLEDGMENT FORM

Personal Cell Phone Use

Personal cell phone use is prohibited during work hours. Employees are asked to make any personal calls during break or lunch time. The company will not be liable for the loss of personal cell phones brought into the workplace.

Personal Use of Company Cell Phone

Employees who are provided a company cell phone may use up to the designated plan minutes. Employees are responsible for paying any additional plan minutes.

Cell phones will be the sole responsibility of each employee of Able Building Maintenance. Cell phones issued by the property will be used for work purposes only. All employees will be accountable for personal use.

Business Use of Company Cell Phone

Employees are expected to have their company issued cellular telephone charged and on during normal working hours and as required to fulfill your job responsibilities. Employees should observe the professional courtesy during meetings of switching their cellular phone to vibrate mode, and returning the phone to ring mode when appropriate. Employees should not turn off their cellular phone during meetings unless absolutely necessary so that contact can be made on urgent matters if required.

Use of Company Cell Phone While Driving

Employees should minimize cellular telephone usage while operating any motor vehicles.

Effective July 1, 2008, California law prohibits all drivers from using handheld wireless telephones while driving. Able Building Maintenance expects all employees to comply with the law. Employees *must* use their company issued hands-free device to place or receive cellular phone calls while driving and only when safe to do so. The only exceptions are when you must make an emergency call to a law enforcement agency, a medical provider, the fire department, or other emergency services agency.

Other alternatives include allowing voice mail to handle your calls and returning messages at your safe convenience or pulling off the road to a safe location. In all instances, employees are advised to keep their hands on the wheel and their eyes and mind on the road while driving.

The law imposes fines against individuals who use handheld wireless telephones while driving and a conviction will appear on the DMV driving record. Able Building Maintenance will not pay the fine or reimburse the employee.

Care of Company Cell Phone

Employees are responsible for taking proper care of company-issued cellular telephones and reasonable precautions against damage, loss or theft. Loss of cellular telephones should be reported to the Chief Financial Officer immediately.

Cell phones that are lost, misplaced or physically abused will be replaced at the expense of the responsible employee.

Acknowledgement

I have read and understand the terms set forth in this Cell Phone Policy. I understand that violation of this policy and/or California law regarding use of cell phones may result in disciplinary action. I agree that upon the termination of my employment from Able Building Maintenance, I will repay any additional plan minutes.

Employee Name: Josue Uribe

Employee Signature: [Signature]

Date: 12-15-18

www.ablebma.com

EMPLOYER COPY
Please Sign and Return

Page 12

CROWN-URIBE000040



EXHIBIT 9

1 **LAW OFFICE OF ARASH N. ALIZADEH**
2 Arash N. Alizadeh, State Bar No. 302290
3 7545 Irvine Center Drive, Suite 200
4 Irvine, California 92618
5 Phone: (949) 606-2845
6 Fax: (949) 264-9345
7 Email: aalizadeh@lawyerforemployees.com

8 Attorneys for Plaintiff JOSUE URIBE

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE**
11 **751 W. SANTA ANA BLVD., SANTA ANA, CA 92701**

12 JOSUE URIBE, on behalf of himself and all
13 other similarly situated employees,

14 Plaintiff,

15 v.

16 CROWN BUILDING MAINTENANCE CO.;
17 and DOES 1 through 100, inclusive,

18 Defendants.

Case No.: 30-2015-00839587

Assigned For All Purposes To:
Judicial Officer: Hon. Glenda Sanders
Dept: CX101

CLASS ACTION

Second Amended Complaint for:

1. Failure to Timely Pay Wages (LC 204)
2. Failure to Pay Min. Wage
3. Failure to Pay Overtime (LC 510, 1194)
4. Failure to Reimburse (LC 2802)
5. Wage Statement Violation (LC 226)
6. Conversion (Civ. C. 3336)
7. Unfair Competition (B&P 17200)
8. PAGA (LC 2698 *et seq*)

Complaint filed: March 9, 2016
First Amended Complaint: May 23, 2016

20 Plaintiff JOSUE URIBE ("Plaintiff" or "Employee") alleges against CROWN BUILDING
21 MAINTENANCE CO. ("defendant" or "Employer") the following:

22 **General Allegations**

23 1. This is a class action under California Code of Civil Procedure section 382, brought
24 by Plaintiff for violation of California's wage and hour laws and the Labor Code Private Attorneys
25 General Act of 2004 ("PAGA"). Plaintiff brings this action on behalf of himself and other current
26 and former employees of defendant.

27 ///

2. Defendant requires their employees to maintain their own uniforms and provide their own slip resistant shoes. Defendant does not reimburse or indemnify employees for these work related expenses, which are a form of wages.

3. Plaintiff brings a claim on behalf of Class Members for Defendants' failure to reimburse such business expenses and wages. Plaintiff seeks to represent a class comprises of janitorial employees including day porters, janitors and foremen and similarly situated manual labor employees who were, are, or will be employed by Defendant in the State of California (hereinafter "Class Members") during the relevant time period.

4. Plaintiff also brings a claim under PAGA, Labor Code sections 2698 *et seq.*

5. This action seeks reimbursement of business expenses, wages, penalties, interest thereon, and reasonable attorneys' fees pursuant to Labor Code sections 226, 218.5, 1194, 2802, and 2698 *et seq.* and Code of Civil procedure section 1021.5. Plaintiff, on behalf of himself and Class Members, also seeks equitable and injunctive relieve for these violations pursuant to Business and Professions Code sections 17200 *et seq.* (also referred to herein as the "UCL"). Plaintiff also seek statutory penalties pursuant to PAGA.

6. Venue is proper in this Court because Defendants do substantial business in Orange County, California, and employed Plaintiff in Orange County, California. Defendant employs or has employed Plaintiff and Class Members in Orange County.

7. On information and belief, Plaintiff's and the Class Members' monetary claims total more than \$25,000, but less than \$75,000.00 per person.

STATEMENT OF FACTS

8. Plaintiff and all Class Members are current or former janitorial employees including day porters, janitors and foremen and similarly situated manual labor employees, of Defendant who are, were, or will be employed in the State of California, at some time during the period beginning four years prior to the filing of the original complaint through the date of the final disposition of this action (the "Class Period").

9. At all times alleged herein, Defendant was, and is, America's largest family-owned provider of Janitorial, Engineering, and Facility solutions. Defendant was established in 1926 and

1 serves customers at their facilities throughout California. Plaintiff and other similarly situated day
2 porters, janitors and janitorial employees worked at Defendant's worksites in Costa Mesa, CA and
3 throughout California and their duties included sweeping, mopping, vacuuming, blowing leaves
4 and other similar tasks.

5 10. Plaintiff used different chemicals, liquid agents, detergents, and cleaning supplies
6 in performing his tasks and he always used a cart that held the cleaning supplies and equipment
7 that he pushed around in his job site. Plaintiff's job duties were essentially similar to a janitor.
8 Plaintiff was required to wear a uniform provided by the company, but the company did not
9 maintain the uniform. Due to heavy and harmful chemicals exposure to Plaintiff's uniform, he had
10 to regularly wash the uniforms in separate wash loads to avoid damaging his non-work clothes,
11 thus incurring additional expenses that Employer failed to reimburse. Defendant also required
12 Plaintiff to purchase his own slip-resistant shoes that he had no other use or need for other than to
13 perform his job. Plaintiff is informed and believes that the foregoing was, and is, a companywide
14 policy implemented by Defendant that similar impacted all of its day porters, janitorial and similar
15 type employees.

16 11. Plaintiff is informed and believes and thereon alleges that, through common
17 practices, policies and/or schemes, Defendant have systematically failed to reimburse employees
18 for out-of-pocket expenses for maintaining their uniform, purchasing slip-resistant shoes, and time
19 spent maintaining their uniform.

20 12. Defendant has not reimbursed or indemnified Plaintiff and the Class Members for
21 the out-of-pocket expense incurred as a result of work related expenses of maintaining their
22 uniforms and purchasing slip-resistant shoes, or for time spent maintaining the uniforms.

23 13. Because Defendant failed to reimburse Plaintiff and Class Members for cost of
24 maintaining their uniform, and purchase slip-resistant shoes, as well as not paying them for time
25 spent maintaining their uniform, they caused their wages to fall below minimum wages, failed to
26 pay their full overtime wages, failed to timely pay wages, and failed to provide accurate wage
27 statement, among other violations as a result. This is because the unreimbursed expenses and
28 uniform maintenance costs are considered "wages." (*In re Work Uniform Cases*, 133 Cal.App.4th

1 328 (2005) (holding that payment for uniform maintenance is compensation); *see also Sanchez v.*
2 *Aerogroup Retail Holdings, Inc.*, 12-CV-05445-LHK, Order On Motion to Dismiss at 12 (N.D.
3 Cal. May 8, 2013) (holding that Labor Code sections 1194, 1194.2, 1197, and 1197.1 permit an
4 action based on unreimbursed expenses because they are 'wages').

5 14. Moreover, Plaintiff is informed and believes and thereon allege that, through
6 common practices, policies and/or schemes, Defendants have systematically failed to reimburse
7 employees for out-of-pocket expenses for work-related use of their personal cell phones.

8 15. Defendants regularly require Plaintiff and the Class Members to use their personal
9 cell phones as a direct consequence of the discharge of their duties. Defendants through
10 supervisors and managers regularly call or text Plaintiff and the Class Members with work-related
11 communications and require that Plaintiff and the Class Members respond to these
12 communications.

13 16. Plaintiff and the Class Members are required to use their personal cell phones
14 frequently for calls and texts with their supervisors and with other janitorial employees in the
15 building(s) they supervise.

16 17. Defendants have not reimbursed or indemnified Plaintiff and the Class Members
17 for the out-of-pocket expenses incurred as a result of the work-related use of their personal cell
18 phones.

19 PARTIES

20 18. Plaintiff is, and at all relevant times was, a competent adult residing in Orange
21 County, California.

22 19. Plaintiff is informed and believes, and on that basis alleges, that defendant is, and at
23 all relevant times was, a business operating at worksites throughout California.

24 20. Plaintiff currently is unaware of the true names and capacities of the defendants
25 sued in this action by the fictitious names DOES 1 through 100, inclusive, and therefore sues those
26 defendants by those fictitious names. Plaintiff will amend this Complaint to allege the true names
27 and capacities of such fictitiously named defendants when they are ascertained.

28 ///

1 21. Plaintiff is informed and believes, and on that basis alleges, that each defendant
2 sued in this action, including each defendant sued by the fictitious names DOES 1 through 100,
3 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged
4 below.

5 22. Plaintiff is informed and believes and on that basis alleges that there exists, and at
6 all relevant times there has existed, a unity of interest and ownership between DOES 1 through 10,
7 on the one hand, and CROWN BUILDING MAINTENANCE CO, on the other hand, such that
8 any separateness and individuality between them have ceased, and CROWN BUILDING
9 MAINTENANCE CO, is the alter-ego of DOES 1 through 10. Adherence to the fiction of the
10 separate existence of CROWN BUILDING MAINTENANCE CO as an entity distinct from
11 DOES 1 through 10 would permit abuse of any corporate privilege, sanction fraud and promote
12 injustice.

13 23. Plaintiff is informed and believes that each Defendant conspired with, aided and
14 abetted, ratified the conduct of, knowingly acquiesced in, acted with the consent and permission
15 of, and accepted the benefits of each other Defendant with respect to the matters alleged herein.

16 24. Plaintiff is informed and believes that, except as otherwise alleged herein, each
17 Defendant is, and at all times relevant to this Complaint was, the agent, joint-employer, partner,
18 joint venturer, alter ego, affiliate, and/or co-conspirator with or of each of the other Defendants,
19 and/or otherwise acted on the behalf of each other Defendant.

20 CLASS ACTION ALLEGATIONS

21 25. For the First through Seventh Causes of Action, but not with respect to the Eight
22 Cause of Action under PAGA, Plaintiff brings this lawsuit as a class action pursuant to Code of
23 Civil Procedure section 382 on behalf of himself and all similarly situated janitorial employees
24 including day porters, janitors and foremen and similarly situated manual labor employees who
25 were, are, or will be employed by Defendant in the State of California (hereinafter "Class
26 Members") during the relevant time period.

27 26. The class that Plaintiff seeks to represent is janitorial employees including day
28 porters, janitors and foremen and similarly situated manual labor employees who were, are, or will

1 be employed by Defendant in the State of California (hereinafter "Class Members") during the
2 relevant Class Period ("Class").

3 27. The claims herein have been brought and may properly be maintained as a class
4 action under Code of Civil Procedure 382 because there is a well-defined community of interest
5 among Class Members with respect to the claims asserted herein, and the proposed class is easily
6 ascertainable.

7 a. Ascertainability and Numerosity: The potential members of the Class, as
8 defined herein, are so numerous that joinder would be impracticable. Plaintiff is
9 informed, believe, and allege that Defendants have employed thousands of
10 Class Members in California during the Class Period. The names and addresses
11 of Class Members are available to Defendants. Notice may be provided to Class
12 Members via first class mail using a form of notice similar to those customarily
used in class action lawsuits of this nature.

13 b. Commonality: There are questions of law and fact common to Plaintiff and
14 Class Members that predominate any questions affecting only individual
15 members of the Class. These common questions of law and fact include,
16 without limitation:

- 17 i. Whether Defendants have violated Labor Code sections 201, 203, 204,
18 226, 226.7, 510, 512, 558, 1174(d), 1194, and 2802, and Business and
19 Professions Code section 17200 by failing to reimburse or indemnify
20 employees for employment related expenses, including, but not
21 necessarily limited to, the costs incurred in maintaining work uniforms
22 and purchasing slip-resistant shoes I the course of performing their work
duties and for time spend maintaining their uniforms.
- 23 ii. Whether Defendant's failure to indemnify employees for their necessary
24 employment-related expenses and losses constitute an unlawful, unfair
25 and/or fraudulent business practice under Business and professions
Code sections 17200 *et seq*; and
- 26 iii. What relief is necessary to remedy Defendant's unfair and unlawful
27 conduct as herein alleged.

28 ///

- 1 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Plaintiff and
2 all Class Members have sustained injuries-in-fact and damages arising out of
3 and caused by Defendant's common course of unlawful conduct, as alleged
4 herein.
- 5 d. Adequacy of Representation: Plaintiff is a members of the Class that he seeks to
6 represent, and will fairly and adequately represent and protect the interest of the
7 Class Members. Counsel representing Plaintiff is a competent and experienced
8 in litigating wage and hour class actions.
- 9 e. Superiority of Class Action: A class action is superior to other available means
10 in order to obtain fair and efficient adjudication of this controversy. Individual
11 joinder of all putative Class Members is not practicable, and questions of law
12 and fact common to the proposed Class predominate over any questions
13 affecting only individual members of the proposed Class. Each Class Member
14 has suffered injury and is entitled to recover by reason of Defendant's unlawful
15 policies and practices alleged herein. Class action treatment will allow those
16 similarly situated persons to litigate their claims in the manner that is most
17 efficient and economical for the parties and the judicial system. Further, the
18 prosecution of separate actions against Defendant by individual members of the
19 proposed Class would create a risk of inconsistent or varying adjudications that
20 would establish incompatible standards of conduct for Defendant.

21 DAMAGES

22 28. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff and
23 similarly situated day porters, janitors, and other similarly situated employees are owed, among
24 other things, damages and statutory penalties, in an amount that exceeds \$25,000, the precise
25 amount of which will be proven at trial.

26 First Cause of Action

27 For Failure to Pay Earned Wages

28 (Cal. Labor Code Section 204)

by Plaintiff Against All Defendants

1 prohibited by order of the IWC, in violation of those orders.

2 36. Defendants deprived Plaintiff and Class Members of their rightfully earned
3 minimum wage compensation, including overtime compensation at the minimum wage rate, as a
4 direct and proximate result of Defendants' failure to pay said compensation. Under Code section
5 1194, Plaintiff and Class Members are entitled to recover such amounts, plus interest thereon,
6 reasonable attorney's fees, and costs.

7 37. In addition, under Code section 1194.2, Plaintiff and Class Members are entitled to
8 recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and
9 interest thereon.

10 **Third Cause of Action**

11 **For Failure to Pay Overtime Compensation**

12 **(Labor Code Sections 510, 1194, 1194.2, 1198; Wage Order)**

13 **by Plaintiff Against All Defendants**

14 38. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as
15 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf
16 of themselves and all other Class Members.

17 39. The Code and the Wage Oder provide that a workday consists of eight hours, a
18 workweek consists of 40 hours, and an employer must compensate an employee who works
19 overtime hours with either one-and-one-half times or double the employee's regular rate of
20 compensation.

21 40. Defendant employed Plaintiff and other Class Members for more than eight hours
22 per day and more than 40 hours per workweek, but Defendant failed to pay Plaintiff and other
23 Class Members the overtime rate.

24 41. Defendant thus required Plaintiff and other Class Members to work for longer
25 hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those
26 orders.

27 42. Defendant thus deprived Plaintiff and other Class Members of their rightfully
28 earned overtime compensation as a direct and proximate result of Defendants' failure to pay said

1 compensation. Under Code section 1194, Plaintiff is entitled to recover such amounts, plus
2 interest thereon, attorney's fees, and costs.

3 **Fourth Cause of Action**

4 **For Failure to Reimburse for All Expenditures and Losses**

5 **(California Labor Code Sections 2802, 1198; IWC Wage Order No. 9-2001)**

6 **By Plaintiff Against All Defendants**

7 43. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
8 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf
9 of themselves and all other Class Members.

10 44. Code section 2802(a) provides: "An employer shall indemnify his or her employee
11 for all necessary expenditures or losses incurred by the employee in direct consequence of the
12 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
13 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
14 unlawful."

15 45. Defendant failed to reimburse Plaintiff and other Class Members for the following
16 expenditures incurred as a result of discharging his duty: dry cleaning and maintenance expenses
17 for his uniform and clothing; purchase cost of slip resistant shoes; and required personal cell
18 phone use.

19 46. Under Code section 2802(c), Plaintiff and other Class Members are entitled to
20 recover all reasonable costs, including attorney's fees, incurred in enforcing their rights granted by
21 Section 2802.

22 **Fifth Cause of Action**

23 **For Failure to Provide Accurate Wage Statements**

24 **(California Labor Code Sections 226, 1198; IWC Wage Order No. 9-2001)**

25 **By Plaintiff Against All Defendants**

26 47. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
27 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf
28 of themselves and all other Class Members.

1 48. Code section 226(a) and the Wage Order required Defendant, "semimonthly or at
2 the time of each payment of wages," to furnish Plaintiff and other Class Members "an accurate
3 itemized statement in writing" showing gross and net wages earned, total hours worked by the
4 employee, rates of pay, and other information. Defendant knowingly and intentionally failed to
5 provide Plaintiff and other Class Members with such timely and accurate wage and hour
6 statements.

7 49. Defendant thus required Plaintiff and other Class Members to work for longer
8 hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those
9 orders.

10 50. Plaintiff and other Class Members suffered injury as a result of Defendant's
11 knowing and intentional failure to provide them with the wage and hour statements required by
12 law.

13 51. Under Code section 226, subsections (e) and (f), 1198, Wage Order § 20(A), and
14 based on Defendant's conduct as alleged herein, Plaintiff and other Class Members are entitled to
15 (a) fifty dollars (\$50) for the initial pay period in which a wage and hour statement violation
16 occurred, and one hundred dollars (\$100) per employee for each violation in a subsequent pay
17 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and (b) injunctive
18 relief to ensure Defendants' compliance with Labor Code Sections 226, 1198 and the Wage Order;
19 and (c) an award of costs and reasonable attorney's fees.

20 52. Defendants' conduct also entitles Plaintiff to seek preliminary and permanent
21 injunctive relief, including but not limited to an order that Defendants issue wage and hour
22 statements to Plaintiff that comply with Code section 226.

23 **Sixth Cause of Action**

24 **For Conversion**

25 **(California Civil Code § 3336)**

26 **By Plaintiff Against All Defendants**

27 53. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
28 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf

1 of themselves and all other Class Members.

2 54. At all relevant times herein, Defendants had and continue to have a legal obligation
3 imposed by statute to pay Plaintiff and other Class Members all earned wages due to them. Such
4 wages belonged to Plaintiff and other Class Members at the time the labor and services were
5 provided to Defendants, and accordingly such wages are the property of Plaintiff and other Class
6 Members, not Defendants.

7 55. Defendant knowingly and intentionally failed to pay Plaintiff and other Class
8 Members earned wages, overtime compensation at the minimum wage rate for their overtime
9 hours worked, overtime compensation, missed meal period compensation, and missed rest period
10 compensation. Instead, Defendant converted Plaintiff's and other Class Members' rightfully
11 earned wages to Defendant's own use and benefit. Defendant converted such wages as part of an
12 intentional and deliberate scheme to maximize their profits at Plaintiff's and other Class Members'
13 expense.

14 56. Plaintiff and other Class Members have been injured by Defendant's intentional
15 conversion of such wages. Plaintiff and other Class Members are entitled to immediate possession
16 of all amounts converted by Defendant, with interest. Before he filed this action, Plaintiff sent to
17 Defendants a copy of this complaint and demanded that Defendants pay the amounts owed, and
18 offered to discuss a pre-litigation resolution of this matter.

19 57. Despite this demand, Defendants refuse to pay Plaintiff and other Class Members
20 the unpaid wages they owe him.

21 Seventh Cause Of Action

22 (Unfair Competition (Business & Professions Code 17200))

23 58. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as
24 though set forth fully herein. Plaintiff alleges as follows a representative cause of action on behalf
25 of themselves and all other Class Members.

26 59. Defendant's failure to reimburse or indemnify employees for all business expenses
27 incurred and wages, in violation of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512,
28 558, 1174(d), 1194, and 2802, constitutes unlawful and unfair activities prohibited by Business

1 and Professions Code section 17200. Plaintiffs reserve the right to identify additional unfair and
2 unlawful practices by Defendants as further investigation and discovery warrants.

3 60. Business and Professions Code section 17203 provides that the Court may restore
4 to an aggrieved party any money or property acquired by means of unlawful and unfair business
5 practices. Plaintiffs seek a court order requiring an audit and accounting of work-related uniform
6 maintenance and slip-resistance shoes expenses to determine the amount of restitution of all
7 unreimbursed business expenses owed to him and Class Members, according to proof, as well as a
8 determination of the amount of funds to be paid to current and former employees that can be
9 identified and located pursuant to a court order and supervision.

10 61. Plaintiffs and all proposed Class Members are "persons" within the meaning of
11 Business and Professions Code section 17204 who have suffered injury in fact as a result of
12 Defendants' unfair competition, and who comply with requirements of Code of Civil Procedure
13 section 382, as set forth above, and therefore have standing to bring this claim for injunctive relief,
14 restitution and other appropriate equitable relief.

15 62. As a result of its unlawful and unfair acts, Defendants have reaped unfair benefits
16 and illegal profits at the expense of Plaintiffs and Class Members. Defendants should be enjoined
17 from this activity and made to restore to Plaintiffs and Class Members their necessary business
18 expenses, interest thereon and related statutory penalties, pursuant to Business and Professions
19 Code sections 17202 and 17203.

20 63. Private enforcement of these rights is necessary, as no other agency has raised a
21 claim to protect these workers. There is a financial burden incurred in pursuing this action that
22 would be unjust to place upon Plaintiffs, as the burden of enforcing workforce-wide rights is
23 disproportionately greater than that of enforcing only Plaintiffs individual claims. Additionally,
24 Plaintiffs and Class Members are low-income workers who cannot afford to spend part of their
25 wages on enforcing others' wage rights. Thus, it would be against the interests of justice to force
26 payment of attorneys' fees from Plaintiffs and Class Members' recovery in this action. Therefore,
27 attorneys' fees are appropriately sought pursuant to Code of Civil Procedure section 1021.5.

28 64. Plaintiffs, on behalf of themselves and Class Members, request restitution of

1 unreimbursed business expenses, wages, injunctive relief and other relief as described below.

2 **Eighth Cause Of Action**

3 **(Violation of the Labor Code Private Attorneys General Act of 2004,**

4 **Lab. Code §§ 2698 et seq.)**

5 **(By Plaintiff, on behalf of himself and other former and current**

6 **Employees, Against All Defendants)**

7 65. The allegation set forth in the paragraphs above are realleged and incorporated
8 herein by reference.

9 66. Plaintiff brings this cause of action pursuant to PAGA on behalf of himself and
10 other current and former aggrieved employees. Plaintiff is an "aggrieved employee" as defined in
11 Labor Code § 2699(c) and brings this cause of action on behalf of himself and other current and
12 former employees ("Plaintiffs") against Defendants for the violation of the Labor Code sections
13 alleged in this pleading and the attached PAGA Notice, which is attached as **Exhibit 1** and
14 incorporated herein by reference as if fully set forth in this pleading.

15 67. Plaintiff mailed the PAGA Notice to the Labor and Workforce Development
16 Agency (LWDA) and Division of Occupational Safety and Health (DOSH) by certified mail
17 notifying them of the specific provisions of the Labor Code alleged herein to have been violated,
18 including the facts and theories to support the alleged violations. More than 33 calendar days
19 lapsed since Plaintiff's postmarked its notice and neither LWDA nor DOSH have taken any action
20 nor given notice of its intention to take any action.

21 68. Due to the aforementioned conduct of Defendant, Plaintiffs are entitled to penalties
22 as set forth in each alleged Labor Code section that has been violated or if no penalties are
23 provided, then the default penalty set forth in Labor Code section 2699.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, plaintiff behalf of himself and the above-described Class of janitorial
26 employees including day porters, janitors and foremen and similarly situated manual labor
27 employees, request relief as follows:

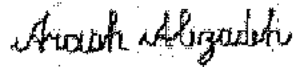
28 a. Certification of this action as a class action, pursuant to Code of Civil Procedure section

- 1 382;
- 2 b. Declaratory judgment that Defendants have knowingly and intentionally violated Labor
- 3 Code section 2802 for failure to reimburse or indemnify Plaintiff and the Class for work-
- 4 related business expenses they have incurred in carrying out their job duties and/or the
- 5 Defendants' instructions, and Business and Professions Code sections 17200 et seq., by the
- 6 conduct set forth above;
- 7 c. Declaratory judgment that Defendants' violations as described above are unlawful;
- 8 Injunctive relief requiring an equitable accounting to identify, locate and restore to all
- 9 current and former janitorial employees the reimbursement for business expenses that are
- 10 due;
- 11 d. An award of damages and restitution to be paid by Defendant, according to proof; Pre-
- 12 judgment and post-judgment interest;
- 13 e. An award of civil penalties pursuant to Labor Code sections 2802(c) and 2698 et seq.;
- 14 f. An award of reasonable attorneys' fees and costs, pursuant to Labor Code sections
- 15 2699(g)(1) and 2802(c) and other applicable law; and
- 16 g. An award of such other and further relief as this Court deems just and proper.

17

18 Dated: November 9, 2017

LAW OFFICE OF ARASH N. ALIZADEH

19 

20

21 ARASH N. ALIZADEH, attorney for plaintiff

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EXHIBIT 10

Tuesday, July 11, 2017
Stipulation for Settlement

Josue Uribe vs. Crown Building
Maintenance Company

JW Case No **A233868**

IT IS HEREBY STIPULATED by and between the parties through the respective counsel or representative of each that the above referenced case has been settled according to the terms memorialized herein below. This settlement document is intended by the parties to be binding and enforceable in court - in state court by motion pursuant to C.C.P. § 664.6 and Evidence Code § 1123, or in federal court by motion pursuant to the inherent power of the court to enforce settlement agreements and in accordance with applicable federal rules of procedure and evidence.

To establish gross settlement fund of \$370,000.00 to resolve
the litigation in its entirety; Gross settlement fund to include attorneys
fees, costs, enhancements, and claims administration and other costs.
Settlement subject to claims made prior; no reversion; Class period for
purposes of release to run from June 2011 to date of final approval.
Class to include janitors, day porters and other employees who perform
cleaning and maintenance work during the class period. General release (over)

In order to facilitate the above specified terms of settlement, the parties further agree that on or before the 26th day of July they will execute or exchange the following:

☒ Settlement/Release Agreement Prepared by _____ plaintiff _____ defendant
☐ Request for Dismissal Prepared by _____ plaintiff _____ defendant
☐ Other

The terms, conditions and content of this stipulation are the product of the counsel and not the mediator, the parties acknowledge that the mediator serves only as scribe not originator. All relevant parties must sign below. Copies are acceptable in lieu of originals.

7/11/17 Arash Alizadeh and motion for preliminary approval.
Josue Uribe
7/11/17 [Signature]

to be provided by class representative; class claims related to
include claims and causes of action related to expense reimbursement
(e.g., Labor Code section 2802) for uniforms and uniform maintenance, safety
shoes, and personal cell phone use. TT to file motion for preliminary
approval ^{and amended complaint to include cell phone claims on class and}
~~(No admission of liability by Δ.~~ ^{AA&A basis.}
This agreement subject to ~~final~~ terms agreed to by
the parties for motion for preliminary approval.

EXHIBIT 11

1 DOUGLAS J. FARMER, Cal. Bar No. 139646
douglas.farmer@ogletreedeakins.com
2 MICHAEL D. THOMAS, Cal. Bar No. 226129
michael.thomas@ogletreedeakins.com
3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4 Steuart Tower, Suite 1300
One Market Plaza
5 San Francisco, CA 94105
Telephone: 415.442.4810
6 Facsimile: 415.442.4870

7 Attorneys for Defendant
Crown Building Maintenance Co.
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12

13 JOSUE URIBE, on behalf of himself and other
current or former employees,

14 Plaintiff,

15 vs.

16 CROWN BUILDING MAINTENANCE CO.;
17 and DOES 1 through 100, inclusive,

18 Defendant.
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Case No. 30-2016-00839857-CU-OE-CXC

[Assigned for all purposes to The Honorable
Hon. Glenda Sanders, Dept. CX101]

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

Action Filed: March 9, 2016
Trial Date: None Set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action Settlement and Release ("Settlement" or "Settlement
3 Agreement") is made and entered into by and between Plaintiff Josue Uribe ("Plaintiff" or "Class
4 Representative"), as an individual and on behalf of all others similarly situated, and Defendant
5 Crown Building Maintenance Co. dba Able Building Maintenance ("Defendant" or "Able")
6 (collectively with Plaintiff, the "Parties"). Subject to the approval of the Court, the Action is hereby
7 being fully and finally compromised and, as explained below, is being settled as a Class and
8 Representative action, all pursuant to the terms and conditions set forth in this Settlement
9 Agreement. This Settlement shall be binding on Plaintiff and the class he represents, and
10 Defendant, subject to the terms and conditions hereof and the approval of the Court.

11 **THE PARTIES STIPULATE AND AGREE AS FOLLOWS:**

12 **DEFINITIONS**

13 The following terms, as used throughout this Agreement, are defined as follows:

- 14 1. "Action" means the Second Amended Complaint entitled Josue Uribe v. Crown
15 Building Maintenance Co., filed currently with the Joint Motion for Preliminary Approval,
16 previously Case No. 30-2016-00839857-CU-OE-CXC (Orange County Superior Court May 23,
17 2016).
- 18 2. "Claim Form" means the document, substantially in the form attached as **Exhibit B**,
19 that Class Members must complete and postmark or fax by the Response Deadline (as defined
20 below) to receive a proportional share of the Net Settlement Amount.
- 21 3. "Claims Administrator" means a third-party class action settlement claims
22 administrator agreed to by the Parties and approved by the Court for the purposes of administering
23 this settlement. The Parties each represent that they do not have any financial interest in the
24 Claims Administrator or otherwise have a relationship with the Claims Administrator that could
25 create a conflict of interest.
- 26 4. "Claims Administration Costs" means the costs payable from the Class Settlement
27 Amount to the Claims Administrator for administering this Settlement, including, but not limited
28 to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts

1 per Class Member, tax reporting, distributing the Class Settlement Amount, and providing
2 necessary reports and declarations, and other duties and responsibilities set forth herein to process
3 this Settlement, and as requested by the Parties. The Claims Administration Costs will be paid
4 from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount
5 represented by the Claims Administrator as being the maximum costs necessary to administer the
6 settlement. The Claims Administration Costs are currently estimated to be Fifty Six Thousand,
7 Eight Hundred Twelve Dollars and zero cents (\$56,812.00). . To the extent actual Claims
8 Administrations Costs are greater such excess amount will be deducted from the Class Settlement
9 Amount.

10 5. "Class Counsel" means the Law Office of Arash N. Alizadeh.

11 6. "Class Counsel Award" means the amounts that the Court authorizes to be paid to
12 Class Counsel as attorneys' fees and costs for Class Counsel's litigation and resolution of this
13 Action and his expenses and costs incurred in connection with the Action, paid from the Settlement
14 Amount in amount not to exceed \$80,000.00.

15 7. "Class List" means a complete list of all Class Members that Defendant will
16 diligently and in good faith compile from its records and provide to the Claims Administrator and
17 to Class Counsel within twenty-one (21) calendar days after Preliminary Approval of this
18 Settlement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and
19 will include each Class Member's full name; most recent mailing address and telephone number;
20 Social Security number; dates of employment; the respective number of Workweeks that each
21 Class Member worked during the Class Period; and any other relevant information needed to
22 calculate settlement payments.

23 8. "Class Member(s)" or "Settlement Class" means all janitorial employees including
24 day porters, janitors and foremen and similarly situated manual labor employees who were, are, or
25 will be employed by Defendant in the State of California at any time during the period from June
26 10, 2011 to the date on which the Court grants preliminary approval of the Settlement.

27 9. "Class Period" means the period from June 10, 2011 through the date on which the
28 Court grants preliminary approval of the Settlement.

1 10. "Class Representative Enhancement Payment" means the amounts to be paid to
2 Plaintiff in recognition of his effort and work in prosecuting the Action on behalf of Class
3 Members, and for his general release of claims. Subject to the Court granting final approval of this
4 Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request
5 Court approval of Class Representative Enhancement Payment in an amount not to exceed Ten
6 Thousand Dollars (\$10,000.00).

7 11. "Settlement Amount" means the maximum settlement amount of Three Hundred
8 Seventy Dollars and zero cents \$370,000.00 to be paid by Defendant in full satisfaction of all
9 claims arising from the Action and Plaintiff's Second Amended Complaint defined below, which
10 includes all Individual Settlement Payments to Participating Class Members, the Class
11 Representative Enhancement Payment to Plaintiff, PAGA payments, Claims Administration Costs
12 to the Claims Administrator, the Labor and Workforce Development Agency Payment, and the
13 Attorneys' Fees and Costs, and employer payroll taxes required by law, including the employer
14 FICA, FUTA, and SDI contributions, which shall be paid out of any unclaimed funds from the
15 Class Settlement Amount.

16 12. "Court" means the Superior Court of the State of California for the County of
17 Orange or any other court taking jurisdiction of the Action.

18 13. "Defendant" means Defendant Crown Building Maintenance Company dba Able
19 Building Maintenance and any of its former and present parents (including Able Services),
20 subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and
21 assigns, as well as all past and present officers, directors, employees, partners, shareholders and
22 agents, attorneys, insurers, and any other successors, assigns, or legal representatives, if any.

23 14. "Effective Date" means the later of: (a) if any timely objections are filed and not
24 subsequently withdrawn, the 60th day after the Court enters an order granting final approval of the
25 Joint Stipulation of Class Action Settlement and Release; (b) if any timely appeals are filed, the
26 resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the
27 Settlement; or (c) if no timely objections are filed, or if all objections are withdrawn, the date upon
28 which the Court enters an order granting final approval of the Joint Stipulation of Class Action

1 Settlement and Release.

2 15. "Individual Settlement Payment" means each Class Member's share of the Net
3 Settlement Amount, to be distributed to the Class Members who timely submit valid and timely
4 Claim Forms.

5 16. "Labor and Workforce Development Agency Payment" means the amount that the
6 Parties have agreed to pay to the Labor and Workforce Development Agency ("LWDA") in
7 connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698,
8 *et seq.*, "PAGA"). The Parties have agreed that Ten Thousand Dollars (\$10,000) of the Class
9 Settlement Amount will be allocated to the resolution of any Class Members' claims arising under
10 PAGA. Pursuant to PAGA, Seventy Five Percent (75%), or seven thousand five hundred dollars
11 and zero cents (\$7,500.00) will be paid to the representative group and Twenty Five Percent (25%)
12 of the PAGA Settlement Amount or two thousand five hundred dollars and zero cents (\$2,500.00)
13 will be paid to the California Labor and Workforce Development Agency.

14 17. "Net Settlement Amount" means the portion of the Class Settlement Amount
15 remaining after deduction of the approved Class Representative Enhancement Payment, Claims
16 Administration Costs, Labor and Workforce Development Agency Payment, and the Attorneys'
17 Fees and Costs.

18 18. "Notice of Objection" means a Class Member's valid and timely written objection
19 to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the
20 objector's full name, signature, address, and telephone number, (b) a written statement of all
21 grounds for the objection accompanied by any legal support for such objection; and (c) copies of
22 any papers, briefs, or other documents upon which the objection is based.

23 19. "Notice Packet" means the Notice of Class Action Settlement and Claim Form,
24 substantially in the forms attached as Exhibits A and B, respectively.

25 20. "Parties" means Plaintiff and Defendant collectively.

26 21. "Participating Class Members" means all Class Members who submit valid and
27 timely Claim Forms and who do not submit valid and timely Requests for Exclusion.

28 22. "Plaintiff" means Plaintiff Josue Uribe.

1 23. "Preliminary Approval" means the Court order granting preliminary approval of the
2 Settlement Agreement.

3 24. "Released Claims" means all wage and hour claims, rights, demands, liabilities and
4 causes of action of every nature and description related to the claims litigated in the Action against
5 Defendant during the Class Period, including without limitation statutory, constitutional,
6 contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated
7 damages, punitive damages, interest, restitution, equitable relief, causes of action or legal theories
8 that could have been asserted based on the same facts, or any other relief based on the following
9 categories of allegations during the Class Period: (a) all claims for unpaid minimum wages owed;
10 (b) all claims for unpaid overtime compensation; (c) all claims for meal and rest period violations;
11 (d) all claims for inaccurate rates of pay; (e) all claims for wage statement violations; (f) all claims
12 for failure to reimburse for necessary business expenses (including required safety shoes, uniforms
13 and personal cell phone use); (g) all claims asserted through the California Labor Code sections
14 2699 *et seq.* (the Private Attorneys General Act of 2004 ("PAGA")) arising out of the
15 aforementioned claims; (h) all claims asserted through the California Business & Professions Code
16 § 17200 *et seq.* arising out of the aforementioned claims and (i) Plaintiff's claim of conversion.
17 Solely with respect to the Released Claims, Class Members expressly waive any rights or benefits
18 available to them under the provisions of California Civil Code section 1542, which provides as
19 follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
21 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
22 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR. The period of
23 the Released Claims shall extend to the limits of the Class Period. The res judicata effect of the
24 Judgment will be the same as that of the Release. The definition of Released Claims shall not be
25 limited in any way by the possibility that Plaintiff or Settlement Class Members may discover new
26 facts or legal theories or legal arguments not alleged in the operative complaint but which might
27 serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of
28 relief falling within the definition of Released Claims.

1 25. "Released Parties" means Defendant and any of its former and present parents
2 (including Able Services), subsidiaries, affiliates, divisions, corporations in common control,
3 predecessors, successors, and assigns, as well as all past and present officers, directors, employees,
4 partners, shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal
5 representatives, if any.

6 26. "Request for Exclusion" means a timely letter submitted by a Class Member
7 indicating a request to be excluded from the settlement. The Request for Exclusion must: (a) be
8 signed by the Class Member; (b) contain the name, address, telephone number and the last four
9 digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state
10 that the Class Member does not wish to be included in the settlement; (d) be returned by fax or
11 mail to the Claims Administrator at the specified address and/or facsimile number; and (e) be faxed
12 or postmarked on or before the Response Deadline. The date of the fax or postmark on the return
13 mailing envelope will be the exclusive means to determine whether a Request for Exclusion has
14 been timely submitted. A Class Member who does not request exclusion from the settlement will
15 be deemed a Class Member and will be bound by all terms of the Settlement Agreement if the
16 settlement is granted final approval by the Court.

17 27. "Response Deadline" means the deadline by which Class Members must postmark
18 or fax to the Claims Administrator valid Claim Forms, Requests for Exclusion, or postmark
19 Notices of Objection to the Settlement. The Response Deadline will be sixty (60) calendar days
20 from the initial mailing of the Notice Packet by the Claims Administrator, unless the 60th day falls
21 on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next
22 day on which the U.S. Postal Service is open. The Response Deadline for Claim Forms or
23 Requests for Exclusion will be extended fifteen (15) calendar days for any Class Member who is
24 re-mailed a Notice Packet by the Claims Administrator, unless the 15th day falls on a Sunday or
25 Federal holiday, in which case the Response Deadline will be extended to the next day on which
26 the U.S. Postal Service is open. The Response Deadline may also be extended by express
27 agreement between Class Counsel and Defendant. Under no circumstances, however, will the
28 Claims Administrator have the authority to unilaterally extend the deadline for Class Members to

1 submit a Claim Form, Request for Exclusion, or objection to the settlement.

2 28. "Workweeks" means the number of weeks each Class Member was employed by
3 Defendant as non-exempt a non-exempt hourly employee at any time during the period from June
4 10, 2011 to the date on which the Court grants preliminary approval of the Settlement. Defendant
5 will determine the number of Workweeks by calculating the number of days each Class Member
6 was employed by Defendant a janitor during the period from June 10, 2011 to the date on which
7 the Court grants preliminary approval of the Settlement, dividing by seven (7), and rounding up to
8 the nearest whole number.

9 29. "Workweek Value" means the value of each compensable Workweek, as
10 determined by the formula set forth in herein.

11 RECITALS

12 30. Class Certification. The Parties stipulate and agree to the certification of this Action
13 for purposes of this Settlement only. Should the Settlement not become final and effective as
14 herein provided, class certification will be set aside (subject to further proceedings on motion of
15 any party to certify or deny certification thereafter). The Parties' willingness to stipulate to class
16 certification as part of the Settlement will have no bearing on, and will not be admissible in or
17 considered in connection with, the issue of whether a class should be certified in a non-settlement
18 context in this Action and will have no bearing on, and will not be admissible or considered in
19 connection with, the issue of whether a class should be certified in any other lawsuit.

20 31. Procedural History. On March 9, 2016, Plaintiff filed an initial complaint on behalf
21 of himself and other current and former hourly employees including janitors and day porters
22 throughout California. Plaintiff's original complaint included a claim for unreimbursed expenses
23 under Labor Code Section 2802 for his uniform and clothing, and slip-resistant shoes.

24 32. In March 2016, Defense counsel informed Plaintiff that Defendant intended to file a
25 notice of related cases because a separate action *Gama v. Crown Building Maintenance Co*, Case
26 No. RG15773582 was pending in the Alameda County Superior Court that alleged unreimbursed
27 expenses for required cell phone use on behalf of hourly employees performing janitorial work.
28 Defendant was concerned of the duplication of discovery and court time on the same subject of

1 Defendant's expense reimbursement practices.

2 33. On April 4, 2016, Plaintiff filed a Notice of Related cases. [Dkt. 10].

3 34. On May 23, 2016, Plaintiff filed his First Amended Complaint ("FAC"). Plaintiff
4 alleges in the FAC that his former employer, Defendant, failed to provide reimbursement for
5 expenses and losses for required uniform and clothing and slip-resistant shoes in violation of
6 California Labor Code Section 2802. (FAC ¶¶ 4, 5, and 29). Plaintiff further alleges that because
7 the unreimbursed expenses for his uniform and clothing, and slip-resistant shoes are considered
8 "wages" or "compensation", he is entitled to damages based on the following additional causes of
9 action: (1) failure to pay all earned wages; (2) failure to pay minimum wages; (3) failure to pay
10 overtime compensation; (4) failure to provide accurate wage statements; (5) conversion; and (6)
11 violation of Labor Code section 2698 et seq., the Private Attorneys General Act of 2004
12 ("PAGA"). (FAC ¶¶ 4, 5, 13-26 and 31-45).

13 35. In response to Plaintiff's allegations, Defendant filed a demurrer.

14 36. Defendant argued Plaintiff's generic "slip-resistant shoe" claim is preempted by
15 federal OSHA and California OSHA. Moreover, Plaintiff failed to allege facts that his generic
16 "slip-resistant shoes" require compensation under either federal OSHA or Cal OSHA because they
17 are not specialty shoes. Defendant also argued Plaintiff was not entitled to compensation for his
18 uniform because there are minimal facts regarding why his wearable items could not be washed
19 with his regular clothes or could not be exchanged for a new uniform from his employer.
20 Defendant further argued that an expense reimbursement claim is not a wage and therefore
21 Plaintiff's claims for unpaid minimum wages and overtime fail. Finally, Plaintiff's remaining
22 wage claims are derivative and therefore fail.

23 37. The Court subsequently denied Defendant's Demurrer.

24 38. The parties subsequently engaged in written discovery which included exchanging
25 records regarding Defendant's expense reimbursement practices, safety and orientation practices,
26 practices regarding safety and personnel protective equipment and documentation of Defendant's
27 payroll practices.

28 39. On September 15, 2016, Defendant took Plaintiff's deposition which confirmed

1 Defendant's position in its Demurrer. Plaintiff also testified that he could perform his job without
2 the use of a personal cell phone but on minimal and infrequent occasions he was contacted by a
3 manager on his personal cell phone for work related purposes.

4 40. Subsequently, the parties began settlement discussions.

5 41. The parties also engaged in written discovery regarding Plaintiff's potential claim of
6 expense reimbursement based on required cell phone use.

7 42. The Parties have conducted significant discovery and investigation of the facts and
8 law regarding Plaintiff amending his complaint to include a cell phone reimbursement claim. Such
9 discovery and investigation have included the exchange of hundreds of pages of cell phone records
10 including the cell phone records of Plaintiff and his supervisors; analyses by both Parties of a
11 representative sample of company issued cell phone records to identify the number of phone calls
12 made to putative class members within a three month period; the informal exchange of
13 information; discussions and meetings between representatives of the Parties; interviews of
14 potential witnesses and Class Members; analysis of relevant records and engaging an expert to
15 review cell phone records. In addition, the Parties have investigated the applicable law regarding
16 the claims and defenses to such claims, as well as the damages alleged by Plaintiff.

17 43. The conclusion of the investigation into Plaintiff's claims supported Defendant's
18 demurrer on Plaintiff's safety shoe and uniform reimbursement claims and there was no evidence a
19 cell phone is "required" to perform the duties of a janitor. Indeed, the evidence revealed that
20 Defendant does not have a phone number for more than half of the putative class members and
21 some putative class members share a cell phone.

22 44. Following Defendant's decision to file a motion for summary judgment on
23 Plaintiff's claims, the parties agreed to attend mediation.

24 45. On July 12, 2017, with the assistance of experienced mediator Alan Berkowitz, Esq.
25 of Judicate West, the Parties reached a Settlement Agreement.

26 46. Defendant also agreed to audit its supervisor use of company issued cell phones to
27 implement changes when needed. Based on Plaintiff's litigation efforts, the employer has begun
28 providing some janitors in the Los Angeles Area and in Orange County a monthly phone

1 allowance.

2 47. Benefits of Settlement to Settlement Class Members. Plaintiff has taken into
3 account the uncertainty and risk of the outcome of further litigation, and has also taken into
4 account the ability of Plaintiff and Class Members to collect on any judgment. Specifically,
5 Plaintiff has taken into account that his case has minimal settlement value and Defendant would
6 likely be successful in filing a motion for summary judgment and/or opposing class certification.
7 Plaintiff has taken into consideration that the policies and practices regarding uniform
8 compensation and cell phone use vary throughout California and is governed by policies and
9 practices narrowly tailored for each property and property owner, various collective bargaining
10 agreements and agreements with each individual property. Finally, Plaintiff has taken into
11 consideration, some of Plaintiffs' claims on behalf of the same class have already been denied
12 certification by Judge Gail Andler in Orange County Superior Court, Complex Division for lack of
13 commonality and as unmanageable. All of the aforementioned are barriers to commonality and
14 manageability. Plaintiff and Class Counsel recognize the expense and length of continued
15 proceedings necessary to litigate their disputes through trial and through any possible appeals.
16 Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a
17 settlement that confers substantial relief upon Settlement Class Members. Based on the foregoing,
18 Plaintiff and Class Counsel have determined that the Settlement set forth in this Settlement
19 Agreement is a fair, adequate and reasonable settlement, and is in the best interests of Class
20 Members.

21 48. Defendants' Reasons for Settlement. Defendant has concluded that any further
22 defense of this litigation would be protracted and expensive for all Parties because Plaintiff's
23 claims lack merit and are not subject to certification. Substantial amounts of time, energy, and
24 resources of Defendant have been consumed and, unless this Settlement is made, will continue to
25 be devoted to the defense of the claims asserted by Plaintiff and Class Members. Defendant has
26 also taken into account the risks of further litigation in reaching its decision to enter into this
27 Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by
28 Plaintiff in the Action, Defendant has, nonetheless, agreed to settle in the manner and upon the

1 terms set forth in this Agreement to put to rest the claims as set forth in the Action.

2 49. Defendant's Defenses and Denial of Wrongdoing. Defendant has claimed and
3 continues to claim that Plaintiff's claims have no merit and do not give rise to liability.

4 50. This Settlement Agreement is a compromise of disputed claims. Nothing contained
5 in this Settlement Agreement and no documents referred to herein and no action taken to carry out
6 this Agreement may be construed or used as an admission by or against Defendants as to the merits
7 or lack thereof of the claims asserted.

8 51. Maximum Amount Payable by Defendant. Under the terms of this Settlement, the
9 maximum amount payable by Defendant will not exceed the Class Settlement Amount of Three
10 Hundred Seventy Thousand Dollar and zero cents (\$370,000.00).

11 **TERMS OF AGREEMENT**

12 52. The Plaintiff, on behalf of himself and the Settlement Class, and Defendant, agree as
13 follows:

14 53. Release As To All Class Members. As of the Effective Date, in exchange for the
15 Class Settlement Amount, Plaintiff and the Settlement Class release the Released Parties from the
16 Released Claims for the Class Period. Plaintiff and the Settlement Class may hereafter discover
17 facts in addition to or different from those they now know or believe to be true with respect to the
18 subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and
19 by operation of the final judgment shall have, fully, finally, and forever settled and released any
20 and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent
21 or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity
22 now existing or coming into existence in the future, including, but not limited to, conduct that is
23 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard
24 to the subsequent discovery or existence of such different or additional facts.

25 54. Second Amended Complaint. As a condition of settlement, Plaintiff will file a
26 Second Amended Complaint ("SAC") seeking class action relief and including a claim of failure to
27 provide expense reimbursement for required personal cell phone use in violation of Labor Code
28 Section 2802, a Business and Professions Code claim, a class period from June 10, 2011 to the

1 present, a PAGA period from April 22, 2014 to the present, and conform the pleadings with the
2 scope of the Settlement and Released Claims, in the form attached hereto as **Exhibit C**. Defendant
3 will not be required to file an answer or other responsive pleading to the SAC. If, for any reason,
4 the Court does not grant final approval of the Settlement, or if the Settlement does not become final
5 and effective for any reason, then the SAC will be deemed withdrawn and the FAC will again
6 become the operative complaint without prejudice to Plaintiff's right to seek leave to file another
7 amended complaint. Defendant does not impliedly or expressly waive any arguments or defenses
8 to the SAC.

9 55. Funding of the Class Settlement Amount. Within twenty one (21) calendar days
10 after the Effective Date of the Settlement, Defendant will make a one-time deposit of all Court
11 approved and claimed amounts from the Class Settlement Amount into a Qualified Settlement
12 Fund ("QSF") to be established by the Claims Administrator. The Claims Administrator shall then
13 disburse the funds as approved per this Agreement.

14 56. Attorneys' Fees and Costs. Class Counsel will apply to the Court for an award of
15 not more than eighty thousand dollars and zero cents (\$80,000.00) or twenty-one and half (21.5)
16 percent of the Net Settlement Amount as his Fees and Cost award. Defendant agrees not to oppose
17 any such applications which are consistent with this paragraph. The amount of attorneys' fees and
18 costs shall include payment for time expended by Class Counsel up to and including the final
19 approval of the Settlement, but not any time expended on an appeal.

20 57. Class Representative Enhancement Payment. In exchange for a general release, and
21 in recognition of his effort and work in prosecuting the Action on behalf of Class Members,
22 Defendant agrees not to oppose or impede any application or motion for a Class Representative
23 Enhancement Payment up to Ten Thousand Dollars and zero cents (\$10,000.00). The Class
24 Representative Enhancement Payment will be paid from the Class Settlement Amount and will be
25 in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement. Plaintiff
26 will not be required to submit a Claim Form to receive his Individual Settlement Payment.
27 Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the payments
28 made pursuant to this paragraph and will indemnify and hold Defendant harmless from any claim

1 or liability for taxes, penalties, or interest arising as a result of the payments.

2 58. Claims Administration Costs. The Claims Administrator will be paid for the
3 reasonable costs of administration of the Settlement and distribution of payments from the Class
4 Settlement Amount, which is currently estimated to be Fifty Six Thousand, Eight Hundred Twelve
5 Dollars and zero cents (\$56,812.00). These costs, which will be paid from the Class Settlement
6 Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments,
7 the issuing of 1099 and W-2 IRS Forms, distributing the Notice Packet, calculating and distributing
8 the Class Settlement Amount, and providing necessary reports and declarations.

9 59. Labor and Workforce Development Agency Payment. Subject to Court approval,
10 the Parties agree that the amount of Ten Thousand Dollars (\$10,000.00) of the Class Settlement
11 Amount will be allocated to the resolution of any Class Members' claims arising under PAGA.
12 Pursuant to PAGA, Seventy Five Percent (75%), or Seven Thousand, Five Hundred Dollars and
13 zero cents (\$7,500.00), of the PAGA Settlement Amount will be paid to the California Labor and
14 Workforce Development Agency. Twenty Five Percent (25%), or Two Thousand Five Hundred
15 Dollars and zero cents (\$2,500.00), of the PAGA Settlement Amount will be included in the Net
16 Settlement Amount.

17 60. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
18 Individual Settlement Payments to Participating Class Members from the Settlement Class in
19 accordance with the terms of this Settlement. Plaintiff and Defendant agree that if there are any
20 unclaimed Individual Settlement Payments, the Claims Administrator will proportionately increase
21 the Individual Settlement Payment for each Participating Class Member so that the amount actually
22 distributed to Participating Class Members equals One Hundred Percent (100%) of the Net
23 Settlement Amount. No Settlement Amount will revert to Defendant.

24 61. Individual Settlement Payment Calculations. Individual Settlement Payments will
25 be calculated and apportioned from the Net Settlement Amount based on the number of
26 Workweeks a Class Member worked during the Class Period. Specific calculations of Individual
27 Settlement Payments will be made as follows:
28

- 1
- 2 a. Defendant will calculate the total number of Workweeks worked by each
- 3 Class Member ("Individual Workweeks") and the total number of
- 4 Workweeks worked by all Class Members ("Class Workweeks") during the
- 5 Class Period.
- 6
- 7 b. To determine each Class Member's Individual Settlement Payment,
- 8 the Claims Administrator will use the following formula: Individual
- 9 Settlement Payment = (Individual Workweeks ÷ Class Workweeks)
- 10 × Net Settlement Amount.
- 11
- 12 c. If there are any unclaimed Individual Settlement Payments, the
- 13 Claims Administrator will proportionately increase the
- 14 Individual Settlement Payment for each Participating Class Member
- 15 so that the amount actually distributed to Participating Class
- 16 Members equals One Hundred Percent (100%) of the Net Settlement
- 17 Amount.
- 18
- 19 d. The Individual Settlement Payment will be reduced by any required
- 20 deductions for each Participating Class Members as set forth herein,
- 21 including employee-side tax withholdings or deductions.

22 62. No Credit Toward Benefit Plans. The Individual Settlement Payments made to

23 Participating Class Members under this Settlement, as well as any other payments made pursuant

24 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to

25 which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus

26 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any

27 other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect

28 any rights, contributions, or amounts to which any Class Members may be entitled under any

benefit plans.

63. Claims Administration Process. The Parties agree to cooperate in the administration

of the settlement and to make all reasonable efforts to control and minimize the costs and expenses

incurred in administration of the Settlement.

64. Delivery of the Class List. Within twenty one (21) calendar days of Preliminary

Approval, Defendant will provide the Class List to the Claims Administrator and to Class Counsel.

65. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the

Class List from Defendant, the Claims Administrator will mail a Notice Packet to all Class

Members via regular First-Class U.S. Mail, using the most current, known mailing addresses

identified in the Class List.

1 66. Response Deadline. Response Deadline” means the deadline by which Class
2 Members must postmark or fax to the Claims Administrator valid Claim Forms, Requests for
3 Exclusion, or postmark Notices of Objection to the Settlement. The Response Deadline will be
4 sixty (60) calendar days from the initial mailing of the Notice Packet by the Claims Administrator,
5 unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will
6 be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
7 Claim Forms or Requests for Exclusion will be extended fifteen (15) calendar days for any Class
8 Member who is re-mailed a Notice Packet by the Claims Administrator, unless the 15th day falls
9 on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next
10 day on which the U.S. Postal Service is open. The Response Deadline may also be extended by
11 express agreement between Class Counsel and Defendant. Under no circumstances, however, will
12 the Claims Administrator have the authority to unilaterally extend the deadline for Class Members
13 to submit a Claim Form, Request for Exclusion, or objection to the settlement.

14 67. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
15 Packet will provide: (a) information regarding the nature of the Action; (b) a summary of the
16 Settlement’s principal terms; (c) the Settlement Class definition; (d) the total number of
17 Workweeks each respective Class Member worked for Defendant during the Class Period; (e) each
18 Class Member’s estimated Individual Settlement Payment and the formula for calculating
19 Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) instructions on
20 how to submit valid Claim Forms, Requests for Exclusion, or Notices of Objection; (h) the
21 deadlines by which the Class Member must postmark or fax Claim Forms or Requests for
22 Exclusions, or postmark Notices of Objection to the Settlement; (i) the claims to be released, as set
23 forth herein; and (j) the date for the final approval hearing.

24 68. Disputed Information on Notice Packets. Class Members will have an opportunity
25 to dispute the information provided in their Notice Packets. To the extent Class Members dispute
26 the number of Workweeks to which they have been credited or the amount of their Individual
27 Settlement Payment, Class Members may produce evidence to the Claims Administrator showing
28 that such information is inaccurate. Absent evidence rebutting Defendant’s records, Defendant’s

1 records will be presumed determinative. However, if a Class Member produces evidence to the
2 contrary, the Claims Administrator will evaluate the evidence submitted by the Class Member and
3 will make the final decision as to the number of eligible Workweeks that should be applied and/or
4 the Individual Settlement Payment to which the Class Member may be entitled. All such disputes
5 are to be resolved not later than fourteen (14) calendar days after the Response Deadline.

6 69. Claim Form Procedures (Plaintiff's Exception). To receive Individual Settlement
7 Payments, all Class Members will be required to submit a timely Claim Form by the Response
8 Deadline. However, Plaintiff is not required to submit Claim Forms to receive his Individual
9 Settlement Payment. All Claim Forms must be signed and returned to the Claims Administrator
10 via fax or first class mail postmarked by the Response Deadline. The date of the postmark or fax
11 on the return mailing envelope will be the exclusive means to determine whether a Claim Form has
12 been timely submitted. However, it is not the intention of the Parties to exclude Class Members
13 from participating in the Settlement for technical reasons that do not interfere with the orderly
14 administration of the Settlement. Therefore, the Claims Administrator will compile a list of claims
15 rejected for (1) failure to cure an unsigned Claim Form or (2) late submission of the Claim Form.
16 As to the Class Members on that rejected claims list, any Class Member who requests, in a signed
17 letter, the ability to participate in the Settlement will be included as a Participating Class Member
18 so long as that written request is received by the Effective Date.

19 70. Cure for Defective Claim Forms. If a Class Member's Claim Form is not signed or
20 lacks required information, the Class Member will be given an opportunity to cure the defect. Any
21 such Claim Form will be returned to the Class Member no later than three (3) business days after
22 receipt of the defective Claim Form with a cure letter stating that the Class Member has fifteen (15)
23 calendar days from the date of the cure letter or from the Response Deadline, whichever date is
24 later, to submit, by mail or facsimile transmission, a revised Claim Form. If the revised Claim
25 Form is not postmarked or fax stamped within that period, it shall be deemed untimely and that
26 Class Member will receive an Individual Settlement Payment only if the Parties so agree. If a
27 Class Member submits both a Claim Form and Request for Exclusion, the Class Member will be
28 given an opportunity to clarify his or her response. The Claims Administrator will send a cure letter

1 no later than three (3) business days after receiving the conflicting response stating that the Class
2 Member has fifteen (15) calendar days from the date of the cure letter or from the Response
3 Deadline, whichever date is later, to clarify his or her response. If no clarification is provided, the
4 Request for Exclusion shall be invalidated, the Class Member will be bound by the Settlement, and
5 the Class Member will receive an Individual Settlement Payment. Class Members who receive
6 Notice Packets but do not submit a valid and timely Claim Form may not receive an Individual
7 Settlement Payment; however, such persons shall nonetheless be deemed Class Members and will
8 be bound by all terms of the Settlement and any Final Judgment entered in this Action if the
9 Settlement receives final approval by the Court.

10 71. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
11 Settlement Agreement must sign and postmark or fax a written Request for Exclusion to the Claims
12 Administrator within the Response Deadline. The date of the postmark on the return mailing
13 envelope or fax receipt confirmation will be the exclusive means to determine whether a Request
14 for Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the
15 Claims Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the
16 Requests for Exclusion that were timely submitted.

17 72. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
18 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely
19 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
20 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
21 approval to the Settlement.

22 73. Objection Procedures. To object to the Settlement Agreement, a Class Member
23 must postmark a valid Notice of Objection to the Claims Administrator on or before the Response
24 Deadline. The Notice of Objection must be signed by the Class Member and contain all
25 information required by this Settlement Agreement. The postmark date will be deemed the
26 exclusive means for determining that the Notice of Objection is timely. Class Members who fail to
27 object in the specific and technical manner specified above will be deemed to have waived all
28 objections to the Settlement and will be foreclosed from making any objections and seeking any

1 adjudication or review, whether by appeal or otherwise, to the Settlement Agreement. Class
2 Members who postmark timely Notices of Objection will have a right to appear at the Final
3 Approval Hearing in order to have their objections heard by the Court. At no time will any of the
4 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
5 objections to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel
6 will not represent any Class Members with respect to any such objections to this Settlement.

7 74. Reminders. Not earlier than twenty (20) calendar days or later than thirty (30)
8 calendar days after the initial mailing, the Claims Administrator will send a Reminder Postcard to
9 all Class Members who have not returned a Claim Form or a Request for Exclusion. All Reminder
10 Postcards will include the Response Deadline, and the contact information for the Claims
11 Administrator.

12 75. Certification Reports Regarding Individual Settlement Payment Calculations. The
13 Claims Administrator will provide Defendant's counsel and Class Counsel a weekly report which
14 certifies: (a) the number of Participating Class Members from the Settlement Class who have
15 submitted valid Claim Forms; (b) the number of Class Members who have submitted valid
16 Requests for Exclusion; (c) the Net Settlement Amount claimed by Participating Class Members;
17 and (d) whether any Class Member has submitted a challenge to any information contained in their
18 Claim Form or Notice Packet. Additionally, the Claims Administrator will provide to counsel for
19 both Parties any updated reports regarding the administration of the Settlement Agreement as
20 needed or requested.

21 76. Uncashed Settlement Checks. Any checks issued by the Claims Administrator to
22 Participating Class Members will be negotiable for at least one hundred twenty (120) calendar days. Those
23 funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-
24 cashed for more than one hundred twenty (120) calendar days after issuance will be tendered to back to the
25 Claims Administrator. The Claims Administrator will proportionately increase the Individual
26 Settlement Payment for each Participating Class Member so that the amount actually distributed to
27 Participating Class Members equals One Hundred Percent (100%) of the Net Settlement Amount.

28 77. Certification of Completion. Upon completion of administration of the Settlement,

1 the Claims Administrator will provide a written declaration under oath to certify such completion
2 to the Court and counsel for all Parties.

3 78. Tax Treatment of Individual Settlement Payments. All Individual Settlement
4 Payments will be allocated as follows: one-third (1/3) of each Individual Settlement Payment will
5 be allocated as wages, one-thirds (1/3) will be allocated as penalties and one-third (1/3) will be
6 allocated as interest. The portion allocated to wages will be reported on an IRS Form W-2 and the
7 portions allocated to penalties and interest will be reported on an IRS Form-1099 by the Claims
8 Administrator.

9 79. Administration of Taxes by the Claims Administrator. The Claims Administrator
10 will be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any W-
11 2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this
12 Settlement. The Claims Administrator will also be responsible for forwarding all payroll taxes and
13 penalties to the appropriate government authorities.

14 80. Tax Liability. Defendant makes no representation as to the tax treatment or legal
15 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not
16 relying on any statement, representation, or calculation by Defendant or by the Claims
17 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that
18 they will be solely responsible for the payment of any taxes and penalties assessed on the payments
19 described herein.

20 81. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
21 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
22 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
23 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
24 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
25 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
26 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
27 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
28 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR

1 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
2 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
3 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
4 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
5 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
6 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
7 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY
8 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
9 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER
10 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
11 ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF
12 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
13 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
14 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
15 AGREEMENT.

16 82. No Prior Assignments. The Parties and their counsel represent, covenant, and
17 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
18 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
19 action, cause of action or right herein released and discharged.

20 83. Release of Additional Claims & Rights by Plaintiff. Upon the Effective Date, and
21 as a condition of receiving any portion of his Class Representative Enhancement Payment, Plaintiff
22 will agree to the additional following General Release: In consideration of Defendant's promises
23 and agreements as set forth herein, Plaintiff hereby fully releases the Released Parties from any and
24 all Released Claims and also generally releases and discharge the Released Parties from any and all
25 claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or
26 could have been asserted against the Released Parties arising out of or relating to Plaintiff's
27 employment by Defendant or termination thereof, including but not limited to claims for wages,
28 restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of

1 employment. This release specifically includes any and all claims, demands, obligations and/or
2 causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except
3 provided by the Settlement Agreement) relating to or in any way connected with the matters
4 referred to herein, whether or not known or suspected to exist, and whether or not specifically or
5 particularly described herein. Specifically, Plaintiff waives all rights and benefits afforded by
6 California Civil Code Section 1542, which provides:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
8 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
9 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
10 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

11 84. Settlement Class Size. The Class Settlement Amount was calculated based on the
12 understanding that there are approximately Nineteen Thousand and thirty eight (19,038) Class
13 Members including approximately Nine Thousand Two Hundred and Four Class Members (9,240)
14 who have provided Defendant a phone number.

15 85. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right
16 to void and withdraw from the Settlement if, at any time prior to Final Approval, two percent (2%)
17 or more of Class Members submit valid Requests for Exclusion. If the option to rescind is
18 exercised, then Defendant will be solely responsible for all Claims Administration Costs incurred
19 to the date of rescission.

20 86. Nullification of Settlement Agreement. In the event that: (a) the Court does not
21 finally approve the Settlement as provided herein; or (b) the Settlement does not become final for
22 any other reason, then this Settlement Agreement, and any documents generated to bring it into
23 effect, will be null and void, and all amounts deposited into the QSF will be returned to Defendant.
24 Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
25 likewise be treated as void from the beginning.

26 87. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
27 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
28 Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes

1 only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a
2 Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the
3 Notice Packet to be sent to all Class Members as specified herein. In conjunction with the
4 Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the
5 terms of this Settlement, and will include the proposed Notice Packet; i.e., the proposed Notice of
6 Class Action Settlement and Claim Form, attached as Exhibits A and B. Class Counsel will be
7 responsible for drafting all documents necessary to obtain preliminary approval.

8 88. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
9 deadlines to postmark Claim Forms, Requests for Exclusion, or objections to the Settlement
10 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be
11 conducted to determine the Final Approval of the Settlement Agreement along with the amounts
12 properly payable for: (a) Individual Settlement Payments; (b) the Labor and Workforce
13 Development Agency Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative
14 Enhancement Payment; and (e) all Claims Administration Costs. The Final Approval/Settlement
15 Fairness Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline.
16 Class Counsel will be responsible for drafting all documents necessary to obtain final approval.
17 Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be
18 heard at the final approval hearing.

19 89. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
20 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
21 Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing
22 jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms
23 of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as
24 may be appropriate under court rules or as set forth in this Settlement.

25 90. Destruction of Company Records. Plaintiff and Class Counsel agree to immediately
26 destroy any and all records provided to them by Defendant in this Action, including photocopies,
27 electronic copies, and all reproductions. This includes, but is not limited to copies of Defendant's
28 policies and procedures, electronic data, pay records, and time records.

1 91. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
2 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
3 herein. Any Exhibits to this Settlement are an integral part of the Settlement.

4 92. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
5 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
6 agreements may be deemed binding on the Parties.

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

10 94. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
11 and represent they are expressly authorized by the Parties whom they represent to negotiate this
12 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
13 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
14 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
15 counsel will cooperate with each other and use their best efforts to effect the implementation of the
16 Settlement. If the Parties are unable to reach agreement on the form or content of any document
17 needed to implement the Settlement, or on any supplemental provisions that may become necessary
18 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
19 such disagreement.

20 95. Binding on Successors and Assigns. This Settlement Agreement will be binding
21 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
22 defined.

23 96. California Law Governs. All terms of this Settlement Agreement and Exhibits
24 hereto will be governed by and interpreted according to the laws of the State of California.

25 97. Execution and Counterparts. This Settlement Agreement is subject only to the
26 execution of all Parties. However, the Settlement Agreement may be executed in one or more
27 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
28 of the signature page, will be deemed to be one and the same instrument provided that counsel for

1 the Parties will exchange among themselves original signed counterparts.

2 98. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
3 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
4 arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation,
5 taking into account all relevant factors, present and potential. The Parties further acknowledge that
6 they are each represented by competent counsel and that they have had an opportunity to consult
7 with their counsel regarding the fairness and reasonableness of this Settlement. In addition, the
8 Mediator may execute a declaration supporting the Settlement and the reasonableness of the
9 Settlement and the Court may, in its discretion, contact the Mediator to discuss the Settlement and
10 whether or not the Settlement is objectively fair and reasonable.

11 99. Invalidity of Any Provision. Before declaring any provision of this Settlement
12 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
13 extent possible consistent with applicable precedents so as to define all provisions of this
14 Settlement Agreement valid and enforceable.

15 100. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
16 class certification for purposes of this Settlement only; except, however, that Plaintiff or Class
17 Counsel may appeal any reduction in the Attorneys' Fees and Costs below the amount they
18 requests from the Court, and either party may appeal any court order that materially alters the
19 Settlement Agreement's terms.

20 101. Class Action Certification for Settlement Purposes Only. The Parties agree to
21 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
22 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
23 that certification for purposes of the Settlement is not an admission that class action certification is
24 proper under the standards applied to contested certification motions and that this Settlement
25 Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a
26 class action should be certified or (b) Defendant are liable to Plaintiff or any Class Member, other
27 than according to the Settlement's terms.

28 102. Captions. The captions and section numbers in this Settlement Agreement are

1 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or
2 intent of the provisions of this Settlement Agreement.

3 103. Waiver. No waiver of any condition or covenant contained in this Settlement
4 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
5 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
6 right or remedy.

7 104. Enforcement Action. In the event that one or more of the Parties institutes any legal
8 action or other proceeding against any other Party or Parties to enforce the provisions of this
9 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
10 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees
11 and costs, including expert witness fees incurred in connection with any enforcement actions.

12 105. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
13 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
14 construed more strictly against one party than another merely by virtue of the fact that it may have
15 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
16 length negotiations between the Parties, all Parties have contributed to the preparation of this
17 Settlement Agreement.

18 106. Representation By Counsel. The Parties acknowledge that they have been
19 represented by counsel throughout all negotiations that preceded the execution of this Settlement
20 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
21 counsel, and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there
22 are no liens on the Settlement Agreement.

23 107. All Terms Subject to Final Court Approval. All amounts and procedures described
24 in this Settlement Agreement herein will be subject to final Court approval.

25 108. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
26 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
27 this Settlement Agreement.

28 109. Binding Agreement. The Parties warrant that they understand and have authority to

1 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
2 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
3 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
4 under federal or state law.

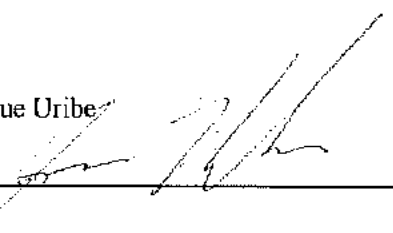
5 110. Confidentiality: The Parties and their counsel agree that they will not issue any press
6 releases, initiate any contact with the press, respond to any press inquiry, or have any communication with
7 the press about the fact, amount or terms of the Settlement. In addition, the Parties and their counsel agree
8 that they will not engage in any advertising or distribute any marketing materials relating to the Settlement
9 of this case prior to preliminary approval, including but not limited to any postings on any websites
10 maintained by Class Counsel. Any communication about the Settlement to Class Members prior to the
11 court approved mailing will be limited to a statement that a settlement has been reached and the details will
12 be communicated in a forthcoming Court-approved notice.

13 111. Plaintiff and Class Counsel represent that they are not currently aware of any unalleged
14 claims in addition to, or different from, those which are finally and forever settled and released against the
15 Released Parties by this Settlement. Plaintiff and Class Counsel further represent that they have no current
16 intention of asserting any claims against Defendant in any judicial or administrative forum. Plaintiff and
17 Class Counsel further represent that they do not currently know of or represent any persons who have
18 expressed any interest in litigation against Defendant, or that Class Counsel believes to have potential claims
19 against Defendant, excepting only the Settlement Class. The Parties further acknowledge understand and
20 agree that this representation is essential to the Agreement and that this Agreement would not have been
21 entered into were it not for this representation.
22

23 **APPROVED AND ACCEPTED**

24
25 Dated: 9-14, 2017

Josue Uribe

By 
26
27
28

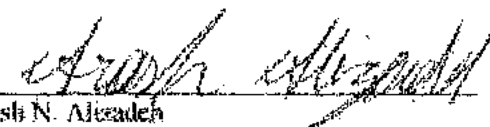
///

1 ///

2 APPROVED AS TO FORM AND
3 ATTORNEY OBLIGATIONS ONLY

4 Dated: 9/14, 2017

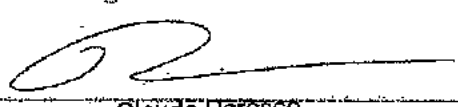
LAW OFFICE OF ARASH N. ALIZADEH

5
6 By 
7 Arash N. Alizadeh
8 Attorney for Plaintiff

9
10 APPROVED AND ACCEPTED

11
12 Dated: 9/17/17, 2017

Defendant Crown Building Maintenance Co. dba
Able Building Maintenance Co.

13
14 By 
15 Title Claude Perasso
16 Able Services
17 SVP, General Counsel

18 APPROVED AS TO FORM AND
19 ATTORNEY OBLIGATIONS ONLY

20 Dated: 11/9/, 2017

OGLFREEDAKINS NASH SMOAK &
STEWART, P.C.

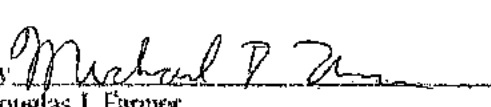
21 By 
22 Douglas J. Farmer
23 Michael D. Thomas
24 Attorneys for Defendant
25
26
27
28

EXHIBIT 12



**Estimate of Costs for Notice & Administration Services related to:
Ogletree Employment Matter**

EXPERIENCE

RG/2 Claims Administration LLC was formed by a team of attorneys and financial and accounting professionals with decades of experience handling complex claims.

SERVICE

Our team provides personalized service—and will always be there when you need us. Our professionals are highly respected in their fields. We deliver value. We have analyzed all materials and information available regarding your case and have put together the best package at the best value for your class action needs.

CUTTING EDGE TECHNOLOGY

To execute the Notice, Administration, and Distribution processes described in this proposal our team will utilize our proprietary and customizable CLEVerPay® technology to offer flexible decision making and unparalleled resource management, as well as real-time updates and reporting. CLEVerPay® is a single-source database solution that centralizes settlement administration from notification to distribution and reconciliation.

FULL LIFE CYCLE SUPPORT FOR YOUR CLASS ACTION SETTLEMENT

Whether engaged as a court-appointed settlement administrator, claims agent or disbursing agent, RG/2 Claims Administration offers a complete range of claims, settlement administration and investment management services tailored to client needs.

Project Summary:	
Class Size	20,000

Cost Estimate Summary:	
Setup Cost	\$ 3,064
Notification Cost	\$ 28,181
Processing Costs	\$ 12,758
Telephone & Email Support	\$ 2,200
Fund Distribution & Tax Reporting	\$ 8,145
Project Management	\$ 2,465
Total Estimated Cost	\$ 56,812

RG2

Claims
Administration LLC
www.rg2claims.com



**Estimate of Costs for Notice & Administration Services related to:
*Ogletree Employment Matter***

Assumptions Used in Estimate Preparation

RG/2 Claims Administration LLC's proposal relies upon the assumptions set forth herein. Any services not discussed herein but required by counsel, the Orders of the Court, or Settlement Agreement will be billed in addition to this proposal.

<u>Class Size</u>	<u>Quantity</u>	<u>Percentage</u>
Total Class Members	20,000	
<u>Notification Process</u>		
Initial Notice Mailings	20,000	100.00%
Returned Notice Mailings	2,000	10.00%
Forwarded Notice Mailings	1,600	80.00%

Telephone & Email Support
Telephone Calls Received

Mailing & Damage Data

This estimate assumes mailing list and damage data will be provided in useable electronic format. Data in useable electronic format includes mailing data, social security numbers, and finalized damage data required for settlement payment calculation. Where damage data requires analysis of multiple or duplicative records per settlement class member or requires the consolidation or accumulation of data, additional time beyond that contemplated by this estimate may be required and will be charged in addition to the estimate above by RG/2 staff at their preferred rates. RG/2 accepts data in all standard file formats including excel files (.xls), text files (.txt), comma separated value files (.csv), and access databases (.mdb). Requests to process data from proprietary databases or paper records, or other sources not identified above can be performed by RG/2 staff at their preferred rates.

Notice Packages

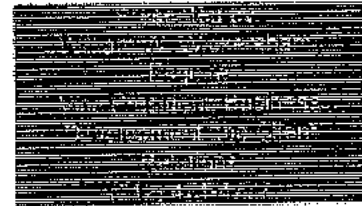
Assumes 5-page notice, 1-page claim form, and envelope.

Distribution

This proposal assumes a single distribution.

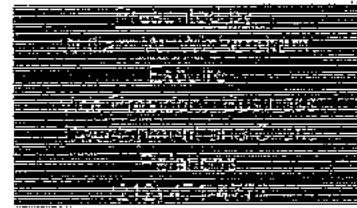
Publication Notice

This Estimate does not include publication of Notice in any periodical or magazine.



**Estimate of Costs for Notice & Administration Services related to:
Ogletree Employment Matter**

	<u>Quantity</u> <u>(hours/pieces)</u>	<u>Amount</u>
Design & Development		
<u>Start Up</u> - Development of Case-Specific Notice and Administration Plan	7 \$	1,631
Case Intake including Claim Form Design		
Review Notice, Design and Typeset Forms	5 \$	833
Data Cleanup and computation of payments	3 \$	600
Spanish Translation		NA
Subtotal: Setup Cost		\$ 3,064
CAFA Notice		NA
Issue Notice and CD of Relevant Documents via Federal Express		
Claimant Identification & Notification		
Print and Mail Notice & Envelope	20,000 \$	8,300
Postage	20,000 \$	8,400
Notice Follow Up		
Returned Notices - Process Mail & Update Database	2,000 \$	800
Locate Missing Class Members (Locator Services)/ Troubleshoot	2,000 \$	1,900
Re-Mail Notices	1,600 \$	2,000
Postage	1,600 \$	784
Issue Reminder Postcards	17,900 \$	1,343
Postage	17,900 \$	4,654
Subtotal: Notification Cost		\$ 28,181
Claim Form Processing		
Input Opt-Outs into Proprietary Database	10 \$	38
Claim Form Processing	3,000 \$	10,500
Business Reply Postage	3,000 \$	1,470
Issue deficiency letters including postage	150 \$	375
Process responses to deficiency letters	150 \$	375
Subtotal: Processing Cost		\$ 12,758



**Estimate of Costs for Notice & Administration Services related to:
Ogletree Employment Matter**

	<u>Quantity</u> <u>(hours/pieces)</u>	<u>Amount</u>
Telephonic Database Support		
Telephone Calls		
Live Phone Support/ Call Management (months)	6 \$	1,500
Emails	200 \$	700
Subtotal: Telephone and Email Support		\$ 2,200
Distribution		
Print and Mail Checks including W-2s and 1099s	3,000 \$	3,600
Postage	3,000 \$	1,470
Report and Remit Payroll taxes (# of States)	1 \$	250
Bank Fees	6 \$	1,500
QSF Tax Return Prep & Filing (1 year @ 5 hours per year)	5 \$	1,025
Employment Tax Filings and Communications (# of Filings)	1 \$	300
Subtotal: Fund Distribution & Tax Preparation		\$ 8,145
Case Management, Data Management, Data Warehousing, Technical Support and Reporting to Counsel and the Court.		\$ 2,465
Subtotal: Project Management		\$ 2,465
Estimated Notice and Administration Costs and Expenses		\$ 56,812



Estimate of Costs for Notice & Administration Services related to: *Ogletree Employment Matter*

Terms and Conditions

All notice and claims administration services to be provided by RG/2 Claims Administration LLC ("RG/2 Claims") to Client shall be subject to the following terms and conditions:

1. Subject to the terms hereof, RG/2 Claims agrees to provide the Client with the notice and/or claims administration services ("Notice/Claims Services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. Any services not described herein but required by counsel, the Orders of the Court, or Settlement Agreement will be billed in addition to this proposal.
2. Charges to the Client for Notice/Claims Services shall be on a time and materials basis at our preferred regular rates, which are updated on a regular basis. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to RG/2 Claims and subject to the assumptions set forth above. Actual fees charged by RG/2 Claims to Client may be greater or less than such estimate, and Client shall be responsible for the timely payment of all such charges and expenses.
3. RG/2 Claims does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by RG/2 Claims in the ordinary course of business in the performance of this Agreement.
4. To the extent performance by RG/2 Claims of any of its obligations hereunder is substantially prevented by reason of Force Majeure, any act of God, or by reason of any other matter beyond RG/2 Claims' reasonable control, then such performance shall be excused and this Agreement, at RG/2 Claims' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
5. The terms of this agreement will remain in effect until completion of the Notice/Claims Services, unless earlier terminated in accordance with Section 7 hereof.
6. Unless directed otherwise in writing by Client, RG/2 Claims will retain and destroy all records including documents, reports, electronics record, and other materials in accordance with its Record Retention and Destruction Policy.
7. The Notice/Claims Services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days prior written notice to RG/2 Claims. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. RG/2 Claims may terminate this Agreement (i) with 10 calendar days prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months prior written notice to the Client. In the event Client terminates this agreement, RG/2 Claims shall have no obligation to release or provide any data, report, or other information relating to the applicable case until Clients' payment obligation for RG/2 Claims services has been satisfied in full.
8. Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of RG/2 Claims or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.
9. No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.
10. All accrued payment obligations hereunder, any remedies for breach of this Agreement, this Section and Section 3 regarding rights in data will survive any expiration or termination of this Agreement.
11. The retention or appointment of RG/2 Claims to perform Notice/Claims Services constitutes the Client's agreement to be bound by these Terms and Conditions for the applicable matter.
12. These Terms and Conditions and Proposal provided to Client to which these Terms and Conditions are attached shall constitute the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No addition to, waiver, or modification of any provision of these Terms and Conditions shall be binding unless in writing and signed by a duly authorized representative of RG/2 Claims and Client.

EXHIBIT 13



868 Polson Street, San Francisco, CA 94107 / TEL 415 681-6070

New Hire Information Sheet

ID Number

206005

Have you ever worked at any of the Able companies?

Yes

☒ No

If yes: Company(s)

Hire Date(s)

Separation Date(s)

Personal Information - To be completed by New Hire - Please Print

Legal Name Edgar E.

As printed on Social Security Card (Last)

Address 288 Main St.

Apt #

20 City Chula Vista

State

CA

Zip

91911

Home Phone # ()

Gender

☐ Female

☒ Male

Date of Birth

09 / 08 / 1995 (month/day/year)

Social Security #

[REDACTED]

Emergency Contacts

Name Karyna Vork

Phone 760-936-5094

Relationship Sister

Name

Phone

Relationship

Job Information - To be completed by Supervisor

Union Membership

☐ Union

Local

Seniority Date

☒ Non-Union

Employment

☐ Full Time

☒ Part Time

☐ Permanent

☒ Temporary

Payroll

☒ Hourly

☐ Salary

☐ Weekly

☐ Bi-Weekly

☐ Semi-Monthly

Benefit

☐ Benefit

☐ No Benefit

Hire Date 6 / 11 / 15 (month/day/year)

Department/Job # STAFF

Employee Title ROVER / JANITOR

Site name and Building Location ROVER / JANITOR

Supervisor Name and Contact Number Ashley Gomez

Hourly Rate \$ 10.00

Salary Yearly Rate (if applicable) \$

New Hire Signature

[Signature]

Date

6 / 16 / 15

Supervisor Signature

[Signature]

Date

6 / 16 / 15



888 Folsom Street, San Francisco, CA 94107 / T 415-881-8070

New Hire Information Sheet

ID Number

2010310

Have you ever worked at any of the Able companies?

Yes

No

If yes: Company(s) _____ Hire Date(s) _____ Separation Date(s) _____

Personal Information - To be completed by New Hire - Please Print

Legal Name Arzola Hesenia

As printed on Social Security Card (Last) (First) (M)

Address 820 Sycamore Ave Apt # 256 City Vista

State Ca. Zip 92081 Home Phone # () - -

Gender ☒ Female ☐ Male Date of Birth 06 / 08 / 1966 (month/day/year)

Social Security # [REDACTED]

Emergency Contacts

Name Edwin A. Phone 660/643 7695 Relationship Hijo / son

Name Luz M. Lopez Phone 660/477 3836 Relationship Hija / daughter

Job Information - To be completed by Supervisor

Union Membership

☐ Union

Local _____

Seniority Date _____

☒ Non-Union

Employment

☐ Full Time

☒ Part Time

☐ Permanent

☒ Temporary

Payroll

☒ Hourly

☐ Salary

☐ Weekly

☐ Bi-Weekly

☒ Semi-Monthly

Benefit

☐ Benefit

☒ No Benefit

Hire Date 10 / 9 / 15 (month/day/year)

Department/Job # 860001

Employee Title JANITOR / REVER

Site name and Building Location Juanita / Rover

Supervisor Name and Contact Number Ashley Gomez 1888/210-0541

Hourly Rate \$ 9.50

Salary Yearly Rate (If applicable) \$ _____

New Hire Signature

Hesenia Arzola

Date

10.9.15

Supervisor Signature

Ashley Gomez

Date

11.0.9.15



558 Folsom Street, San Francisco, CA 94107 / T 415-4 8070

New Hire Information Sheet

ID Number _____

Have you ever worked at any of the Able companies?

Yes

☒ No

If yes: Company(s) _____ Hire Date(s) _____ Separation Date(s) _____

Personal Information - To be completed by New Hire - Please Print

Legal Name Velazquez Zulma
As printed on Social Security Card (Last) (First) (MI)
Address 1621 S Diamond St Apt. # _____ City Santa Ana
State CA Zip 92704 Home Phone # () _____
Gender ☒ Female ☐ Male Date of Birth 09/25/1972 (month/day/year)
Social Security # [REDACTED]

Emergency Contacts

Name Diana Velazquez Phone (714) 414-5009 Relationship Daughter
Name Irma Orozco Phone (714) 417-5908 Relationship Mother

Job Information - To be completed by Supervisor

Union Membership

☒ Union

Local _____

Seniority Date 6-1-08

☐ Non-Union

Employment

☒ Full Time

☐ Part Time

☒ Permanent

☐ Temporary

Payroll

☒ Hourly

☐ Salary

☐ Weekly

☐ Bi-Weekly

☒ Semi-Monthly

Benefit

☒ Benefit

☐ No Benefit

Hire Date 11/15/15 (month/day/year)

Department/Job # 886005

Employee Title Janitor

Site name and Building Location 500-600 City Parkway

Supervisor Name and Contact Number Manuel Alvarez

Hourly Rate \$ 16.95

Salary Yearly Rate (If applicable) \$ _____

New Hire Signature Zulma Velazquez

Date 11/15/15

Supervisor Signature Manuel Alvarez

Date 11/16/15

Exhibit M

EXHIBIT 14

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

SAN FRANCISCO MAINTENANCE CONTRACTORS ASSOCIATION

("Employer")

AND

**SEIU LOCAL #87,
SERVICE EMPLOYEES INTERNATIONAL UNION**

("Union")



**NORTHERN CALIFORNIA
MAINTENANCE
CONTRACTORS
AGREEMENT**

with

**SERVICE EMPLOYEES
INTERNATIONAL UNION
UNITED SERVICE WORKERS WEST**

Bay Area

**Santa Clara, San
Mateo, Alameda and
Contra Costa Counties**

Sacramento Area

**Sacramento, Yolo and
Placer Counties**

May 1, 2012 through April 30, 2016



PACIFIC PLAZA

Specifications for Janitorial Contract Services

TABLE OF CONTENTS

SUPPLIES AND SERVICES	Pg.2
SCOPE OF WORK	Pg.3
1. General Conditions	Pg.3
2. Security Consideration	Pg.3
3. Safety	Pg.4
4. Staffing	Pg.5
5. Equipment and Supplies	Pg.7
6. Quality Control	Pg.9
7. Performance Standards	Pg.9
8. Key Control	Pg.11
9. Trash Removal	Pg.11
10. Storm Damage	Pg.11
11. Tenant Property	Pg.12
12. Dress Code	Pg.12
13. Smoking/Alcohol/Drug Use	Pg.12
14. Breaks	Pg.12
15. Recycling/Waste Management/ LEED-BB Certification Programs	Pg.12
16. Ground Floor Tenant Space	Pg.13
17. Vacant Space/Initial Cleaning	Pg.13
18. Contractor Billing	Pg.13
19. Records/Right to Audit	Pg.13
20. Exclusions and Optional Services	Pg.13
21. Miscellaneous	Pg.13
22. Insurance Requirements	Pg.14
23. Client Service Agreement/ Required Documents	Pg.15
24. Task Schedule/ Detailed Cleaning Specifications	Pg.16
Exhibit A - CBBB Green Cleaning Policy	Attached

The Supervisor shall remain on-site until all nightly work is completed. In addition, the Account Manager and supervisor will be responsible for ensuring compliance with the following activities and requirements:

- a. Report to the Building Management office prior to the commencement of each nightly shift to check the Log Book and communicate with Manager on any issues related to the tenants, building, security or janitorial service;
 - b. Oversee the security sign-in and out process and distribute keys as required;
 - c. Secure all entrances/ exits to the premises and tenant suites in accordance with property security guidelines;
 - d. Perform regular quality assurance inspections during nightly services;
 - e. Remain available during regular operating hours of the facilities to investigate and respond to tenant complaints of any nature relating to activities of the cleaning staff;
 - f. Meet with Building Management representatives at regular, pre-determined intervals to conduct inspections and evaluate service, review inventories, budgets, cost efficiencies, billings, labor costs and quality controls;
 - g. Fulfill all reporting requirements of Manager;
 - h. Furnish Manager with a weekly report of all complaints and service requests submitted by Manager, along with the action taken;
 - i. Furnish Manager with a written report indicating the dates that periodic services are to be scheduled and subsequent reporting upon completion;
 - j. Retain, at all times, a current copy of the most recent property's emergency telephone contact list;
 - k. Provide emergency, fire and disaster training/ instruction to all cleaning personnel, in accordance with Security and Building Management requirements;
 - l. Comply with and assist the property security staff in enforcing the building rules, regulations and security plan as applicable to the cleaning staff;
 - m. Inspect all service equipment and implements for optimum performance and safety;
 - n. Report all maintenance and repair items to Security Personnel and Manager;
 - o. Immediately communicate any accident, damage, or emergency situation to Security Personnel and Manager;
- a. Ensure that all contractor personnel comply with the following general property guidelines:
 - * The professional conduct of service personnel is mandatory. Recklessness will not be tolerated.
 - * Contractor's employees are not permitted to make or receive telephone calls during the work shift.
 - * Report evidence or knowledge of any security breach to Security Personnel and Manager.
 - * Report maintenance and repair items on a nightly basis.
 - * Immediately report evidence or knowledge of any damage, breakage or building emergency (i.e., plumbing, electrical, fire, safety hazard, etc.) to Security Personnel and Manager.
 - * Immediately submit all "Lost and Found" items to Building Security.
 - * Only the assigned personnel shall have access to tenant suites. Upon entering, cleaning personnel shall immediately secure and lock all entry doors. Cleaning personnel are prohibited from allowing access to tenant offices.
 - * Contractor will use only lights required in the performance of its duties and will assist the property in its efforts to minimize energy consumption. At the conclusion of nightly services in office areas, all lights will be turned off. All entry doors will be secured and locked.

EXHIBIT A

Specifications for Janitorial Contract Services

TABLE OF CONTENTS

SUMMARY AND SERVICES	Page 2
SCOPE OF WORK	Page 3
1. General Conditions	Page 3
2. Security Considerations	Page 3
3. Safety	Page 4
4. Staffing	Page 5
5. Equipment and Supplies	Page 7
6. Quality Control	Page 9
7. Performance Standards	Page 10
8. Key Control	Page 11
9. Trash Removal	Page 11
10. Patient Property	Page 12
11. Smoking/ Alcohol/ Drug Use	Page 12
12. Dress Code	Page 12
13. Breaks	Page 13
14. Recycling/ Empty Trashcans/ Green Cleaning Program	Page 13
15. Vapors/ Sprays/ Filled Cleaners	Page 13
16. Reports/ Night to Audit	Page 13
17. Reservations and Additional Services	Page 13
18. Contractor Policies	Page 13
19. Miscellaneous	Page 14
20. Insurance Requirements	Page 14
21. Task Schedule/ Detailed Cleaning Specifications	Page 15
A. Exterior Building Entrance Areas and Walkways	Page 15
B. Main Building Lobby, Common Areas and Corridors	Page 15
C. Elevators	Page 16
D. Stairwells	Page 17
E. Restrooms	Page 18
F. Women's Area - Offices	Page 19
G. Women's Area - Examination and Break Rooms	Page 20
H. Janitorial Storage/ Janitorial Closets	Page 21
I. Trash Enclosures/ Storage Area/ Loading Dock	Page 22
J. Day Porter Services	Page 22

The Supervisor shall remain on-site until all nightly work is completed. In addition, the Account Manager and supervisor will be responsible for ensuring compliance with the following policies and requirements:

- a. Oversee the security sign-in and out process and the shift change as required;
- b. Handle all unsecured calls to the premises and third parties in accordance with property security guidelines;
- c. Perform regular quality assurance inspections during nightly services;
- d. Reports available during regular operating hours of the facilities to investigate and respond to tenant complaints or requests relating to activities of the cleaning staff;
- e. Meet with Building Management representatives at regular pre-defined intervals to discuss expectations and service, review inventories, budgets, cost effectiveness, billings, labor costs and quality controls;
- f. Submit all reporting requirements of Management;
- g. Notify Manager with a weekly report of all complaints and employee requests submitted by Management along with the follow-up;
- h. Provide Manager with a weekly report detailing the dates that periods previous are to be scheduled and subsequent reporting requirements;
- i. Retain, at all times, a current copy of the most recent property's emergency (telephone contact list);
- j. Provide emergency, fire and disaster training/instruction to all cleaning personnel, in accordance with Security and Building Management requirements;
- k. Comply with and audit the property security staff in enforcing the building rules, regulations and security plan as applicable to the cleaning staff;
- l. Inspect all service equipment and implement any operational performance and safety;
- m. Report all maintenance and repair issues to Security Personnel and Manager;
- n. Immediately communicate any accident, damage, or emergency situation to Security Personnel and Manager;
- o. Ensure that all contractor personnel comply with the following general property guidelines:
 - a. The professional conduct of service personnel is mandatory. Profanity will not be tolerated.
 - b. Contractor's employees are not permitted to smoke or use tobacco products while on the work site.
 - c. Report evidence of knowledge of any security breach to Security Personnel and Manager.
 - d. Report all damages and repairs items on nightly basis.
 - e. Immediately report evidence of knowledge of any damage, breakage or building emergency (i.e., plumbing, electrical, fire, safety hazard, etc.) to Security Personnel and Manager.
 - f. Immediately submit all "Lost and Found" items to Building Security.
 - g. Only the assigned personnel shall have access to tenant areas. Upon entering, cleaning personnel shall immediately secure and lock all entry doors. Cleaning personnel are prohibited from allowing access to tenant offices.
 - h. Contractor will use only lifts as required in the performance of his duties and will hand the property to the extent to minimize property interruption. At the conclusion of nightly services, all lifts will be moved off site. All entry doors will be secured and locked.

Passenger elevators will not be locked off or held on any given floor to remove trash or maintenance equipment. Only designated service elevators shall be used to remove/ dispose trash to the designated area. Access to elevators, exits, corridors and egresses shall not be blocked at any time.

As a security measure, Contractor shall establish and actively implement a separation of responsibilities relating to the removal of trash from the property. Such measures will be proactive in preventing theft of tenant property, and will be approved by Management.

Removal of toxic/ hazardous materials and components shall be performed by Contractor at Contractor's expense in accordance with current City, State and Federal regulations. No such materials shall be disposed of in the property's refuse containers or sanitary sewer systems. All Contractor employees shall not knowingly place prohibited or hazardous items in the building's dumpster. Prohibited or hazardous items include, but are not limited to, paint, solvents or chemicals of any kind, refrigerants, computer monitors or any large equipment or machinery. Contractor will segregate and label these materials in the building's dumpster accordingly.

10. TENANT PROPERTY

Service personnel will not use or damage tenant property, including computer terminals, office equipment and personal effects under any circumstances. Breaks are not permitted in tenant areas.

No collecting or recycling calls are authorized at any time. Telephone calls are to be coordinated with the Supervisor. Tenant phones shall not be used for any emergency requiring 911 assistance is restricted.

11. SMOKING/ ALCOHOL/ DRUG USE

Contractor's personnel shall not be permitted to work while under the influence of alcohol or drugs of any kind. Smoking while on the premises is not allowed.

12. DRESS CODE

Contractor will provide its employees uniforms and identification, satisfactory to Management. In order to assure the professional appearance of the cleaning staff, Contractor will supply each night cleaner with a minimum of three (3) open-toed shoes or sneakers.

Contractor's personnel shall adhere to the following dress code regulations:

- " All personnel must dress neatly and be well-groomed.
- " All cleaning personnel shall be outfitted with proper identification, satisfactory to Management.
- " Hair or eyes are not permitted. Eyeglasses must be approved by Management.
- " Uniforms will be clean and free of wrinkles. Pants/shirts must be in good condition, free of holes/ tears.
- " Shoes are to be worn at all times, and be appropriate for the type of work to be performed by Contractor's employees. High heels, platform, or open-toed shoes are not permitted.
- " Hair must be clean and neat. Long hair must be pulled back and away from face and secured neatly.
- " Jewelry, piercings and tattoos shall be kept in a minimum.
- " Personal cell phones may not be used except during meal breaks or an emergency.
- " Items such as I-Pods, MP3 players or other music devices may not be used except during meal breaks.

EXHIBIT A

Lake Merritt Plaza & 1956 Webster Street

Specifications for Janitorial Contract Services

TABLE OF CONTENTS

SUPPLIES AND SERVICES	Pg 2
SCOPE OF WORK	Pg 3
1. General Conditions	Pg 3
2. Security Consideration	Pg 3
3. Safety	Pg 4
4. Staffing	Pg 4
5. Equipment and Supplies	Pg 7
6. Quality Control	Pg 9
7. Performance Standards	Pg 9
8. Key Control	Pg 11
9. Noise Restriction	Pg 11
10. Tenant Property	Pg 11
11. Smoking, Alcohol/Drug Use	Pg 11
12. Dress Code	Pg 12
13. Breaks	Pg 12
14. Recycling/ Energy Management/ Green Cleaning Practices	Pg 12
15. Vacant Space/ Initial Cleaning	Pg 12
16. Records/ Right to Audit	Pg 13
17. Estimates and Optional Services	Pg 13
18. Competitive Bidding	Pg 13
19. Miscellaneous	Pg 13
20. Immediate Response/Callouts	Pg 13
21. Task Schedule/ Detailed Cleaning Specifications	Pg 15
A. Exterior Building Entrances Areas and Walkways	Pg 15
B. Main Building Entrances, Entrances and Common Corridors	Pg 15
C. Elevators	Pg 17
D. Mailroom	Pg 18
E. Stairwells	Pg 18
F. Restrooms	Pg 19
G. Tenant Areas - Offices	Pg 20
H. Tenant Areas - Kitchens and Break Rooms	Pg 22
I. Service Corridors, Basement Corridors, Stairwells and Similar Closets	Pg 23
J. Trash Enclosures/ Service Areas/ Loading Dock	Pg 23
K. Day Locker Entrance	Pg 24

The Supervisor shall remain on-site until all nightly work is completed. In addition, the Account Manager and supervisor will be responsible for ensuring compliance with the following activities and requirements:

- a. Oversee the security sign-in and out process and distribute keys as required;
- b. Secure all entrance/ exits to the premises and tenant suites in accordance with property security guidelines;
- c. Perform regular quality assurance inspections during nightly services;
- d. Remain available during regular operating hours of the facilities to investigate and respond to tenant complaints of any nature relating to activities of the cleaning staff;
- e. Meet with Building Management representatives at regular, pre-determined intervals to conduct inspections and evaluate service, review inventories, budgets, cost efficiencies, billings, labor costs and quality controls;
- f. Fulfill all reporting requirements of Manager;
- g. Furnish Manager with a weekly report of all complaints and service requests submitted by Manager, along with the action taken;
- h. Furnish Manager with a written report detailing the dates that periodic services are to be scheduled and subsequent reporting upon completion;
- i. Retain, at all times, a current copy of the most recent property's emergency telephone contact list;
- j. Provide emergency, fire and disaster training/ instruction to all cleaning personnel, in accordance with Security and Building Management requirements;
- k. Comply with and assist the property security staff in enforcing the building rules, regulations and security plan as applicable to the cleaning staff;
- l. Inspect all service equipment and implements for optimum performance and safety;
- m. Report all maintenance and repair items to Security Personnel and Manager;
- n. Immediately notify Manager of any accident, damage, or emergency situation to Security Personnel and Manager;
- o. Ensure that all contractor personnel comply with the following general property guidelines:
 - * The professional conduct of service personnel is mandatory. Profanity will not be tolerated.
 - * Contractor's employees are not permitted to make or receive telephone calls during the work shift.
 - * Report evidence or knowledge of any security breach to Security Personnel and Manager.
 - * Report maintenance and repair items on a nightly basis.
 - * Immediately report evidence or knowledge of any damage, breakage or building emergency (i.e., plumbing, electrical, fire, safety hazard, etc.) to Security Personnel and Manager.
 - * Immediately submit all "Lost and Found" items to Building Security.
 - * Only the assigned personnel shall have access to tenant suites. Upon entering, cleaning personnel shall immediately accept and lock all entry doors. Cleaning personnel are prohibited from allowing access to tenant offices.
 - * Contractor will use only lights required in the performance of its duties and will assist the property in its efforts to minimize energy consumption. At the conclusion of nightly services in office areas, all lights will be turned off. All entry doors will be secured and locked.

BISHOP RANCH

Specifications for Janitorial Contract Services

TABLE OF CONTENTS

INTERPRETATION	Pg 2
SUPPLIES AND SERVICES	Pg 2
SCOPE OF WORK	Pg 3
1. General Conditions	Pg 3
2. Security Consideration	Pg 3
3. Safety	Pg 4
4. Staffing	Pg 5
5. Equipment and Supplies	Pg 7
6. Quality Control	Pg 9
7. Performance Standards	Pg 10
8. Key Control	Pg 11
9. Trash Removal	Pg 12
10. Tenant Property	Pg 12
11. Dress Code	Pg 12
12. Smoking/ Alcohol/ Drug Use	Pg 13
13. Breaks	Pg 13
14. Customer Satisfaction Programs	Pg 13
15. Vacant Space/ Initial Cleaning Services	Pg 14
16. Evaluations and Optional Services	Pg 14
17. Records/ Night in Audit	Pg 14
18. Contractor Billing	Pg 14
19. Damages	Pg 14
20. Miscellaneous	Pg 15
21. Insurance Requirements	Pg 15
22. Task Schedule/ Detailed Cleaning Specifications	Pg 16
A. Park-Wide Exterior Signage & Amenities	Pg 16
B. Building Exterior/ Seating Areas/ Walkways	Pg 16
C. Main Lobby/ Corridor/ Conference Rooms	Pg 17
D. Elevators	Pg 18
E. Stairwells	Pg 18
F. Restrooms/ Shower Rooms	Pg 19
G. Tenant Areas - Office Areas	Pg 21
H. Tenant Areas - Kitchens and Break Rooms	Pg 22
I. Vacant Space	Pg 23
J. Bishop Ranch Cafeteria/ Kitchens	Pg 24
K. Store Rooms, Janitor Closets & Break Rooms	Pg 24
L. Parking Garages	Pg 25
M. Hervey Center/ Loading Dock	Pg 25
N. Dry Porter Services	Pg 26

All liquid chemicals must be properly labeled and stored in the janitor closets and supply room. A locked container that dispenses the specified measurement of dilution will be used for concentrated chemicals. Contractor will store a limited amount of chemicals in each janitor closet (not to exceed a one-week supply) and each product will not be stored above eye level. The janitorial storeroom will be used to store extra chemicals and only authorized employees will have access to this area.

Pledge lines, restroom paper products, hand soaps, air fresheners and auxiliary supplies will be supplied by Contractor, at Owner's expense. Owner, at any time, will have the right to purchase these supplies directly through a third party. Contractor will receive and store all such supplies delivered to the property and maintain an ongoing inventory list of supplies on hand. This inventory list shall be posted in each of the supply rooms and updated semi-monthly. Contractor will maintain an adequate amount of supplies at all times, ensuring that re-orders are placed in a timely manner.

Only supplies used in the delivery of services hereunder will be placed in the janitor closets and storeroom. Supplies for above-standard tenant use will be stored in the appropriate tenant space. Under no circumstances will supplies furnished by Owner be used to service, stock or supply tenant space that is outside the scope of these specifications. Supplies furnished by Owner are the sole property of Bishop Ranch.

Contractor, at its expense, shall be responsible for stocking of carbon/napkin dispensers. Collection monies shall remain the property of Contractor. Contractor will notify Owner if equipment is not operating properly.

Vehicles -- Contractor will supply a sufficient number of vehicles to support the day and evening cleaning operations in accordance with these specifications. Contractor will comply, at its expense, with all regulations, fees, taxes, registration and insurance costs related to the operation of vehicles supplied to the Bishop Ranch. Contractor will ensure that all employees assigned to the property are properly licensed and fully covered by Contractor's automobile insurance policy.

Mobile Communication Devices -- Contractor will provide all communication devices deemed necessary by Contractor and Owner to adequately support the activities and/or supervision of Contractor's employees. Contractor will provide, at its sole cost and expense, all communication devices deemed necessary by Contractor to adequately support the activities and/or supervision of Contractor's employees. Contractor will supply recent management, supervisory and other key personnel with a smart phone that is compatible with Owner's maintenance and management system, Angus Anywhere.

Uniforms -- Contractor's personnel shall be properly uniformed, as satisfactory to Owner, and display identification of the individual and Contractor at all times. Contractor will issue photo identification that exhibits the property name, contractor's name, employee name, identification and assigned work area. Under no circumstances will service employees be permitted to report to work at the property without a Contractor issued identification badge.

Owner shall have the right to select and/or approve uniforms worn by personnel while working on the premises. The day staff will adhere to a strict policy concerning personal appearance and grooming. Day porter and night staff uniforms will include Owner-approved skirts detailed with the property logo and slacks. The employee will be responsible for providing a black belt and black closed-toed shoes.

Contractor shall ensure adequate controls are in place to maintain a neat, orderly and professional appearance of all cleaning personnel while on the premises. Such controls will include a sufficient quantity of uniforms distributed to each worker (3 uniform sets each). Contractor, at its expense, will provide weekly laundry services for the care and maintenance of day staff uniforms.

Storage -- Owner will provide secured area(s) on the premises for storage of contractor's cleaning materials, chemicals and equipment. Storage of supplies, chemicals, products and equipment must meet all environmental and safety guidelines. Contractor shall maintain all such areas in a clean, orderly, and sanitary condition at all times.

No materials are to be stored in electrical, telephone, mechanical rooms, tenant suites or vacant space without Owner approval. Contractor is prohibited from using building property (i.e., ladders, carts, etc.) without the consent of Owner.

6. QUALITY CONTROL

Contractor shall designate an Account Manager to oversee the cleaning program at Bishop Ranch. In addition to Contractor's regular quality control inspections, the Account Manager shall accompany a representative of Building Management on a weekly inspection of the premises to monitor, maintain, or oversee improvement to Contractor's

Contractor's employees will return all building keys to Supervisor prior to break and upon leaving the premises. If keys are not returned at the end of each shift, Contractor will take all necessary actions to expedite their retrieval. The keys must be turned in before 8:00 a.m. of the following morning. Contractor will immediately notify Owner and Building Security if the event keys or access cards are lost, stolen or unaccounted for.

Contractor will be financially responsible for the immediate re-keying of any suite, floor, building or other locked area of the premises for which Contractor has been issued keys and failed to return at the conclusion of night shift services. Re-keying shall be in accordance with Owner's specifications and will include the replacement of any suite, building master, or other entry keys that have been provisionally issued by Owner. Contractor accepts full liability for any additional loss, cost or expenses that Owner may incur due to the loss of any key(s) under Contractor's control.

9. TRASH REMOVAL

Contractor's employees will not remove or relocate any papers or materials from tenant furnishings. Contractor will not remove any items that are not properly placed in designated trash receptacles, unless clearly marked as "Trash" or "Banned". Prior to removal, trash will be properly contained and secured in order to protect against spillage or staining of carpets and floors. Contractor will be held solely responsible for any and all damages resulting from its failure to adhere to these policies.

Contractor's employees will keep recyclables separate from non-recyclable trash. Trash will be removed from the building, organized and enclosed off prior to pick up and delivery to the Service Center. Only designated trash containers will be used for the disposal of trash. Contractor will work with the recycling company to ensure the proper collection, segregation and storage of recyclable materials on site.

All spills and debris are to be removed prior to leaving the trash area. Main building entrance doors will not be used to remove trash from the property, except in buildings where no service entrance exists. Most service and main entrance doors cannot be opened or held open for an extended period of time due to alarm monitoring of these doors.

Passenger elevators will not be locked off or held on any given floor to remove trash or maintenance equipment. Only designated service elevators shall be used to remove/relocate trash to the designated area. In the event the freight elevator is not operable, only elevator(s) designated by Owner as a temporary freight elevator shall be used and will be added to protect the interior of such surfaces. Access to stairwells, exits, corridors and elevators shall not be blocked at any time.

As a security measure, Contractor shall establish and actively implement a separation of responsibilities relating to the removal of trash from the property. Such measures will be proactive in preventing theft of tenant property, and will be approved by Owner.

Removal of toxic hazardous materials and substances shall be performed by Contractor at Contractor's expense in accordance with current City, State and Federal regulations. No such materials shall be disposed of in the property's refuse containers or sanitary sewer systems. Contractor's employees shall not knowingly place prohibited or hazardous items in the building dumpsters. Prohibited or hazardous items include, but are not limited to, paint, solvents or chemicals of any kind, televisions, computer monitors or any large equipment or machinery. Contractor will segregate any such items discovered in the building trash and notify Owner accordingly.

10. TENANT PROPERTY

Service personnel will not use or disturb tenant property, including audio/visual equipment, computer hardware, office equipment and personal effects under any circumstances. Restrooms are not permitted in tenant areas.

No smoking or smoking areas are authorized at any time. Emergency calls are to be coordinated with the Supervisor. Tenant phones shall not be used unless an emergency requiring 911 assistance is warranted.

2600 CAMINO RAMON @ BISHOP RANCH

Specifications for Janitorial Contract Services

TABLE OF CONTENTS

INTERPRETATION	Pg 2
SUPPLIES AND SERVICES	Pg 2
SCOPE OF WORK	Pg 3
1. General Conditions	Pg 3
2. Security Consideration	Pg 3
3. Safety	Pg 4
4. Staffing	Pg 4
5. Equipment and Supplies	Pg 7
6. Quality Control	Pg 9
7. Performance Standards	Pg 10
8. Key Control	Pg 11
9. Trash Removal	Pg 12
10. Tenant Property	Pg 12
11. Dress Code	Pg 13
12. Smoking/ Alcohol/ Drug Use	Pg 13
13. Breaks	Pg 13
14. Customer Satisfaction Programs	Pg 13
15. Vacant Space/ Initial Cleaning Services	Pg 14
16. Exclusions and Optional Services	Pg 14
17. Reserve/ Right to Audit	Pg 14
18. Contractor Willing	Pg 14
19. Damages	Pg 14
20. Miscellaneous	Pg 15
21. Insurance Requirements	Pg 15
22. Task Schedule/ Detailed Cleaning Specifications	Pg 16
A. Building Exterior/ Sealing Areas/ Walkways	Pg 16
B. Main Lobbies/ Common Corridor/ Holding Areas/ Elevators	Pg 17
C. Elevators	Pg 18
D. Stairwells	Pg 18
E. Restrooms/ Shower Rooms	Pg 19
F. Tenant Areas - Office Areas	Pg 20
G. Tenant Areas - Kitchens and Break Rooms	Pg 21
H. Vacant Spaces	Pg 22
I. Hugo Rooms, Janitor Closets & Break Room	Pg 22
J. Vending Machines	Pg 23
K. Service Areas/ Loading Docks	Pg 23
L. Cafeteria	Pg 24
M. Option Services Ranges	Pg 25
* Option A - Modified Scope (2ndXV)	Pg 27
* Option B - Modified Scope (3rdXV)	Pg 28
* Option C - Reduced Scope	Pg 29

Contractor's employees will return all building keys to Supervisor prior to breaks and upon leaving the premises. If keys are not returned at the end of each shift, Contractor will take all necessary actions to expedite their retrieval. The keys must be turned in before 8:00 a.m. of the following morning. Contractor will immediately notify Owner and Building Security in the event keys or access cards are lost, stolen or unaccounted for.

Contractor will be financially responsible for the immediate re-keying of any suite, floor, building or other locked area of the premises for which Contractor has been issued keys and failed to return at the conclusion of nightly services. Re-keying shall be in accordance with Owner's specifications and will include the replacement of any suite, building master, or other entry keys that have been previously issued by Owner. Contractor accepts full liability for any additional loss, costs or expenses that Owner may incur due to the loss of any key(s) under Contractor's control.

9. TRASH REMOVAL:

Contractor's employees will not remove or relocate any papers or materials from tenant furnishings. Contractor will not remove any items that are not properly placed in designated trash receptacles, unless clearly marked as "Trash" or "Remove". Prior to removal, trash will be properly contained and secured in order to protect against spillage or staining of carpets and floors. Contractor will be held solely responsible for any and all damages resulting from its failure to adhere to these policies.

Contractor's employees will keep recyclables separate from non-recyclable trash. Trash will be removed from the building, organized and contained off prior to pickup and delivery to the Service Center. Only designated trash containers will be used for the disposal of trash. Contractor will work with the recycling company to ensure the proper collection, segregation and storage of recyclable materials on site.

All spills and debris are to be removed prior to leaving the trash area. Main building entrance doors will not be used to remove trash from the property, except in buildings where no service entrance exists. Most service and main entrance doors cannot be propped or held open for an extended period of time due to alarm monitoring of these doors.

Freight elevators will not be locked off or held on any given floor to remove trash or maintenance equipment. Only designated service elevators shall be used to remove outside trash to the designated area. In the event the freight elevator is not operable, only elevator(s) designated by Owner as a temporary freight elevator shall be used and will be padded to protect the interior of such surfaces. Access to stairwells, exits, corridors and elevators shall not be blocked at any time.

As a security measure, Contractor shall establish and actively implement a separation of responsibilities relating to the removal of trash from the property. Such measures will be proactive in preventing theft of tenant property, and will be approved by Owner.

Removal of toxic/hazardous materials and containers shall be performed by Contractor at Contractor's expense in accordance with current City, State and Federal regulations. No such materials shall be disposed of in the property's refuse containers or sanitary sewer systems. Contractor's employees shall not knowingly place prohibited or hazardous items in the building dumpster. Prohibited or hazardous items include, but are not limited to, paint, solvents or chemicals of any kind, televisions, computer monitors or any large equipment or machinery. Contractor will segregate any such items disposed in the building trash and notify Owner accordingly.

10. TENANT PROPERTY

Service personnel will not use or disturb tenant property, including audio/visual equipment, computer terminals, office equipment and personal effects under any circumstances. Breaks are not permitted in tenant areas.

No outgoing or incoming calls are authorized at any time. Emergency calls are to be coordinated with the Supervisor. Tenant phones shall not be used unless an emergency requiring 911 assistance is warranted.

SERVICE AGREEMENT

This SERVICE AGREEMENT ("Agreement") is made and entered into on the 14th day of November, 2014, by and between Able Building Maintenance, an Able Service Company, a California corporation ("Contractor"), and Crownrock Realty Investment Fund, L.P., a California limited partnership, d/b/a Airport Corporate Center ("Owner"), who agree as follows:

1. **Project Purpose.** Owner is the owner of that certain commercial real estate project, commonly referred to as Airport Corporate Center, located at 7877 Oakport Street, Oakland, CA 94621 (the "Project"). Owner desires to have Contractor perform certain services for the Project on the terms and conditions of this Agreement.

2. **Services.** On all the terms and conditions of this Agreement, Contractor agrees to furnish to the Project all labor, supplies, uniforms, equipment and materials necessary or reasonably required to perform the services set forth on Exhibit A (collectively, the "Services"). Contractor shall exert Contractor's best efforts, skill and judgment to complete the Services in accordance with the highest standard of professional care and in a good and workmanlike manner.

3. **Payment.** Owner shall pay Contractor for the performance of the Services in accordance with the provisions of Exhibit B. Payment for Services performed shall be made once a month in arrears. The preceding to the contrary notwithstanding, Contractor hereby agrees that it shall not bill or invoice Owner after the date six (6) months following the expiration or earlier termination of this Agreement for any Services performed or furnished or supplied to Owner pursuant to the terms of this Agreement (except that the foregoing shall not preclude or prohibit Contractor after the expiration of such six (6) month period from sending reminder bills or invoices to Owner for Services previously billed or invoiced by Contractor to Owner prior to the expiration of such six (6) month period and remaining unpaid). If at any time after the expiration of such six (6) month period, Contractor bills or invoices Owner for any Services performed or furnished or supplied to Owner pursuant to this Agreement, then all charges set forth in such bill(s) or invoice(s) submitted by Contractor to Owner to the extent not previously billed or invoiced to Owner prior to the expiration of such six (6) month period shall be deemed waived by Contractor and Owner shall not be liable for same. Payment to Contractor shall not relieve Contractor of responsibility for faulty materials or workmanship unless otherwise specified. Contractor shall promptly correct, repair and remedy any defect in work, materials or equipment performed, installed or supplied by Contractor.

4. **Term.** The term of this Agreement shall be one (1) year, commencing on December 1, 2014, and ending November 30, 2015, provided, however, either party shall have the right to terminate this Agreement with or without cause at any time upon 30 days' prior written notice. If neither party delivers written notice of termination prior to the end of the initial one (1) year term, this Agreement shall continue on a month-to-month basis until either party gives a 30-day termination notice.

5. Termination for Cause.

5.1. **Termination.** Owner may terminate this Agreement for cause upon five days' prior written notice to Contractor if Contractor at any time:

(a) fails for any reason, including, but not limited to, the reasons contained in the Harmony Clauses provisions of Section 12, below to supply a sufficient number of properly skilled employees or a sufficient quantity of materials of proper quality; or

(b) becomes a debtor under any federal or state bankruptcy act or makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of Contractor's insolvency; or

EXHIBIT A-4
RULES AND REGULATIONS

General Services

1. Service to be performed Monday through Friday.
2. Daily reporting of number of janitors and hours worked.
3. Furnish proper and good janitorial equipment; subject to monthly inspection by Building Management.
4. Daily service shall commence no later than 5:30 pm.
5. Washing dishes will be at tenant's expense and a time allowance will be deducted from the building's expense.
6. Specification must be followed regarding cleaning and polishing furniture, elevator cabs, main lobby walls, floors and other designated areas.
7. Daily contact must be maintained between the building office and janitorial foreman.
8. All janitorial personnel should report any damage, breakage, and plumbing problems immediately to the foreman. The foreman will report any of these occurrences to the building office the following morning; however, in case of any emergency in the building, the foreman will contact the building manager immediately and other proper authorities, and follow emergency procedures as designated for the building.
9. Janitorial personnel should only be in assigned designated areas.
10. If any janitorial personnel cause any damage and/or breakage in the building and/or tenant's suite, the janitorial/maintenance company will be responsible for reimbursing Landlord and/or tenant for replacing or repairing such items.
11. Use of wet and/or soaker's not permitted on the floors without special instruction and approval from Building Management.
12. Janitorial/maintenance company must provide supervision at the middle management level of all janitorial personnel.
13. The same people should work in the building nightly. All janitorial personnel including the foreman must be approved by the building manager.
14. No T-shirts or sweats are to be worn by janitorial personnel. Placed I.D. badge will be worn at all times when working in or about the building. Day Porter to wear a uniform designated by Building Management which will have a logo patch especially designed for the building. All janitorial personnel must be neat and clean and comply with the rules and regulations of the building.
15. All janitorial personnel must wear laminated photo I.D. badges.
16. Capability to shampoo carpeting as required.
17. Staff shall include a non-working supervisor and working foreman.
18. "Bang" method cleaning is prohibited.
19. Water tight Rubbermaid trash containers shall be used.
20. When in use by janitorial staff, elevator floors to be covered.
21. No abrasive cleaners to be used - liquids only.
22. Janitorial company shall supply cleaning cloths. Restroom hand towels are not to be used.
23. Janitorial company supplied carts shall have non-marking rubber bumpers on all equipment.
24. Last trash to be inspected by the security guard.
25. Absolutely no friends or relatives will be allowed to help clean or accompany workers in the building unless approved by the building manager.
26. Workers will not let anyone into the building or tenant spaces at any times.
27. Break areas will be designated by supervisor. Leaving the building during work hours is not permitted. Entering secured areas or roof areas is not permitted. Tenant vending machines are not to be used unless permitted by tenant. Food in kitchen areas or restrooms will not be taken. All trash will be removed and break areas thoroughly cleaned.
28. No out-going or in-coming phone calls or a personal nature (breaks and lunch breaks excepted).
29. No worker will be allowed to work under the influence of alcohol or drugs and will be subject to immediate dismissal. No smoking on the job.

EXHIBIT B

685 MARKET STREET

Specifications for
Janitorial Contract Services

TABLE OF CONTENTS

SUPPLIES AND SERVICES	Pg 2
SCOPE OF WORK	Pg 3
1. General Conditions	Pg 3
2. Security Consideration	Pg 4
3. Safety	Pg 5
4. Staffing	Pg 6
5. Equipment and Supplies	Pg 9
6. Quality Control	Pg 12
7. Dress Code	Pg 13
8. Performance Standards	Pg 13
9. Key Control	Pg 15
10. Trash Removal	Pg 15
11. Storm Damage	Pg 16
12. Customer Sustainability Programs	Pg 16
13. Vacant Space/Initial Cleaning Services	Pg 17
14. Exclusions & Optional Services	Pg 17
15. Records/Right to Audit	Pg 17
16. Contractor Billing	Pg 17
17. Property Damages	Pg 18
18. Miscellaneous	Pg 18
19. Insurance Requirements	Pg 18
20. Task Schedule/ Detailed Cleaning Specifications	Pg 19
A. Main Building Lobbies	Pg 19
B. Common/ Public Areas	Pg 21
C. Elevators	Pg 22
D. Stairwells	Pg 23
E. Restrooms	Pg 24
F. Office Areas	Pg 26
G. Store Rooms, Janitor Closets & Break Room	Pg 28
H. Loading Dock, Service Areas, Van Parking	Pg 29
I. Building Exterior and Grounds	Pg 29
J. Day Porter Services	Pg 30

Supplies - Contractor, at its expense, will provide all supplies required for the effective cleaning and maintenance of the property in accordance with these specifications. Cleaning chemicals and products must meet the Green Seal Standard for Industrial and Institutional Cleaners. Cleaning products that are not covered by Green Seal standards, or do not meet the requirements of the U.S. Green Building Council, will be first approved by Manager. Contractor will maintain Material Safety Data Sheets wherever supplies are stored, as well as a full set in the Building Management Office, updated monthly. Cleaning supplies will be of highest quality to complete the tasks as specified and subject at all times to the approval of Manager.

All liquid chemicals must be properly labeled and stored in the janitor closets and supply room. A locked container that dispenses the specified measurement of dilution will be used for concentrated chemicals. Contractor will store a limited amount of chemicals in each janitor closet (not to exceed a one-week supply) and such products will not be stored above eye level. The janitorial storeroom will be used to store excess chemicals and only authorized employees will have access to this area.

Plastic liners, restroom paper products, hand soaps, air fresheners and sanitary supplies will be supplied by Manager, unless requested otherwise. Contractor will receive and store all such supplies delivered to the property and maintain an on-going inventory list of supplies on hand. The inventory list shall be posted in each of the supply rooms and updated semi-monthly. Contractor will maintain an adequate amount of supplies at all times, ensuring that re-orders are placed in a timely manner.

Only supplies used in the delivery of services hereunder will be placed in designated storage locations. Supplies for above-standard tenant use will be stored in the appropriate tenant space. Under no circumstances will supplies furnished by Manager be used to service, stock or supply tenant space that is outside the scope of these specifications.

Where applicable, Contractor shall be responsible for the collection of money, and stocking of tampon/makin dispensers. Contractor will notify Manager if equipment is not operating properly.

Mobile Communication Devices - Contractor will provide all communication devices deemed necessary by Contractor to adequately support the activities and/or supervision of Contractor's employees.

Uniforms - Contractor's personnel shall be properly uniformed, as satisfactory to Manager, and display identification of the individual and Contractor at all times. Contractor will issue photo identification that exhibits the property name, contractor's name, employee name, classification and assigned work area. Under no circumstances will service employees be permitted to report to work at the property without a contractor issued identification badge.

Manager shall have the right to select and/or approve uniforms worn by personnel while working on the premises. The day staff will adhere to a strict policy concerning personal appearance and grooming. Day staff uniforms will include manager-approved shirts detailed with the contractor's logo, slacks, a black belt, black shoes and a coordinating winter jacket (with contractor's logo). The night staff will be issued shirts or smocks with the Contractor's identification clearly evident. Night cleaners are required to wear dark slacks and shoes.

Contractor shall ensure adequate controls are in place to maintain a neat, orderly and professional appearance of all cleaning personnel while on the premises. Such controls will include a sufficient quantity of uniforms distributed to each cleaner and services provided for mending and maintenance of uniforms. Contractor will provide weekly laundering services for the day staff uniforms.

EXHIBIT 15



Able Building Maintenance

EMPLOYEE WARNING REPORT

EMPLOYEE'S NAME		Gaia Monica		DATE OF WARNING	2/28/2011
LAST		FIRST	MIDDLE NAME		
TYPE OF VIOLATION	ATTENDANCE		CARELESSNESS		DISOBEDIENCE
	SAFETY		TARDINESS		WORK QUALITY
	OTHER	X			

Cite Violation of Company Policy:

violation of company policy

DISCIPLINE ACTION

PREVIOUS WARNING

YES NO

FIRST VERBAL WARNING

SUSPENSION OR FINAL WRITTEN WARNING

FIRST WRITTEN WARNING

TERMINATION

X

PLACE WHERE VIOLATION OCCURRED

VIOLATION DATE(S)

Violation

a.m.

Time

p.m.

Name of Shop Steward Present:

Summary of Investigation:

Company Statement

Monica was seen by Jay Jinks (Able Manager) and building guest talking on her cell phone with the lights out in the janitorial storage room.

Employee Statement

APPROVED BY

Jay Jinks
NAME

Operations Manager
TITLE

DATE

Monica Galen
EMPLOYEE'S SIGNATURE

DATE

2/28/2011

COPY DISTRIBUTION

EMPLOYEE
UNION REP.
PERSONNEL DEPT.
EMPLOYEE'S FILE

[Signature]
SUPERVISOR'S SIGNATURE

DATE

2-28-2011

Able Building Maintenance

EMPLOYEE WARNING REPORT

EMPLOYEE'S NAME Alvarado
LAST

FIRST

MIDDLE NAME

DATE OF WARNING 10/8/2010

TYPE OF VIOLATION ATTENDANCE
SAFETY
OTHER

CARELESSNESS
TARDINESS

DISOBEDIENCE
WORK QUALITY

City Violation of Company Policy

DISCIPLINE ACTION

PREVIOUS WARNINGS

YES NO
X

FIRST VERBAL WARNING

SUSPENSION OR FINAL WRITTEN WARNING

FIRST WRITTEN WARNING

TERMINATION

X

VIOLATION DATE(S)
8/12/2009

Violation Time
pm

8:10
pm

PLACE WHERE VIOLATION OCCURRED
Bishop Ranch
San Ramon

Name of Shop Steward Present

Summary of Investigation:

On 10/08/10 Alicia Alvarado was found talking on her bluetooth while vacuuming at approx 8:10pm in suite Q-460. She was reminded by Eliseo Gudio that we are not allowed to be talking on the bluetooth and vacuum. She got upset and responded that she didn't have her hands busy and that she could do both talk and vacuum. She was told by Eliseo that it was for her own protection so she would not have any accidents. Her response was that he had no right to tell her anything. She continue by comparing Eliseo to Francisco.

Company Statement

On 10/7/10 Alicia came to the office with shopsteward Yessenia Sanchez to talk about the incident. I expected Alicia to apologize for her behaviour towards Eliseo but instead her attitude was all negative. I explained to her that Eliseo was in no way disciplining her but rather making an observation but that her attitude was totally unacceptable.

Furthermore it was discovered that on that same day approx 15 minutes prior to Eliseo finding her, the foreman Fernando, had found her too on the phone and had reminded her that we are not allowed to be on the phone and work at the same time.

Further violations will result in additional disciplinary action including termination of employment.

Employee Statement

APPROVED BY

Javier Palacios
NAME

Project Manager
TITLE

10/8/2010
DATE

EMPLOYEE'S SIGNATURE

DATE

SUPERVISOR'S SIGNATURE

DATE

COPY DISTRIBUTION

EMPLOYEE
UNION REP.
PERSONNEL DEPT.
EMPLOYEE'S FILE

CROWN-ABLE 000096

EMPLOYEE WARNING REPORT

DATE OF	7/28/2014
WARNING	
EMPLOYEE NAME	Gutierrez, Gliberto

EMPLOYEES NAME Guilarte Gilberto WARNING 7/20/2014
LAST FIRST MIDDLE NAME

TYPE OF VIOLATION	ATTENDANCE	CARELESSNESS	☒ DISOBEDIENCE
	SAFETY	TARDINESS	WORK QUALITY
	OTHER		

PREVIOUS WARNING	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	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465
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PREVIOUS WARNING	☒	FIRST VERBAL WARNING	☐	FIRST WRITTEN WARNING
		SECOND WRITTEN WARNING	☐	TERMINATION

FINAL WRITTEN WARNING

VIOLATION DATE(S)	7/29/2014	Violation	7-48	SMH
		Time		

PLACE WHERE VIOLATION OCCURRED

EMPLOYEE STATEMENT

Gilberto Gutierrez was caught talking on the phone while service the suite

BB145 this report was made by our Able maintenance Operator
manager Tim Murphy.

All our employees are aware to not use the phone while performing service.

[illegible]

[illegible]

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	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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APPROVED BY: Luis Vazquez PROJECT SUPERVISOR: 7/28/2014
NAME: TITLE: DATE:

[illegible]

7-28-14 COPY DISTRIBUTION

DATE _____

EMPLOYER'S SIGNATURE _____

DATE _____

EMPLOYER'S SIGNATURE _____

5 28 11

7-28-19

EMPLOYEE'S FILE

SUPERVISOR'S SIGNATURE _____ DATE _____

CROWN-ABLE 000097

CROWN-ABLE 000097

Able Building Maintenance

EMPLOYEE WARNING REPORT								
EMPLOYEE'S NAME		MONTANO JORGE		DATE OF WARNING				
	LAST	FIRST	MIDDLE	7/26/2012				
TYPE OF VIOLATION	☐ ATTENDANCE	☐ CARELESSNESS	☒ DISOBEDIENCE					
	☐ SAFETY	☐ TARDINESS	☐ WORK QUALITY					
	☐ OTHER							
DISCIPLINE ACTION								
PREVIOUS WARNING	☒ FIRST VERBAL WARNING		☐ FIRST WRITTEN WARNING					
	☐ FINAL WRITTEN WARNING		☐ TERMINATION					
VIOLATION DATE(S)	7/26/2012	Violation Time	A.M. ☐ P.M. ☒	PLACE WHERE VIOLATION OCCURRED BISHOP RANCH SAN RAMON				
COMPANY STATEMENT			EMPLOYEE STATEMENT					
JORGE MONTANO WAS FOUND IN THE DARK IN PRIVATE OFFICE Y-3006 AT 9:46 P.M. LAYING DOWN WITH HIS CELL PHONE CHARGING IN AN OUTLET AND TALKING ON THE PHONE. WHEN ASKED WHAT HE WAS DOING, HE REPLIED THAT HE DID NOT FEEL WELL AND THAT'S WHY HE WAS LAYING DOWN. HE ALSO SAID THAT HE NORMALLY TAKES HIS BREAKS THERE AND WAS ON HIS BREAK AT 9:46 P.M. HE WAS TOLD TO TAKE HIS BREAK ELSEWHERE AT 10:00 P.M. THEN PROCEEDED TO TAKE A LOOK AT A TASK WITH THE FOREMAN AND CAME BACK 10 MINUTES LATER, AT 9:56 P.M. AND JORGE MONTANO WAS IN THE EXACT SAME SPOT ON HIS PHONE MAKING A PERSONAL PHONE CALL. THIS IS NOT THE FIRST OR SECOND TIME I HAVE FOUND JORGE MONTANO ON PERSONAL PHONE CALLS TAKING BREAKS ON NON-BREAK DESIGNATED TIMES. A FIRST VERBAL WARNING IS GIVEN TO JORGE MONTANO. THIS WILL CONSTITUTE A FIRST VERBAL WARNING FOR JORGE MONTANO AND SHOULD SERVE AS A REMINDER TO MAKE PERSONAL PHONE CALLS ON NON-WORK HOURS AND TAKE BREAKS ACCORDINGLY.								
APPROVED BY Juan Avila			SUPERVISOR					
NAME			TITLE					
			7/26/2012					
			DATE					
EMPLOYEE'S SIGNATURE			DATE					
			7/26/2012					
SUPERVISOR'S SIGNATURE			DATE					
SHOP STEWARD'S SIGNATURE			DATE					
COPY DISTRIBUTION								
			☐ EMPLOYEE					
			☐ UNION REP.					
			☐ PERSONNEL DEPT.					
			☐ EMPLOYEE'S FILE					

CROWN-ABLE 000098

EXHIBIT 16



568 Folsom Street, San Francisco, CA 94107 | T: 415.981.8070 | F: 415.546.5190

CELL PHONE USAGE ACKNOWLEDGEMENT FORM

Personal Cell Phone Use

Personal cell phone use is prohibited during work hours. Employees are asked to make any personal calls during break or lunch time. The company will not be liable for the loss of personal cell phones brought into the workplace.

Personal Use of Company Cell Phone

Employees who are provided a company cell phone may use up to the designated plan minutes. Employees are responsible for paying any additional plan minutes. Cell phones will be the sole responsibility of each employee of Able Building Maintenance. Cell phones issued by the company will be used for work purposes only. All employees will be accountable for personal use.

Business Use of Company Cell Phone

Employees are expected to have their company issued cellular telephone charged and on during normal working hours and as required to fulfill your job responsibilities. Employees should observe the professional courtesy during meetings of switching their cellular phone to vibrate mode, and returning the phone to ring mode when appropriate. Employees should not turn off their cellular phone during meetings unless absolutely necessary so that contact can be made on urgent matters if required.

Use of Company Cell Phone While Driving

Employees should minimize cellular telephone usage while operating any motor vehicles. Effective July 1, 2008, California law prohibits all drivers from using handheld wireless telephones while driving. Able Building Maintenance expects all employees to comply with the law. Employees must use their company issued hands-free device to place or receive cellular phone calls while driving and only when safe to do so. The only exceptions are when you must make an emergency call to a law enforcement agency, a medical provider, the fire department, or other emergency services agency. Other alternatives include allowing voice mail to handle your calls and returning messages at your safe convenience or pulling off the road to a safe location. In all instances, employees are advised to keep their hands on the wheel and their eyes and mind on the road while driving. The law imposes fines against individuals who use handheld wireless telephones while driving and a conviction will appear on the DMV driving record. Able Building Maintenance will not pay the fine or reimburse the employee.

Care of Company Cell Phone

Employees are responsible for taking proper care of company-issued cellular telephones and reasonable precautions against damage, loss or theft. Loss of cellular telephones should be reported to the Chief Financial Officer immediately. Cell phones that are lost, misplaced or physically abused will be replaced at the expense of the responsible employee.

Acknowledgement

I have read and understand the terms set forth in this Cell Phone Policy. I understand that violation of this policy and/or California law regarding use of cell phones may result in disciplinary action. I agree that upon the termination of my employment from Able Building Maintenance, I will repay any additional plan minutes.

Employee Name: Jose Uribe

Employee Signature: [Signature]

Date: 12-15-15

www.ableserve.com

EMPLOYEE COPY
Please Sign and Return

Page 12

CROWN-URIBE000040



Personal Electronic Equipment Use Policy

Purpose of this Policy

The use of any personal electronic equipment such as smart phones, I-phones, I-pods, or any other non-work related device is prohibited while on Company time or when performing company related duties.

Able Services is dedicated to providing a work environment that promotes a safe work conditions. Employees need to be aware of their surroundings at all times. Use of cell phones, ear buds or any other device that limits hearing ability or creates a distraction compromises your personal safety and the safety of others.

Communication at Able is critical to our success. While performing work related duties, employees are to be available to each other for information share, inquiries, and work instruction. Employees wearing headphones must be interrupted in order for communication to take place.

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7 Attorneys for Defendants
CROWN BUILDING MAINTENANCE CO. dba ABLE
8 BUILDING MAINTENANCE, and ABLE ACQUISITION CORP.
dba UNITED BUILDING SERVICES
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12

13 JOSUE URIBE, on behalf of himself and other
current or former employees,

14 Plaintiff,

15 vs.

16 CROWN BUILDING MAINTENANCE CO.,
17 and DOES 1-10, inclusive,

18 Defendants.
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Case No.: 30-2016-00839857-CU-OE-CXC

Assigned for all purposes to
The Honorable Glenda Sanders, Dept. CX101

**DECLARATION OF MICHAEL D.
THOMAS IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: December 15, 2017
Time: 1:30 p.m.
Department: CX101

Action Filed: March 9, 2016
Trial Date: None set

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EXHIBIT A

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Expert Report re *Uribe v CBMC* Cell Phone Utilization Cost Analysis

We were retained by Ogletree, Deakins, Nash, Smoak, & Stewart P.C. to review a proposed mediation settlement for uncompensated cell phone charges in the matter of *Uribe v Crown Building Maintenance Co.*

This report is by George Arzumanyan, CFA, Dennis Halcoussis, Ph.D., and G. Michael Phillips, Ph.D. We are economists and statisticians with Phillips, Fractor & Company LLC (PFC).

George Arzumanyan holds the Chartered Financial Analyst designation and is a coauthor of the book series Sample Size Illustrations, Confidence Intervals, & Margins of Error: Hypergeometric Distributions Tables for Attorneys & Experts (2017, Walnut Oak Press). Through PFC, Mr. Arzumanyan has provided statistical and financial analysis for numerous clients.

Dennis Halcoussis received his Ph.D. in economics from University of Pennsylvania. He is a tenured full professor in the Department of Economics, California State University, Northridge and is the author of Understanding Econometrics (2005, Southwest-Thomson) as well as numerous other academic articles and books. Dr. Halcoussis has been affiliated with PFC for about a decade during which he has provided service on numerous class action damage computations and performed statistical modeling for complex litigation assignments.

G. Michael Phillips received his Ph.D. in economics from University of California, San Diego. He is a tenured full professor in the Department of Finance, Financial Planning, and Insurance, California State University, Northridge and is the author of numerous academic articles and books. Dr. Phillips has provided consulting and expert services on a wide variety of cases and has testified for plaintiff and defense in numerous venues. Dr. Phillips is a coauthor of work that was cited by the California Supreme Court in *Duran v U.S. Bank National Assn.*, 59 Cal. Rptr. 3d 371, 325 P.3d 916. Dr. Phillips was the plaintiff expert computing class damages in *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014).

Current CVs for the authors of this review are attached in Appendix 1.

To begin our analysis, we were provided copies of a mediation stipulation, the defense mediation brief, various documents relating to Mr. Uribe's employment, a spreadsheet identified as a current class list, various PDF files containing cell phone records for company issued cell phones, a large spreadsheet entitled "Revised Analysis.XLSB" which contained data from a sample of telephone calls with class members, and other documents. We were also provided a set of scanned telephone bills from personal cell phones for two managers and the cell phone numbers for an additional six managers. We understand that the sampled records were provided as the result of a random selection process by plaintiff counsel in a related case although we were not involved with any of the statistical sampling

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processes. In addition, we were provided with supplemental class member names and corresponding data as well as phone numbers and names for eight individuals identified to us as managers.

From the class list, we identified that there were 19,038 class members.

We then proceeded to do two separate types of estimation to determine the rate at which class members would be expected to use their personal telephone for possibly company related reasons. The first method is to use the sample of company issued cell phone bills and determine on the basis of those data the expected rate at which class members would be contacted by supervisors using company provided cell phones.

We were informed that in the 307 calendar weeks from 6/10/2011 through 4/30/2017 there were 2,301,475 "workweeks" (one workweek corresponds to one person working one week). From these numbers, we compute that there were an average of about 7,490 employees working in a given calendar week ($=2,301,475 \text{ workweeks} / 307 \text{ calendar weeks}$). Note that while there were 19,038 people on the class list, the 7,490 "full time equivalent" for an average week will be used below.

It is our understanding that the "Revised Analysis" (Sample) spreadsheet contains information from representative periods in 2013, 2015, and 2016 for selected properties where 525 class members worked. For the 14 weeks sampled, it is our understanding that all of the calls recorded on company provided cell phones which were made to or received from class members in the sample group (525 potential employees) were tabulated. From the Sample spreadsheet, we identified 321 unique employee ID numbers who made or received phone calls associated with company provided cell phones. In the 14 unique calendar weeks in the sample, there were 4,494 workweeks with associated cell phone calls, and 7350 ($= 525 \text{ potential employees} \times 14 \text{ weeks}$) potential workweeks.

Comparing the 321 employees who received calls during this period to the 525 average employees at the sampled sites, we estimate that approximately 61.14% of employees received these phone calls. Using the methods in *Sample Size Illustrations, Confidence Intervals, & Margins of Error: Hypergeometric Distributions Tables for Attorneys & Experts*, we determine that the 95% confidence interval is 56.89% to 65.28%, approximately a 4.2% margin of error).

From the Company-Provided Cell Phone Sample data, we determined that there were 11,601 cell phone minutes associated with the selected class member cell phones and company cell phones. There were 5,261 calls with an average duration of approximately 2.205 minutes ($=11,601 \text{ minutes} / 5,261 \text{ calls}$).

We assume that prepaid cell phone service is available at 5 cents per minute (e.g., PlatinumTel charges \$10 for 200 minutes per month, <http://www.prepaidphonepro.com/compare-200-minute-plans/>).

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With these data, two alternative estimates for costs associated with calls from Company-Provided cell phones can be made. The first will focus on calls to or from Company-Provided cell phones. The second will focus on calls associated with personal phones.

First, consider a calendar week based extrapolation. In an average calendar week in the sample periods, there were about 828 cell phone minutes ($= 11,601 \text{ minutes} / 14 \text{ calendar weeks}$). This corresponds to an estimated amount to the selected members of the class of about \$41.40 ($= 828 \text{ minutes} \times \$0.05 \text{ incremental cost per minute}$) per week. From this, the estimated total cost for the selected members of the class use of cell phone minutes is \$12,719.67 ($= \$0.05 \text{ incremental cost per minute} \times (11,601 \text{ total minutes in sample} / 14 \text{ calendar weeks in sample}) \times 307 \text{ total calendar weeks from 6/10/2011 through 4/30/2017}$). From this, the estimated total cost to the class is \$181,467.29 ($= \$12,719.67 \text{ group cost} \times (7,490 \text{ average class employees} / 525 \text{ group employees})$).

Second, consider a work week based extrapolation. In the sample, there were 11,601 minutes called. We would estimate that there were 165,507.6 minutes in the overall class during this period ($= 11,601 \text{ group minutes} \times (7,490 \text{ average class employees} / 525 \text{ group employees})$). During the 14 calendar weeks in the sample, there were approximately 104,860 workweeks ($= 7,490 \text{ average employees working} \times 14 \text{ weeks}$). From these two, we determine that there was an average of 1.58 minutes per sample workweek ($= 165,507.6 \text{ minutes} / 104,860 \text{ workweeks in sample period}$). Multiplying by \$0.05 per minute as a marginal cell phone cost, the average cell phone cost per sample workweek is approximately \$0.08 per workweek ($= \$0.05 \text{ per minute} \times 1.58 \text{ minutes per workweek}$). Multiplying this by the total number of workweeks results in an estimated class cost of approximately \$184,118 ($= .08 \text{ cents per week} \times 2,301,475 \text{ workweeks in period}$).

A third alternative begins with the observation that 37.16% of class members provided cell phone numbers. For this scenario, suppose that of the 321 class members in the sample using cell phones for work only 37.16% previously owned cell phones and the remaining 62.84% would need to purchase cell phone service for the relevant times. This would result in 201,7164 group members in a given month being expected to purchase cell phone service for use that month. After reviewing historical Tracfone advertisements, the cost for a basic prepaid cell phone ranged from \$7/month at the beginning of the period to about \$8/month at the end of the period, with an average of about \$7.50. There are approximately 76.75 months ($= 307 \text{ calendar weeks} / 4 \text{ weeks per month}$) in the period.

Consequently, a hypothetical estimate assuming that about 2/3 of the group members using cell phones in a given month purchased the phone for that month's use, and the other 1/3 paid incremental minutes, is \$120,843.83 ($= [201,7164 \text{ average number of Tracfones purchased per month} \times \$7.50 \text{ average charge} \times 307 \text{ weeks} / 4 \text{ weeks per month}] + [\$12,732 \text{ if all minutes were incremental} \times 37.16\% \text{ portion of class with cell phones}]$). To estimate the corresponding class figures, this would be increased by $(7,490/525)$, resulting in \$1,724,038.64 ($= \$120,843.83 \times 7490/525$).

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A possibly more realistic alternative uses national survey results instead of using the class list data as the source of cell phone ownership rates. For example, CNBC, reporting on a Pew survey, states that 64% of American adults own smartphones and they are particularly important for lower income workers (<http://www.cnbc.com/2015/04/01/for-more-poor-americans-smartphones-are-lifelines.html>). Replacing the 64% for 37.16% cell phone ownership and $(1 - 64\% = 36\%)$ for the 62.84% non-cell phone percentage, then the final estimate of group cost becomes \$74,667.05 total class cell phone charges $(=\$66,519.22 \text{ Tracfone charges} + \$8,147.83 \text{ incremental minutes charges})$. As above, this is converted to a class estimate by multiplying by 14.267 $(=7490 \text{ average employees}/525 \text{ employees at sampled sites})$ to get \$1,065,249.91.

Using cell phone ownership statistics, rather than just rates of smart phone ownership, provides a lower estimated cost. According to other data collected by Pew Research Center in 2016 (<http://www.pewinternet.org/fact-sheet/mobile/>), they determined that 92% of Americans earning less than \$30,000 per year own cell phones, compared to 95% for adults overall. The 95% percent overall is an increase from 92% overall in 2013, with an average of 93.5%. Consequently, to adjust for the growth in ownership, suppose we use 90.5% $(= [93.5\% \text{ average for adults}/95\% \text{ current for all adults}] * [92\% \text{ current for low income adults}])$ as an average cell phone ownership rate for the class. In such a scenario, there would be expected to be \$17,553.68 for Tracfone purchases and \$11,521.54 for incremental minute purchases, for a total expected cost to the group of \$29,075.22. Adjusting as above, we estimate total class cost of \$414,806.47 $(=\$29,075.22 \text{ group cost} \times 7490/525)$.

The margin of error for these can be approximated by the above 4.2% margin of error based on the sample cell phone communications ratio.

It is our opinion that the best estimate of the total cost to the class from cell phone use associated with company provided cell phones over this period is \$414,806.47 +/- 4.2%.

The second approach uses data obtained from two managers. These data originated as monthly telephone bills from the cell phone providers. The data were provided to us in PDF format and we used sophisticated OCR software and manual editing to convert the personal phone bills into a usable dataset. Comparing the phone numbers on the two sets of billings to phone numbers on the class list identified 10,404 calls involving the two managers and numbers in the class list data. Using records for which minutes were machine-readable, these calls were an average of 2.3208 minutes in length. (Some of the records were adequately poor that the time records could not be parsed.)

The 10,404 calls were to 191 individuals. Approximately 48% of these calls were to 10 individuals. About 65 individuals account for 90% of the calls, with 126 accounting for the remaining 10%.

Using an incremental minutes approach, all these calls would be expected to cost \$0.1160 per call $(=\$0.05 \text{ per minute} \times 2.3208 \text{ minutes per call})$.

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The personal billing data provided covered from October, 2011 through August, 2016. This is a period of approximately 250 weeks. About 42 calls per week ($=10,404$ calls / 250 weeks) were made during the period. An average employee who was called would be receiving about 1.5 calls a month ($250 \text{ weeks} / 52 \text{ weeks per year} \times 12 \text{ months per year} = 57 \text{ months in period}$; $10,404 \text{ calls} / 57 \text{ months} =$ about 183 calls per month; $183 \text{ calls} / 191 \text{ class members receiving calls} = 0.96 \text{ calls per month}$). The average cost per month per called employee would be about 11 cents per month ($=0.96 \text{ calls per month} \times 2.3115 \text{ minutes} \times \$0.05 \text{ per minute}$), a relatively small amount. Over the entire class period, this would be \$6.27 per called employee ($11 \text{ cents} \times 57 \text{ months} = \$6.27$).

Based on the phone records of two managers, the total estimate for the class from "personal phones", were every employee to be called at this frequency and duration, would be approximately \$46,962 ($= 7,490 \text{ average employees} \times \$6.27$). (This assumes that these same 191 were not receiving calls from other supervisors at the same time; in our data, about 65% of the class members we were able to match phone records were involved in calls with only one of the two managers we received phone call data for while the remaining 35% had calls with both managers)

An alternative computation results in \$47,343 ($= 10,404 \text{ calls} \times 2.3208 \text{ minutes} \times \$0.05 \text{ per minute} \times 7,490 \text{ average employment} / 191 \text{ class members receiving calls in sample}$). The differences are due to rounding in intermediate results.

An upper bound estimate of total phone cost to the class is the sum of Company-provided Phone related and Personal Phone related call costs equal to \$46,962 "Personal Phone Related" plus \$414,806.47 "Company Provided Phone Related" costs for a total of \$461,768.47.

A small percentage of the class made a large number of calls. For example, 13.1% of the class members (25 of 191) made 100 calls or more. This 13.1% of the class accounted for 66.1% of all the calls ($=6,880 / 10,404$). Those who made over 1000 calls, representing 1% of the class ($=2 / 191$), accounted for 23.0% of all calls ($=2,392 / 10,404$). This suggests estimating the costs after removing "heavy users" from the sample.

If only class members who made 1000 calls or more are eliminated, there remains a total of 8,012 calls. Accounting for the change in the average duration of a call as well as the decrease in the number of calls and class size reduces the estimate to \$34,154 following the first method and \$34,537 following the alternative method.

Next, eliminating everyone who made 100 calls or more leaves a total of only 3,524 calls. Accounting for the change in the average duration of a call as well as the decrease in the number of calls and class size, this reduces the estimate to a value of \$17,077 following the first method and \$17,778 following the alternative method.

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Discussion

We have not specifically estimated a combined margin of error because of the lack of site-specific employment statistics for the sites associated with the owners of the personal telephone records we analyzed. However, were we for illustrative purposes to apply the same 4.2% margin of error that we calculated for the estimates based on company provided cell phones, then the total illustrative estimate without exclusion of class members (e.g., excluding class members with 100 phone calls or more) would be \$461,768.47 +/- \$19,394 (= \$414,806.47 related to company provided cell phones + \$46,962 related to manager personal phones with no exclusions, +/- \$.042 margin of error x \$461,768.47 combined estimate).

The total illustrative estimate leaving out calls involving those with 1000 phone calls or more would be \$448,960.47 +/- \$18,856 (= \$414,806.47 related to company provided cell phones + \$34,154 related to manager personal phones excluding class members with 1000 calls or more, +/- \$.042 margin of error x \$448,960.47 combined estimate).

The total illustrative estimate leaving out calls involving those with 100 phone calls or more would be \$431,883.47 +/- \$18,139 (= \$414,806.47 related to company provided cell phones + \$17,077 related to manager personal phones excluding class members with 100 calls or more, +/- \$.042 margin of error x \$431,883.47 combined estimate).

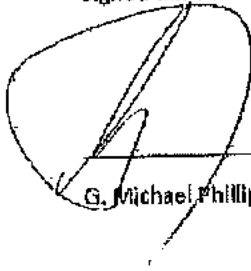
We believe that these are statistically credible numbers that are "soaking wet numbers", assuming that all the covered calls were reimbursable business calls.

For purposes of valuation before trial, there are potentially several adjustments that could be made. First, suppose that some percentage of the calls were actually personal and not business related. Then, the numbers above would be reduced by that percentage. For example, if the percentage of personal calls was actually 25%, then the new estimate of calls (excluding those with over 100 calls) would become $\$461,768.47 \times (1 - 25\%) = \$346,326.33$. Second, suppose that there is uncertainty about whether or not the plaintiff would prevail were the case to proceed to trial. Suppose that there would be a 70% chance of prevailing were trial to proceed, with a 30% chance of not prevailing. Then, the estimate would be adjusted by the prevailing probability to become \$242,248.44. Third, suppose that there is actually some probability that the class itself would not be certified. Again, the figures would be adjusted by the probability of certification. For example, suppose there is a 75% chance of certification. Then, the estimate would become $\$242,248.44 \times .75 = \$181,686.33$. And, there may be further "haircuts".

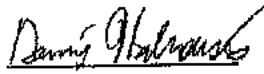
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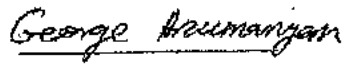
Signed this 5th day of September, 2017 in Pasadena, California.



G. Michael Phillips, Ph.D.



Dennis Halcoussis, Ph.D.



George Arzumanyan, CFA

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& COMPANY, LLC**

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G. MICHAEL PHILLIPS, PH.D.

July 2017

Current Positions

Professor of Finance, Financial Planning, and Insurance
David Nazarian College of Business and Economics
California State University, Northridge

President
Phillips Research Applications, Inc.
(PRAI is a member of Phillips, Fractor & Company, LLC)

Chief Scientist & President
Center for Computationally Advanced Statistical Techniques (c4cast.com, Inc.)

Principal
Walnut Oak Capital, LLC

Director
Volunteers of America, Los Angeles - 501(c)(3)

Chairman
Foothill Academy of Vocal Arts - 501(c)(3)

Education

Ph.D. 1982 Economics, University of California, San Diego
Dissertation "Regulatory Issues in a Multiple Species Fishery: The Case of San Pedro"

M.A. 1980 Applied Economics
University of California, San Diego

B.S. 1977 Illinois State University,
B.S. (Honors Program) in Mathematics and Economics

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Experience

- 2014-present: Professor of Finance, Financial Planning, and Insurance
David Nazarian College of Business and Economics
California State University, Northridge
- 1990-2014: Professor of Finance, Real Estate, and Insurance
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- 1988-1991: Research Coordinator
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- 1987-1990: Associate Professor of Finance, Real Estate, and Insurance
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- 1985-1987: Lecturer in Economics and Finance
College of Business and Economics
California State University, Northridge
- 1982-1985: Assistant Professor of Finance and Business Economics
Graduate School of Business
University of Southern California
- 1980-1982: Economist
U.S. Department of Commerce
National Marine Fisheries Service
- 1979-1980: Research Economist
Energy Research Center
University of California, San Diego

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Fellowships, Honors, and Competitive Grants

Lifetime Scholarly Achievement Award, David Nazarian College of Business and Economics, December 2016
Loman Foundation Research Grant, 1987 (with J. Laurie & G. Johnson)
Regent's Dissertation Fellow, 1981-82
Regent's Fellow, University of California, San Diego, 1977-82
Robert G. Bone Scholar, Illinois State University, 1976
Dewitt Wallace Fellow, Woods Hole Pleasant Bay Marine Research Center, 1975

Beta Gamma Sigma (business)
Omicron Delta Epsilon (economics)
Kappa Mu Epsilon (mathematics)
Alpha Omega Nu (marine biology)

Current Research Interests

Financial Economics & Valuation
Applied Econometrics, Economic Statistics, and Modeling
Investments & Portfolio Analysis
Financial Planning & Wealth Management
Surveys, Statistical Methods, Computational Statistics
Forensic Economics
Applied Microeconomics
Business Economics
Labor Economics
Economics of Real Estate
Economics of Regulation, Market Structures and Industrial Organization
Quantitative Management

Books & Chapters

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CAPM, Down-market, and Up-market Betas by Industry: Data for Common Stocks, Preferred Stocks, and Mutual Funds, As of the End of the 4th Quarter, 2016 (with W.P. Jennings, Chong, Arzumanyan). Beta Estimates for Valuation and Cost of Capital. Pasadena, CA: Walnut Oak Press, 2017.

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2. *The Role of Structured On-Site Training in ETP* (with Blake, Gorman, and Moore) (Sacramento, CA: <http://www.etp.ca.gov/docs/sostreport.pdf>, July 2002)
3. *ETP At Work: An Evaluation of 1995-96 ETP Projects*, (with Moore, Blake, McConaughy, and Cheung von Haam), (Columbus, OH: ERIC # 437561, Jan 27, 2000).
4. *Training That Makes A Difference: ETP's Impact on Trainees, Companies and the State's Economy*, (with Moore, Blake, McConaughy, and Cheung von Haam), (Columbus, OH: ERIC #437562, Jan 27, 2000).
5. *Accounting for Training: An Analysis of the Outcomes of California Employment Training Panel Programs*, (with Moore & Blake), (Columbus, OH: ERIC, May 1997).
6. *Public Training with Private Efficiency: An Analysis of the Outcomes of California Employment Training Panel Programs*, (with Moore & Blake), (Columbus, OH: ERIC, October 1994).
7. *An Experimental Study of Comparable Worth*, (with Arnault, Gordon, and Joines), Federal Reserve Bank of Kansas City Working Paper, 1989.
8. *Rent Control: A New Look at Its Political Economy*, (with M.C. Findlay, Joines, Arnault) JurEcon Monograph.

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2. "ESG Investing: A Simple Approach" (with Chong), *Journal of Wealth Management*, Vol 19, No. 2.
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10. "Tactical Asset Allocation with Macroeconomic Factors" (with Chong), *Journal of Wealth Management*, Vol. 17, Issue 1.
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13. "Asset Attribution Stability and Portfolio Construction: An Educational Example", (with Chong, W.P. Jennings), *American Journal of Business Education*, Vol. 7, No. 2.
14. "Why Downside Beta Is Better: An Educational Example" (with Chong and W.P. Jennings), *American Journal of Business Education*, Vol. 6, No. 3.
15. "Low- (Economic) Volatility Optimization" (with Chong), *Journal of Wealth Management*, Vol. 16, Issue 3. Finalist for *The William F. Sharpe Indexing Achievement Awards, ETF/Indexing Paper of the Year across all Institutional Investor Journals (2014)*.
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17. "What's Good in Theory May Be Flawed in Practice: Potential Legal Consequences of Poor Implementation of a Theoretical Sample" (with Williams and A.L. Phillips), *Hastings Business Law Journal*, Vol. 9, Issue 1.

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20. "Eta® Analysis of Portfolios: The Economy Matters" (with Chong and W.P. Jennings), *Journal of Wealth Management*, Vol. 15, Issue 2.
21. "Five Types of Risk and A Fistful of Dollars: Practical risk analysis for investors" (with Chong and W.P. Jennings), *Journal of Financial Service Professionals*, Vol. 66, Issue 3.
22. "Measuring Risk for Cost of Capital: The downside beta approach" (with Chong), *Journal of Corporate Treasury Management*, Vol. 4, Issue 4.
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27. "Can Dual Beta Filtering Improve Investor Performance?" (with Chong and S. Pfeiffer), *Journal of Personal Finance*, Vol. 10, No. 1 (2011).
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31. "The Persistence of Traditional Gender Stereotypes: Evidence From the Distribution of Academic Honors at a Female-Majority University" (with A.L. Phillips), *American Journal of Business Education*, Vol. 3, No. 10 (2010).
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2. "Integrating Accounting Measurement with Global Financial Linkages to Predict U.S. Equity Risk/Return Characterization" (with Rana) presented by Rana at Financial Management Association, Las Vegas, October 2016.
3. "Incorporating Risk Tolerance in Portfolio Construction" (with Chong and Jennings) presented at Insider's Forum, San Diego, September 2016.
4. "Current Economic Trends and the Market" presented at Insider's Forum, San Diego, September 2016.
5. "Portfolio Optimization Strategy: Models & Time Horizons" (with Chong, Jennings, and Underwood) presented at IB50 Insights 2016, San Diego, April 2016.

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6. "Auxiliary Supported Student Managed Investment Funds" presented at AOA Annual Conference 2016, Auxiliary Organizations Association, Sacramento, January 2016.
7. "Professional Certifications in the Finance Curriculum" presented at Financial Management Association Annual Conference, Orlando, October 2015.
8. "Data Sources: CalcBench and Quandl" presented at FMA Corporate Financial Planning and Analysis Round Table, Financial Management Association, Orlando, October 2015.
9. "Inclusion of International Factors in Fama French and Carhart Models" (with Rana) presented at FMA Corporate Financial Planning and Analysis Round Table, Financial Management Association, Orlando, October 2015.
10. "Portfolio Optimization Strategy: Models and Time Horizons" (with Chong) presented at FMA Financial Planning and Analysis, Financial Management Association, Orlando, October 2015.
11. "Communicating, Modeling, & Managing Risk" (with Chong) presented at Inside Information Financial Planning Conference 2015, Inside Information, Phoenix, September 2015.
12. "MacroRisk Stoplights and the fi360 Fiduciary Score" (with Chong) presented at fi360 Insight 2015, Orlando, March 2015.
13. "Asset Classes Aren't All They Seem: The Importance of Asset Selection When Constructing Portfolios" (with Chong and W. P. Jennings) presented at fi360 Conference, Orlando, March 2015.
14. "Mapping Investor's Risk Preferences to Portfolio Risk Characteristics: An Econometric Approach" (with Chong and W. P. Jennings) presented at FMA Financial Planning and Analysis Corporate Round Table, Financial Management Association, Nashville, October 2014.
15. "An Academic Assessment of the fi360 Fiduciary Score" (with Chong and W. P. Jennings) presented at fi360 Conference, Nashville, April 2014.
16. "Tactical Asset Allocation with Macroeconomic Factors" (with Chong) presented at fi360 Conference, fi360, Nashville, April 2014.
17. "Spinning Gold Into Straw: Weaving Profits in California's Looming Economy" BB&T Insurance Annual Sales Meeting, Rancho Palos Verdes, CA, April 2014.
18. "Panel on Student-Managed Investment Funds", WDSI Annual Meeting, Western Decision Sciences Institute, Napa, CA, April 2014.

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19. "Technology for Analyzing Macroeconomic Risk: The MacroRisk Analytics Approach" (with Chong and W. P. Jennings), presented at T3 Conference, Technology Tools for Today, Anaheim, CA, February 2014.
20. "How to Factor In the Economy When Selecting Investments and Creating Portfolios" (with Chong and W. P. Jennings), presented at T3 Enterprise Conference (for Broker/Dealers), Technology Tools for Today Magazine, Rosemont, Illinois, November 2013.
21. "Low Economic Volatility Optimization," presented by Chong at Academy of Financial Services, Academy of Financial Services, Chicago, October 2013.
22. "Applications of Portfolio Replication for Corporate Finance" (with Chong and W. P. Jennings), presented at FMA Financial Planning and Analysis Corporate Round Table, Financial Management Association, Chicago, October 2013.
23. "Economies of Scale and Scope in Mutual Fund Management: The Post-2008 Experience" presented by Chong at FMA Financial Planning and Analysis Corporate Round Table, Financial Management Association, Chicago, October 2013.
24. "How to Factor In the Economy When Selecting Investments and Creating Portfolios" (with Chong and W. P. Jennings) presented at Insider's Forum Wealth Management Conference, Inside Information Magazine, Dallas, September 2013.
25. "Low-economic Volatility Investing," (with Chong) presented at Institute for Private Investors Fall Forum, Institute for Private Investors, San Francisco, September 2013.
26. "Avoiding Low Volatility Potholes: Practical Advice for Fiduciaries" (with Chong) presented at f360 Conference, Scottsdale, AZ, April 2013.
27. "Opportunities and Risks of Low Volatility Portfolios" (with Chong) presented at f360 Conference, Scottsdale, AZ, April 2013.
28. "A Survey of Low Volatility Portfolio Strategies" (with Chong) presented at RISE 13, University of Dayton, Dayton, OH, April 2013.
29. "Measuring the Impact of the Economy on Investments: New Tools for Fiduciaries," presented at Warner Center Estate and Tax Planning Council, Woodland Hills Country Club, November 2012.
30. "Five types of risk... and a fistful of dollars," (with Chong and W. P. Jennings) presented at FMA Financial Planning and Analysis Corporate Round Table, Financial Management Association, Atlanta, GA, October 2012.
31. "Low (economic) volatility investing," (with Chong) presented at FMA Financial Planning and Analysis Corporate Round Table, Financial Management Association, Atlanta, GA, October 2012.

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32. "Portfolio size: Revisited," (with Chong) presented at Academy of Financial Services, San Antonio, TX, October 2012.
33. "Practical risk analysis," (with Chong and W. P. Jennings) presented at Business and Wealth Management Forum, Bob Veres and T3, Denver, CO, September 2012.
34. "Understanding Economic Risk Statistics," (with Chong and W.P. Jennings) presented at TRX User's Conference, Denver, September 2012.
35. "Downside beta and controlling risk," (with Chong) presented at f360 Conference, Chicago, IL, April 27, 2012.
36. "Teaching Corporate Finance: A Digital Experience," presented as WFN Guest Lecture, Wiley Faculty Network, Webconference (Online), March 2012.
37. "Teaching Corporate Finance: A Digital Experience," presented at Wiley Faculty Network Finance Conference, John Wiley & Sons, New York City, March 2012.
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39. "S&P 500 ETFs and Index Funds: Are fees all there is to it?" (with M. Hussein and Chong) presented at Academy Financial Services Annual Meeting 2011, October 2011.
40. "How Many Holdings for Diversification?" (with Chong) presented at Financial Management Association's Financial Planning and Analysis Corporate Round Table, October 2011.
41. "Macroeconomic Portfolio Construction: An Introduction to MacroRisk for academia" (with Chong) presented at Financial Management Association's Financial Planning and Analysis Corporate Round Table, October 2011.
42. "What's Best Isn't Normal: The dual-beta model and estimated costs of capital" (with Chong) presented at Financial Management Association's Financial Planning and Analysis Corporate Round Table, October 2011.
43. "Macroeconomic Portfolio Construction" (with Chong and W.P. Jennings) presented at Business and Wealth Management Forum, October 2011.
44. "It's Not Betting on Winners but Avoiding Loss That Matters: Portfolio analysis and strategy for these volatile times" (Chong and M. Hussein) presented at Southern California Financial Planning Associations' Technology Day: Trends for 2011 & Beyond, June 2011.
45. "S&P 500 ETFs and Index Funds: Are fees all there is to it?" (with M. Hussein and Chong) presented at Tamkang University in Taipei, Taiwan, June 2011.

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47. "Understanding Credit Reports and Scores" (with Chong) presented at My Money Management in California State University, Northridge, April 2011.
48. "Breaking Through Boundaries: Initial steps toward finding profitable, but mostly untapped, markets" (with Chong) presented at the Quarterly General Breakfast Meeting of the Society of Financial Service Professionals, San Fernando Valley Chapter, March 2011.
49. "MacroRisk Analytics Methods for Financial Planners: Investment tools for a Changing Economy" (with Chong) presented at Personal Financial Planning Association at Texas Tech University, March 2011.
50. "Bubble Risks, Economics Risks, and Portfolios" (with Chong) presented at Personal Financial Planning Association at Texas Tech University, March 2011.
51. "Presidential Approval Ratings and Risk," (with Chong and Halcoussis) presented at Financial Management Association Annual Meeting 2010, October 2010.
52. "Can Typical Households Earn Hedge Fund Returns?" (with Chong) presented at Academy of Financial Services, October 2010.
53. "The Performance of Safe Portfolios During Stressful Times: How Beta failed, why new measures were needed" (with Chong) presented at Financial Management Association, October 2009.
54. "New Perspectives on Portfolio Risk" (with Chong) presented at Financial Planning Association, July 2010.
55. "A New Approach to Measuring and Managing Investment Risk" presented at June 2010 Meeting of American Association of Individual Investors, June 2010.
56. "The Obama Effect" (with A. Lowenberg and Halcoussis) presented at Western Economic Association International annual conference, July 2009.
57. "Financial Simulation and Risk Analysis Using PopTools" (with Chong and Gorman) invited paper, Financial Management Association Financial Planning and Analysis Corporate Round Table, October 2008.
58. "Open Source Software Resources for Financial Research and Teaching: An Evaluation with Applications", (with Her) invited paper, Financial Management Association Financial Planning and Analysis Corporate Round Table, October 2007.
59. "EVA: The Bubble Years, Meltdown, and Beyond", (with Chong, Fountaine, Her) presented at Academy of Financial Services 21st Annual Meeting, October 2007.

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60. "Fun with Beta! (Or, applying Beta is a risky proposition)" (with W.P. Jennings) invited paper, Financial Management Association Financial Planning and Analysis Corporate Round Table, October 2006.
61. "Teaching Finance Electronically: A Panel Discussion", panel member, Financial Management Association, October 2006.
62. "Is Economic Value Added a Better Proxy for Market Value Added?" (with Chong, Her, Fountaine), presented at the Academy of Financial Services International Conference, 2006.
63. "Hedonic Regression and Unusual Loss Analysis in Civil Litigation" (with Fractor) invited Presentation, International Contracts Conference, February 2006.
64. "Eta™ Analysis: Forecasting and Quantitative Analysis for Investment Banking and Hedge Funds", invited Keynote Presentation, Institute for Operations Research and Management Science (INFORMS) Roundtable Meeting on Forecasting, February 2006.
65. "A Strategic View of How State-Sponsored Training Works for Companies: Findings from an Evaluation of the Largest State-Sponsored Workforce Training Program in the United States," (with Gorman, Moore, Blake, Rossy) presented at the 2006 Western Academy of Management Conference, Long Beach, CA.
66. "Evaluating Institutional Arrangements for State-Funded Customized Training: An Analysis of the California Employment Training Panel Program," (with Gorman, Moore, Blake, Rossy) presented at the 2006 Academy of Human Resource Development Conference, Columbus, Ohio.
67. "An Eta Analysis of IBM" (with W.P. Jennings and M.C. Findlay) invited paper, Financial Management Association Financial Planning and Analysis Corporate Round Table, October 2005.
68. "When It's Good, It's Good; When It's Bad, It's Better" (with Chong and Her) at Academy of Financial Services International Conference, 2005.
69. "Does State-Sponsored Training Work for Workers? An Econometric Analysis of How a State-Sponsored Training Program Affects Trainees' Earnings," (with Gorman, Moore, Blake, Rossy) presented at the 2005 Western Academy of Management Conference, Las Vegas.
70. Lessons from the Past and New Priorities: A Multi-Method Evaluation of ETP, report submitted to California Employment Training Panel (with Moore, Gorman, Blake, Rossy, Cohen, Grimes, and Abad).
71. "An Empirical Study of the Effectiveness of Publicly-Funded 'Structured on-Site Training': Implications for Policy and Practice," (with Gorman, Moore, and Blake) presented at the 2004 Western Academy of Management Conference, Anchorage, AK.

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73. Beyond the "Four Levels": A Dynamic Model of Evaluation" (with Moore, Blake, and Gorman) presented at Western Academy of Management, 2003.
74. "ETP's Impact on Trainees: An Analysis of Earnings and Employment," (with Gorman, Moore, and Blake) interim report submitted to California Employment Training Panel, December, 2003.
75. Public Subsidy of Private on The Job Training: Policy Lessons from California's Employment Training Panel (with Moore, Blake, and Gorman) presented at Journal of Vocational Education and Training 5th International Conference, 2003.
76. "ETP's Role in the California Economy: A Concept Paper," (with Moore, Blake, Gorman, Herczeg) assessment concept paper funded by California Employment Training Panel in August, 2002.
77. Matching the Tools with the Targets: A Reappraisal of Outcomes, Measurement, and Strategy (with O'Rear), invited paper to the Cypress 2000 Conference, 2000.
78. ETP Training and Individual Outcomes, presented to the State of California Employment Training Panel, 2000.
79. The Impact of Neighborhood Identification on Property Values (with Bleich and Cary), presented at Allied Academics International Conference, 1998.
80. Estimating Economic Losses Using Discounted Intervention Analysis: A Theoretical Analysis (with Fractor) presented at Western Economic Association meetings, 1993.
81. Issues in Taxes and Fringe Benefit Valuation, Topic Discussant presented at National Association of Forensic Economics meetings, 1993.
82. The Economic Determinants of Wages in Southern California: A Survey Analysis (with Trybus and Johnson) presented at The American Statistical Association Meetings, 1990.
83. An Economic Analysis and Taxonomy of Insurance Rate of Return Regulation (with Greenhalgh, Johnson, and Laurie) presented at The Western Risk and Insurance Association, 1990.
84. The Economic Impact of a Landfill on Surrounding Neighborhood Values (with Bleich & M.C. Findlay) presented at American Real Estate Society Meetings, 1989.
85. A Labor Market Test of the "Stair Steps" earnings hypothesis (with Johnson and Trybus) presented at The American Statistical Association Conference on Social Science, 1988.

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86. Perversity in the Regulation of Transfrontier Pollution (with Fractor) presented at Western Economic Association Meetings, 1988.
87. A Regulatory Explanation for Underwriting Cycles (with Launle and Johnson) presented at Western Risk and Insurance Association; and at American Risk and Insurance Association, 1987.
88. Social Security Payments and Monetary Forecast Errors (with Joines and Clark) presented at Western Finance Association meetings, 1986.
89. Expectations Formation and Forecasting, Topic Discussant presented at Western Economics Association meetings, 1986.
90. A Tale of Two Cities: Forecasting Nonresidential Construction Activity Using Employment Data (with Dale-Johnson) presented at Western Economic Association Meetings, 1984.
91. On the Inappropriateness of Annual Fishing Models for Regulatory Analysis presented at CalCOFI Meetings, 1982.
92. Bivariate Causal Models of Commercial Fisheries with Applications to Schaefer Models presented at CalCOFI Meetings, 1981.

Other Publications

1. "Fiduciary and Economic Scoring of Mutual Funds Enhances Portfolios" (with Arzumanyan, Underwood, and Chong), *T3: Technology Tools for Today*, Vol. 12.
2. "The Economy in Review: 2011" (with Chong and W.P. Jennings), *Technology Tools for Today*.
3. "Low Volatility Portfolio Tools for Investors" (with Chong and W.P. Jennings), *Technology Tools for Today Newsletter*, Vol. IX, Issue 11 (November 2011).
4. "Economics in Action or Economic Inaction? You Might Not Have a Choice", *T3: Technology Tools for Today* (May 2011).
5. "America West' Rejects Strict Standard on Stock Price Effect" (with M.C. Findlay and Garcia), *Los Angeles Daily Journal*, (April 1, 2003): p. 7.

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Refereeing Experience

Eastern Economic Journal
Economic Inquiry
Journal of Economics and Finance
Journal of Insurance Issues and Practices
Associate Editor (2004-2006) - *Journal of Investment*
Management and Financial Innovations
Journal of Macroeconomics
Associate Editor (1995-1999), *Litigation Economics Digest*

John Wiley and Sons
Little, Brown & Company
Prentice-Hall Publishing Company
Southern Economic Journal
Southwest Publishing Company
Thomson Learning Company
Wadsworth Publishing Company

Professional Memberships

Academy of Financial Services
American Association of Public Opinion Research (AAPOR)
American Statistical Association
Association of Certified Fraud Examiners
Association of Researchers in Construction Management (ARCOM)
Financial Management Association
INFORMS
National Association of Business Economics
Western Economics Association

**PHILLIPS,
FRACTOR
& COMPANY, LLC**

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DENNIS HALCOUSSIS, PH.D.

July 2017

Current Positions

Economist

Phillips, Fractor & Company, LLC

Professor, Department of Economics

David Nazarian College of Business Administration & Economics

California State University, Northridge

Education

Ph.D. 1992 Economics, University of Pennsylvania
Dissertation "The Economic Foundation of the U.S. Populist Movement"

M.A. 1987 Economics, University of Pennsylvania

B.A. 1985 Economics, Case Western Reserve University
Minor in Mathematics and Statistics

Email

dhalcoussis@rule26.com

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Experience

2008 - Present:	Economist Phillips, Fractor & Company, LLC (formerly Phillips Fractor Gorman)
2002 - Present:	Professor, Department of Economics David Nazarian College of Business and Economics California State University, Northridge
1997 - 2002:	Associate Professor, Department of Economics David Nazarian College of Business and Economics California State University, Northridge
1991 - 1997:	Assistant Professor, Department of Economics David Nazarian College of Business and Economics California State University, Northridge
July 1987- May 1988:	Research Analyst New Generation Investments Boston, MA
Aug 1984- Dec 1984:	Research Assistant, Line-of-Business Program Federal Trade Commission Washington, D.C.

Graduate and Undergraduate Courses Taught

Econometrics	Price Theory
Use and Interpretation of Economics Data	Principles of Microeconomics
MBA Survey of Economics	

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Books

Age-Based Conditional Probabilities of Death, 2013 (with G. Michael Phillips, David Fractor, Edward T. Garcia, and Laurel J. Fish). Mortality Factors for Valuation. Pasadena, CA: Walnut Oak Press, 2017.

Age-Based Cumulative Probabilities of Survival, 2013 (with Fractor, Phillips, Garcia, and Fish). Mortality Factors for Valuation series. Pasadena, CA: Walnut Oak Press, 2017.

Life Expectancy Based Remainder Perpetuity Present Value Factors, 2013 (Vol. 1, Vol. 2, and Vol. 3) (with Phillips, Halcoussis, Garcia, and Fish). Mortality Factors for Valuation. Pasadena, CA: Walnut Oak Press, 2017.

Probability Adjusted Remainder Perpetuity Present Value Factors, 2013 (Vol. 1, Vol. 2, and Vol. 3) (with Phillips, Halcoussis, Garcia, and Fish). Mortality Factors for Valuation. Pasadena, CA: Walnut Oak Press, 2017.

Age-Based Conditional Probabilities of Death, 2012 (with Phillips, Halcoussis, Garcia, and Fish). Mortality Factors for Valuation. Pasadena, CA: Walnut Oak Press, 2017.

Understanding Econometrics, Cengage/South-Western, 2005 (available in English or Korean.)

Publications

1. "Estimating the Price Elasticity of Demand for Cannabis: A Geographical and Crowdsourced Approach" with Anton D. Lowenberg and Zach Roof. Journal of Quantitative Methods for Economics and Business Administration, Vol. 23, June 2017.
2. "Improved Margin of Error Estimates for Proportions in Business: An Educational Example" with George Arzumanyan and G. Michael Phillips, American Journal of Business, Vol. 8, No. 13, 2015.
3. "All-In: An Empirical Analysis of Legislative Voting on Internet Gambling Restrictions in the United States" with Anton Lowenberg, Contemporary Economic Policy, Vol. 33, #1, 2015.

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4. "Unions and Democracy: When Do Nonmembers Have Voting Rights?" with Melanie Williams, Journal of Business and Technology Law, Vol. 9, No. 2, 2014.
5. "Misleading Betas: An Educational Example", American Journal of Business Education, Vol. 5, No. 5, 2012.
6. "Does Market Volatility Impact Presidential Approval?" with James Chong and G. Michael Phillips, Journal of Public Affairs, Vol. 11, Issue 4, November 2011.
7. "Economic Sanctions and Culture" with Donna Driscoll and Anton D. Lowenberg, Defence and Peace Economics, Vol. 22, No. 4, August 2011, pp. 423-448.
8. "Explaining Local Growth-Management Policies: The Role of Public Goods" with Donna Driscoll and Anton D. Lowenberg, American Journal of Economics and Business Administration, 2(1): 45-55, 2010, pp. 45-55.
9. "Interpreting Bivariate Regression Coefficients: Going Beyond the Average" with G. Michael Phillips, American Journal of Business Education, 3(#4) April 2010, pp. 67-70.
10. "Property Ownership and Educational Discrimination 1885-1930" with Kenneth Ng and Nancy Virts, Journal of Education Finance, 35 (2) Fall 2009, pp. 128-39.
11. "The Obama Effect" with Anton D. Lowenberg and G. Michael Phillips, Journal of Economics and Finance, 33 (3) July 2009, pp. 324-329.
12. "Gains In Standardized Test Scores: Evidence of Diminishing Returns to Achievement" with Donna Driscoll and Shirley Svorny, Economics of Education Review, 27(2) April 2008, pp. 211-220.
13. "eBay Auctions for Third Eye Blind Concert Tickets" with Timothy Mathews, Journal of Cultural Economics, March 2007 31(1), pp. 65-78.

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14. "Quantity and Quality of Radio Broadcasting: Are Small Markets Underprovided?" with Anton D. Lowenberg, International Journal of the Economics of Business, November 2003, 10(3), pp. 347-57.
15. "Determinants of the Level of Public School Discrimination, 1885-1930" with Kenneth Ng, Journal of Education Finance, Summer 2003, Vol. 29, #1 pp. 49-60.
16. "School District Size and Student Performance" with Donna Driscoll and Shirley Svorny, Economics of Education Review, Vol. 22, #2, April 2003.
17. "An Empirical Analysis of Web Catalog User Experiences" with Aniko L. Halverson (California Arts), Susan Lowenberg, Anton D. Lowenberg, Information Technology and Libraries Vol. 21, #4, December 2002.
18. "Linguonomics: Official Language Laws, Entry Barriers, and Public Goods" with Gary M. Anderson and Anton D. Lowenberg, Journal of Public Finance and Public Choice, (Vol. 18, No. 2-3, 2000.).
19. "Regulatory Barriers to Entry in the Healthcare Industry: The Case of Alternative Medicine" with Gary M. Anderson,, Linda Johnston, M.D., and Anton D. Lowenberg, Quarterly Review of Economics and Finance, (Vol. 40, No. 4, 2000).
20. "The Role of Alternative Medicine in the Health Care Market" with Gary M. Anderson,, Linda Johnston, M.D., and Anton D. Lowenberg, Journal of Medical Licensure and Discipline, (Vol. 86, No. 2, 1999).
21. "Jim Crow and Local Public Goods" with Anton D. Lowenberg, Journal of Institutional and Theoretical Economics (Vol. 154, No. 4, December 1998).
22. "Drafting the Competition: Labor Unions and Military Conscription" with Gary M. Anderson and Robert D. Tollison (George Mason), Defense and Peace Economics (Vol. 7, No. 4, December 1996).
23. "Economic Losses Due to Forecasting Error and the U.S. Populist Movement," Economic Inquiry (Vol. 34, No. 2, April 1996).

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24. "The Political Economy of Legal Segregation: Jim Crow and Racial Employment Patterns," with Gary M. Anderson, Economics and Politics, (Vol. 8, No. 1, March 1996).

Other Publications

1. "Large School Districts Aren't Necessarily Better" with Donna Driscoll and Shirley Svorny, (Los Angeles) Daily News, November 2, 2001 p. 23.
2. Review of "Party Spirit in a Frontier Republic," Journal of Economic History, (Vol. 59, No. 2, June 1999).

Presentations at Professional Meetings

1. Presented "All in: An Empirical Analysis of Legislative Voting on Internet Gambling Restrictions in the United States" with Anton Lowenberg in session entitled "Topics in Microeconomics II" Western Economics Association, 86th Annual Conference, San Diego, July 2, 2011.
2. Discussed "Changes in Racial Concentration in the United States, 1980-Present" in session entitled "U.S. Labor Market: Outward FDI, Immigration, and Racial Concentration" Western Economics Association, 86th Annual Conference, San Diego, July 2, 2011.
3. Presented "The Obama Effect" (with Anton Lowenberg, and G. Michael Phillips) in a session entitled "Financial Issues in Economics" at the Western Economics Association, 84th Annual Conference in Vancouver, July 1, 2009.
4. Presented at Canadian Economics Association Meetings, "Economic Sanctions and Culture," (with Anton Lowenberg) Canadian Economics Association, Vancouver, British Columbia, Canada (June 7, 2008).
5. Chaired session entitled "Experimental Economics and Global Policy", Western Economics Association International Annual Conference, Seattle, WA. (June 30, 2007).

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6. Discussed "Complex System Theory: Implications for Today's Global Policy Makers" by Samuel P. Baker (Trans National Research Corporation), Western Economics Association International Annual Conference, Seattle, WA. (June 30, 2007).
7. Discussed "Valuing the Environmental Gains of Beijing's 'Green Olympics'" by Robert W. Mead and Victor Brajer, Western Economics Association International Annual Conference, Seattle, WA. (June 30, 2007).
8. Presented "Explaining Local Growth Policies: An Empirical Investigation" (with Anton Lowenberg), Western Economics Association International Annual Conference, Seattle, WA. (June 30, 2007).
9. Presented "Economic Sanctions and Culture" (with Anton Lowenberg), Western Economic Association International Annual Conference, San Diego, CA. (July 2006).
10. Chaired session entitled "Micro Theory", Western Economics Association International Annual Conference, San Diego, CA. (July 3, 2006).
11. Discussed "The Impact of Home Ownership on Criminal Activity: Empirical Evidence from United States' County Level Data" by Christopher S. Decker (University of Nebraska, Omaha) and Jinlan Ni (University of Nebraska, Omaha)," Western Economics Association International Annual Conference, San Diego, CA. (July 3, 2006).
12. Presented "Gains in Standardized Test Scores: An Empirical Investigation", Public Choice Society Annual Meeting, New Orleans, Louisiana. (March 11, 2005).
13. Presented "3eb Auctions on eBay," Western Economics Association International Association Conference, Vancouver, CA. (July 1, 2004).
14. Discussed "The Policy Perspectives of High-Technology Clustering" by Diana H. Tsai (National Sun Yat-Sen University)," Western Economics Association International Annual Conference, Vancouver, Canada. (July 1, 2004).

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15. Discussed "Health Information and Cigarette Consumption: Supply and Spatial Considerations" by Craig Gallet (California State University, Sacramento), Western Social Science Association Meetings, Las Vegas, NV. (April 10, 2003).
16. Dennis Halcoussis (Presenter & Author), Western Social Science Association Meetings, "Violent Crime and the Decision to Smoke," Western Social Science Association, Las Vegas, NV. (April 10, 2003).
17. Presented "The Quantity and Quality of Radio Broadcasting: Are Small Markets Underprovided?" (with Anton Lowenberg), Western Economic Association International Annual Conference, Seattle, WA. (June 2002).
18. Presented "Official Language Laws, Entry Barriers, and Public Goods" (with Anton Lowenberg and Gary Anderson), Western Economic Association International, Vancouver, B.C. (July 2000).
19. Speaker, presented "Regulatory Barriers to Entry in the Health Care Industry: The Case of Non-Traditional Medicine" (with Gary Anderson, Linda Johnston, M.D., and Anton D. Lowenberg), Public Choice Society Conference, New Orleans, March 13-15, 1998.
20. Speaker, Chair, and Organizer, session entitled "Local Public Goods Models of Political Economy," presented "Jim Crow and Local Public Goods", Western Economic Association 70th Annual Conference, San Diego, July 5-9, 1995.
21. Speaker, presented "Agrarian Discontent in the Populist Era: Farm Surplus and Mortgage Payments in Nebraska," at the "All University of California" Economic History Conference, University of California at Berkeley, November 13, 1992.

Awards and Honors

Honorable Mention, MOD teaching award, Spring 2005.

Polished Apple Award, presented by University Ambassadors and the Provost, 2001.

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GEORGE ARZUMANYAN, CFA

July 2017

Experience

Research Associate
Phillips, Fractor & Company, LLC (2013 to present)

Education

B.S., 2013 Business Administration emphasis in Global Supply Chain Management and Systems &
Summa Cum Laude Operations Management
Minor in Finance & Marketing
California State University, Northridge

Certification & Professional Memberships

CFA Charterholder and Member of CFA Institute
Member of CFA Society Los Angeles
Member of IMCA
2013 Recipient of Warner K. Masters Award College of Business and Economics at Calif. State University, Northridge.

Representative Consulting

Performed statistical analysis, sample analysis, and extrapolations in construction defects cases.
Assisted in the analysis of payroll data and work activity data to determine class-wide damages in wage dispute cases involving truck drivers.
Performed financial analysis on stock option valuations.

Email

garzumanyan@rule26.com

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Books & Articles

CAPM, Down-market, and Up-market Betas by Industry: Data for Common Stocks, Preferred Stocks, and Mutual Funds: As of the End of the 1st Quarter, 2017 (with W.P. Jennings, J. Chong, G. Arzumanyan). Beta Estimates for Valuation and Cost of Capital. Pasadena, CA: Walnut Oak Press, 2017.

Hypergeometric Distributions Tables for Attorneys & Experts: 80 Percent Confidence Level (with Arzumanyan and Halcoussis). Sample Size Illustrations, Confidence Intervals, & Margins of Error. Pasadena, CA: Walnut Oak Press, 2017.

Hypergeometric Distributions Tables for Attorneys & Experts: 85 Percent Confidence Level (with Arzumanyan and Halcoussis). Sample Size Illustrations, Confidence Intervals, & Margins of Error. Pasadena, CA: Walnut Oak Press, 2017.

Hypergeometric Distributions Tables for Attorneys & Experts: 90 Percent Confidence Level (with Arzumanyan and Halcoussis). Sample Size Illustrations, Confidence Intervals, & Margins of Error. Pasadena, CA: Walnut Oak Press, 2017.

Hypergeometric Distributions Tables for Attorneys & Experts: 95 Percent Confidence Level (with Arzumanyan and Halcoussis). Sample Size Illustrations, Confidence Intervals, & Margins of Error. Pasadena, CA: Walnut Oak Press, 2017.

Hypergeometric Distributions Tables for Attorneys & Experts: 99 Percent Confidence Level (with Arzumanyan and Halcoussis). Sample Size Illustrations, Confidence Intervals, & Margins of Error. Pasadena, CA: Walnut Oak Press, 2017.

CAPM, Down-market, and Up-market Betas by Industry: Data for Common Stocks, Preferred Stocks, and Mutual Funds: As of the End of the 4th Quarter, 2016 (with W.P. Jennings, Chong, Arzumanyan). Beta Estimates for Valuation and Cost of Capital. Pasadena, CA: Walnut Oak Press, 2017.

"Improved Margin of Error Estimates for Proportions in Business: An Educational Example" (with Arzumanyan and Halcoussis), *American Journal of Business Education*, Vol. 8, No. 3.

"Fiduciary and Economic Scoring of Mutual Funds Enhances Portfolios" (with Arzumanyan, Underwood, and Chong), *T3: Technology Tools for Today*, Vol. 12.

EXHIBIT B

1 DOUGLAS J. FARMER (SBN 139646)
douglas.farmer@ogletreedeakins.com
2 CHARLES L. THOMPSON, IV (SBN 139927)
charles.thompson@ogletreedeakins.com
3 MICHAEL D. THOMAS (SBN 226129)
michael.thomas@ogletreedeakins.com
4 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
5 Stuart Tower, Suite 1300
One Market Plaza
6 San Francisco, CA 94105
Telephone: 415.442.4810
7 Facsimile: 415.442.4870
8 Attorneys for Defendant
CROWN BUILDING MAINTENANCE DBA
9 ABLE BUILDING MAINTENANCE COMPANY

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ALAMEDA**
13

14 CARMEN GAMA and ISABEL GARIBAY,

15 Plaintiffs,

16 vs.

17 ABLE SERVICES; CROWN BUILDING
18 MAINTENANCE CO.; CROWN BUILDING
19 MAINTENANCE DBA ABLE BUILDING
MAINTENANCE COMPANY; and DOES 1-10,
inclusive,

20 Defendants.

Case No. RG15773582

**DECLARATION OF BILL HUFF IN
SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFF'S MOTION
TO COMPEL DISCOVERY**

Date: November 16, 2016
Time: 2:30 p.m.
Dept.: 17
Judge: Hon. George C. Hernandez, Jr

Action Filed: June 10, 2015

Case No. 34-2015-00181522

**DECLARATION OF BILL HUFF IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION
TO COMPEL DISCOVERY**

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1 employee address changes that occur without notification to Able. Below are my estimates to
2 provide quality data:

3 7. With respect to the request for janitor phone numbers including cell phone numbers,
4 more than half of janitors do not provide Able with a phone number. Able does not require
5 employees to provide a phone number or cell phone number to be hired. The numbers provided by
6 employees on job applications do not state whether they are a cell phone or not.

7 8. It would take a massive amount of time to verify the accuracy of the employee
8 phone numbers. We could first call the employee based on the phone number on record. If the
9 employee does not answer or the number is no longer owned by the employee, it would take
10 approximately 10-15 minutes per employee to locate their personnel file to determine if the phone
11 number on record is consistent with information provided to us by the employee in their personnel
12 file. We would then need to actually call the employee to determine if the phone number is his/her
13 phone number or not and to determine if the phone number is active or not.

14 9. For the employees who did not provide this data in their employment application, it
15 would take days if not weeks to track down this employee to obtain this missing data. I estimate
16 Able would be required to hire at least one full time employee to call employees, review personnel
17 files if necessary, track down employees and record any new data. The billing rate this type of
18 temporary worker in San Francisco is approximately 40.00 per hour. To verify 25% of the
19 population would be about 1000 hours or a cost of \$50K including time spent training. Looking at
20 our normal rate of communication returns annually of about 25%, this is indicative that the system
21 data would require cleanup to be completely accurate. Using total number of employees as a base,
22 with the 25% return rate, I concluded that 25% of employees may need some type of data
23 validation and cleanup

24 10. With respect to janitor names and mailing addresses, Able has this information from
25 employee job applications. These names may or may not be accurate. In addition, this is a
26 transient population. Employee addresses change regularly. We would need to do a special
27 mailing to each employee and then research any return date in order to verify our data or to obtain
28 accurate data. This would take months to gather all of the missing or incomplete data. We would

1 also need to perform data cleanup which would involve reviewing the data for accurate
2 information. The cost to prepare and produce accurate names and mailing address would exceed
3 \$50,000.00. Able would have to hire another full time employee to review data and obtain
4 accurate data for the 25% of the employee population will need data verified. If they provided
5 updates over their time of employment those should be reflected in our current data.

6 11. It will also be difficult to determine the location of where each employee worked and
7 their job title.

8 12. With respect to being able to identify each employee's job title back to June 2011 this
9 task is also burdensome. Each employee is given a job title in their payroll file. However, what
10 they actually do is not retained in our systems. Some assumptions would have to be made in this
11 area. Also, depending on what is considered "janitorial" work, many of our employees may be
12 performing non-janitorial work even though they are designated as janitors (ie utility work, waxing
13 or supervision). To provide an accurate response we would have to go back to timesheets to
14 determine what work the employee actually performed to get a list of janitors, forepersons and
15 supervisors.

16 13. In addition, if the employee was hired as a supervisor, we will probably have that
17 reflected in their payroll file. However, if the employee was promoted into this position we may or
18 may not have that data. To provide accurate data we would be required to go back and review
19 timecards to ascertain who is a supervisor.

20 14. With respect to a list of Able facilities where janitorial employees worked, this is
21 also burdensome. Janitors do not always work at work sites assigned. A list of Able worksites will
22 simply provide you with a list of Able worksite. The list, however, will be incomplete. The list
23 will not contain locations where janitors actually worked. The only way to produce accurate
24 information regarding where employees worked is to review payroll records for each employee or
25 the employee's timesheets to determine what job code was assigned to this employee during this
26 pay period. This is a massive project to perform going back to June 2011.

27 15. If we have an employee's information regarding the job worked, title and facility,
28 we can research the individual in the individual transaction system. The additional challenge is job

1 number and employee titles change when we change systems. It is time consuming to map this
2 data and would require technical assistance. For example, we would need to track the employee
3 back to their actual timesheet and then verify or record the actual work performed and job title.

4 16. In order to get an accurate portrayal of the total number of supervisors, you would
5 need to verify at least 30% of the supervisor titles back to the timesheet. This would involve a
6 massive amount of documents and a massive amount of employee or temporary employee time
7 committed to this project.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed on November 2, 2016, at ^{San} ~~Francisco~~, California.

10 Bill Huff
11 Bill Huff

12 26738820.1

1 **LAW OFFICE OF ARASH N. ALIZADEH**
Arash N. Alizadeh, State Bar No. 302290
2 7545 Irvine Center Drive, Suite 200
Irvine, California 92618
3 Phone: (949) 606-2845
4 Fax: (949) 264-9345
Email: aalizadeh@lawyerforemployees.com

5 Attorney for Plaintiff JOSUE URIBE

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE**
8
9 **CIVIL COMPLEX CENTER**

751 SANTA ANA BLVD, SANTA ANA, CALIFORNIA 92701

10 JOSUE URIBE, on behalf of himself and
other current or former employees,

11 Plaintiff,

12 v.

13 CROWN BUILDING MAINTENANCE
14 CO.; and DOES 1 through 100, inclusive,

15 Defendants.

Case No.: 30-2016-00839857-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO:
HON. GLENDA SANDERS
DEPARTMENT: CX101

**SUPPLEMENTAL DECLARATION OF
ARASH N. ALIZADEH**

Date: December 15, 2017
Time: 1:30 p.m.
Department: CX101

Complaint Filed: March 9, 2016
Trial Date: None set

22 I, ARASH N. ALIZADEH, declare:

23 1. I am attorney licensed to practice law before this Court. I am over 18 years of age.
24 I have personal knowledge of the facts set forth in this declaration and could testify
25 competently to them.

26 2. I am the founder of the Law Offices of Arash N. Alizadeh, attorney of record for
27 Plaintiff Josue Uribe ("Plaintiff") and the proposed settlement class (the "Class") in the above-
28 captioned matter.

3. On November 13, 2017, I filed a Motion for Preliminary Approval of Class Action and Representative Action Settlement. Attached as **Exhibit 11** to said motion was a true and correct copy of the parties Stipulation of Settlement of Class Action and Representative Action and Release of Claims signed by the Parties. Two attachments to said Exhibit 11 were inadvertently omitted. These were attachment A, *Notice of Class Action Settlement*, and attachment B, *Claim Form*.

4. A true and correct copy of attachment A and attachment B to Exhibit 11 are attached to this declaration.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Amogh Aliyadeh

November 28, 2017

Arash N. Alizadeh

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

If you are or were a janitorial employee of Crown Building Maintenance Co., dba Able Building Maintenance ("Crown"), including day porters, janitors and foremen or similarly situated hourly employee, employed full time or part time during the period of June 10, 2011 to [the Preliminary Approval Date], You May Be Able to Collect Money From a Class Action Settlement.

The Orange County Superior Court permitted this notice. This is not an ad.

PLEASE READ THIS NOTICE CAREFULLY

IT MAY AFFECT YOUR LEGAL RIGHTS TO RECEIVE ADDITIONAL WAGES AS YOUR PORTION OF A CLASS ACTION SETTLEMENT BECAUSE YOU WERE EMPLOYED CROWN BUILDING MAINTENANCE DURING THE TIME PERIOD SHOWN ABOVE.

IF YOU WISH TO RECEIVE A SHARE OF THE SETTLEMENT DESCRIBED IN THIS NOTICE, YOU MUST SIGN AND SUBMIT THE CLAIM FORM INCLUDED WITH THIS NOTICE ON OR BEFORE (60 DAYS AFTER MAILING), 2018. YOUR ESTIMATED SETTLEMENT SHARE IS SET FORTH IN THE ACCOMPANYING CLAIM FORM, BASED ON THE ASSUMPTIONS SET FORTH IN THAT DOCUMENT. YOUR ACTUAL SETTLEMENT SHARE MIGHT BE HIGHER OR LOWER. PLEASE REVIEW THE INFORMATION IN YOUR CLAIM FORM TO CONFIRM THAT IT IS ACCURATE. IF YOU DO NOT RETURN A SIGNED CLAIM FORM ON A TIMELY BASIS, YOU WILL NOT RECEIVE ANY COMPENSATION AND YOU WILL STILL BE BOUND BY THE RELEASE OF CLAIMS DESCRIBED BELOW.

IF YOU DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT, YOU MUST COMPLETE AND RETURN A WRITTEN ELECTION NOT TO PARTICIPATE ON OR BEFORE (60 DAYS AFTER MAILING), 2018, OTHERWISE YOU WILL BE BOUND BY THE SETTLEMENT.

IF YOU WISH TO OBJECT TO THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS IN THIS NOTICE.

PURSUANT TO THE ORDER OF THE HONORABLE GLENDA SANDERS, SUPERIOR COURT JUDGE IN THE COUNTY OF ORANGE, CALIFORNIA, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

CROWN CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING IN THIS SETTLEMENT, CHOOSING NOT TO PARTICIPATE IN THIS SETTLEMENT, OR OBJECTING TO THIS SETTLEMENT.

- A former employee has sued Crown on behalf of himself and all other similarly situated employees (the "Action");
- The parties to the Action have reached a tentative settlement, and the Court has preliminarily approved it;
- The settlement resolves the Action;
- Your legal rights are affected whether you act, or don't act. Read this notice carefully.

THESE RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.

The Court in charge of this case is Orange County Superior Court, and the case is known as *Josue Uribe et al. v. Crown Building Maintenance dba Able Building Maintenance* Case No. 30-2016-00839857-CU-OE-CXC. The Honorable Judge Glenda Sanders is the judge presiding over this case. The Court still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. Please be patient.

1. Why Should You Read This Notice?

You should read this Notice because Crown's records indicate that you are a Class Member and you may be entitled to money from a class action settlement.

This Notice informs you of your rights to share in the settlement and, if you so choose, to exclude yourself from the settlement or to object to the settlement terms. There was a Preliminary Approval hearing on December 15, 2017, before Judge Glenda Sanders of the Orange County Superior Court. The Court preliminarily approved this class action settlement and directed that you receive this Notice. The Court will hold a Final Approval Hearing on [INSERT DATE].

The class action settlement will resolve all Class Members' claims described below during the Class Period which is June 10, 2011 through [insert date]. This Notice informs you of your rights to share in the settlement and, if you so choose, to exclude yourself from the settlement or to object to the settlement terms.

2. What Is The Lawsuit About?

The named plaintiff in the Action, Josue Uribe ("Uribe"), filed a lawsuit on behalf of all of Crown's janitorial employees including day porters, janitors and foremen and similarly situated manual labor employees in California seeking injunctive relief, money damages, attorneys' fees and penalties for the following categories of alleged claims: failure to pay all earned wages; failure to pay minimum wages, including overtime; failure to pay overtime compensation; failure to reimburse for all expenditures and losses (including safety shoe expenses, uniform related expenses; and personal cell phone use related expenses); failure to provide accurate wage statements; conversion; unfair business practices, and penalties under the Private Attorneys General Act ("PAGA") (Labor Code § 2699).

The time period covered by the Action is June 10, 2011 to [the Preliminary Approval Date].

Crown denies Uribe's allegations and asserts that it has no liability for any of Uribe's or the Class Members' claims under any statute, wage order, common law, or equitable theory.

3. Why Is This A Class Action?

This case was proposed and is being settled as a class action. In a class action, one or more people, called Class Representatives (in this case Josue Uribe), sue on behalf of people who have similar claims and who are referred to as Class Members. Rather than litigating or settling multiple individual lawsuits, one case resolves the claims at issue for all Class Members, except for those who choose to exclude themselves from the Class.

4. Why Is There A Settlement?

The Court did not decide in favor of Uribe or Crown and there was no trial. The Class Representative, Uribe, thinks he could have won at trial. Crown thinks the Class Representative would not have won anything at trial. Crown does not admit to any of the claims alleged in the lawsuit and denies that it owes money to Plaintiff or to the Class Members for any of the alleged claims. Crown chose to settle this lawsuit as a compromise to avoid the cost of litigation. The Class Representative and the attorneys think the settlement is best for the members of the Class.

5. What Does The Settlement Provide?

Crown has agreed to pay \$370,000.00 ("Settlement Amount"), to cover (a) settlement payments to participating Class Members; (b) the cost of administering the settlement; (c) payments made to the State of California for resolution of PAGA claims; (d) incentive payments to the named Plaintiff; and (e) attorneys' fees and costs. After deducting items b-e from the Settlement Amount, the balance, called the "Net Settlement Amount," will be available to pay all participating Class Members. **Class Counsel's attorney's fees and costs and Plaintiff's Incentive Payment remain subject to Court approval.**

6. How Do I Receive Money From the Settlement?

If you want to receive money from the Settlement, **YOU MUST SUBMIT A SIGNED CLAIM FORM ON OR BEFORE (60 DAYS AFTER MAILING).** All members of the class who submit timely and valid claim forms and do not submit a written election not to participate in the settlement will receive settlement checks if the Judge enters an Order Granting Final Approval of the Settlement, and the Court enters Final Judgment following the Final Approval Order. **If you do nothing, you will not receive a settlement payment but you will still release the claims against Crown brought in the lawsuit that are described below.**

7. How Much Will My Payment Be?

Under the settlement, the maximum total amount Crown will pay for all settlement-related costs and expenses is \$370,000.00. Class Members' will be able to submit a claim for their pro rata portion of the "Net Settlement Amount," which means \$370,000.00, less the Class Representative Payment (to be set by the Judge, although Plaintiff is seeking \$10,000 for his services as the Class Representative), the Class Counsel Attorneys' Fees Payment (to be set by the Judge, although the Plaintiff's counsel is seeking 21.5% or \$80,000.00 of the total maximum settlement amount), payment to the Labor Workforce Development Agency in the amount of \$10,000.00 (subject to the Judge's approval), the Settlement Administrator's fees and expenses (to be set by the Judge, although the parties have estimated that it will cost up to \$56,812.00). The Net Settlement Amount will be distributed to the approximately 19,038 current and former janitors, day porters, foreman and other manual labor employees will be paid about 90 days after the court enters a judgment based on this settlement, but possibly later depending on whether

there is any appeal of the judgment entered by the court.

Each class member's settlement share will be calculated pro-rated based on the number of weeks that he or she was employed by Crown in California and received a wage statement with withholdings for California taxes from June 10, 2011 through 2012 as a percentage of all Class Members' weeks employed in California during the same time period. Your estimated portion of the Net Settlement Amount based on your Covered Workweeks in Crown's records is set forth on your Claim Form, which is included with this Notice packet. Your Claim Form also contains an estimate of the amount of your Individual Settlement Amount, although, as explained below, taxes and withholdings will be taken out your Settlement Share allocated to wages.

A portion of each individual Settlement Payment shall be considered settlement of alleged unpaid wages and subject to the withholding of federal, state and local income taxes including FICA taxes. The remaining portions of each individual Settlement Payment shall not be subject to payroll withholding. The Claims Administrator shall issue to each settling Class Member an IRS Form W-2 for the portion of the individual settlement that is designated as unpaid wages. The Claims Administrator shall issue an IRS Form 1099 to each settling Class Member for the remaining portion of the individual Settlement Payment that is not designated as unpaid wages. All settling Class Members will be responsible for correctly characterizing this income for tax purposes and for paying any taxes on the amounts received. Each Class Member who accepts a Settlement Payment agrees to indemnify and hold CROWN harmless for any liability he or she incurs to any tax authority on account of the settling Class Member's failure to pay all taxes due.

8. *If I Submit a Claim Form, When Will I Receive My Settlement Share?*

The settlement shares and other amounts will be paid after final approval of the settlement by the Judge and after the Court enters Judgment on the final approval order and all rights of any objectors to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement. Class Members who submit timely Claim Forms will receive a portion of their Individual Settlement Amount approximately 90 days following Final Approval and Final Judgment in this case. Class Members who submit timely Claim Forms will then have 120 days to cash their settlement checks. All funds associated with settlement checks that are not cashed within 120 days will be tendered to back to the Claims Administrator. The Claims Administrator will proportionately increase the Individual Settlement Payment for each Participating Class Member so that the amount actually distributed to Participating Class Members equals One Hundred Percent (100%) of the Net Settlement Amount.

9. *What Claims Do I Release?*

This class action settlement contains a release in which Class Members who do not choose to exclude themselves release Crown, and its past, present and/or future, direct and/or indirect, officers, directors, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, members, managers, administrators, parents, subsidiaries, affiliates, Able Services, predecessors, successors and/or assigns as of the Date of Final Approval, from the following:

a. All wage and hour claims, rights, demands, liabilities and causes of action of every nature and description related to the claims litigated in the Action against Defendant during the Class Period, including without limitation statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, restitution, equitable relief, causes of action or legal theories that could have been asserted based on the same facts, or any other relief based on the following categories of allegations during the Class Period: (a) all claims for unpaid minimum wages owed; (b) all claims for unpaid overtime compensation; (c) all claims for meal

and rest period violations; (d) all claims for inaccurate rates of pay; (e) all claims for wage statement violations; (f) all claims for failure to reimburse for necessary business expenses (including required safety shoes, uniforms and personal cell phone use); (g) all claims asserted through the California Labor Code sections 2699 *et seq.* (the Private Attorneys General Act of 2004 ("PAGA")) arising out of the aforementioned claims; (h) all claims asserted through the California Business & Professions Code § 17200 *et seq.* arising out of the aforementioned claims and (i) Plaintiff's claim of conversion and

b. All rights, and benefits you may otherwise have pursuant to Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

c. The claims listed in (a) and (b) above are referred to as "Released Claims." The period of the Released Claims shall extend to the limits of the Class Period. The res judicata effect of the Judgment will be the same as that of the Release. The Released Claims shall not be limited in any way by the possibility that Plaintiff or Settlement Class Members may discover new facts or legal theories or legal arguments not alleged in the second amended complaint but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Claims.

Thus, even if you later discover facts in addition to or different from those which you now know or believe to be true with respect to the subject matter of this Settlement, you shall be deemed to have and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of these claims. This is true whether such claims are known or unknown, suspected or unsuspected, contingent or non-contingent whether or not concealed or hidden, which now exist, without regard to the subsequent discovery or existence of such different or additional facts.

10. How Do I Exclude Myself From The Settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from the *Josue Uribe v. Crown Building Maintenance Co.* settlement. Be sure to include your name, address, telephone number, last four digits of your social security number, and your signature. You must mail your exclusion request postmarked no later than _____, 2018 and addressed to Uribe-Crown, Settlement Administrator, _____.

If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendants in the future.

11. If I Don't Exclude Myself, Can I Sue Defendant Or Get Money From The Settlement?

If you exclude yourself from this settlement, you can still sue Defendant for any of the claims that this settlement resolves. But if you do not exclude yourself from the settlement, you cannot sue Defendant for those claims. If you have a pending lawsuit against Defendant, speak to your lawyer in that case immediately. You must exclude yourself from this case to continue your own lawsuit. Remember, the exclusion deadline is **60 DAYS AFTER MAILING**), 2018.

Similarly, if you exclude yourself from this settlement, you cannot get money from this settlement. But, if you do exclude yourself, you may sue, continue to sue, or be part of a different lawsuit against Defendant.

12. How Do I Object To The Settlement?

If you are a Class Member, you can object to the settlement if you take issue with the terms of the settlement as described herein. You can give reasons why you think the Court should not approve the settlement. If you object in time and follow the following procedures, the Court will consider your views: To object, you must send a letter to the Claims Administrator at [insert address of claims admin] saying that you object to the *Josue Uribe v. Crown Building Maintenance* settlement. In the letter, be sure to include your name, address, telephone number, signature, and the reasons why you object to the settlement, and attach any documents that support your objection. If you intend to appear at the Final Approval Hearing, you must say so in the letter. Mail the objection letter to these three different places postmarked no later than **60 DAYS AFTER MAILING**), 2018:

The objections will be filed with the court once they have all been received.

13. What's The Difference Between Objecting And Excluding?

Objecting is simply telling the Court that you disagree with the terms of the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement, if it is approved by the Court.

14. Do I Have A Lawyer In This Case?

The Court asked Arash N. Alizadeh of the Law Office of Arash N. Alizadeh to represent you and other members of the Class. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense. Arash N. Alizadeh's contact information can be found at <http://www.lawyerforemployees.com>.

15. How Will The Attorneys For The Class And Class Representative Be Paid?

The attorneys for the Class Representative and the Settlement Class will be paid from the \$370,000.00 Settlement Amount. Class Counsel will ask for up to \$80,000. 00 in attorney's fees and for actual litigation costs incurred, the actual amount of which will be determined by the Court at the Final Approval Hearing. **Class Members (like you) do not have to pay the fees and costs of Class Counsel. If you elect, however, to hire your own lawyer, you will have to make your own arrangements to compensate your lawyer.**

16. Notice Of Hearing On Final Approval And Objections To Class Action Settlement

You are hereby notified that a Final Approval Hearing will be held before the Honorable Judge Glenda Sanders, on _____, 2018, at _____ a.m., in Department CX101 of the Superior Court of California for the County of Orange, located at 751 W. Santa Ana Blvd, Santa Ana, CA 92701, to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved by the Court. The Court may adjourn the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment against Defendant, and all members of the Class who have not requested exclusion will be deemed to have waived and released any and all causes of action or claims that were or could have been plead based upon the factual allegations set forth in the Complaint in the Action for the period of June 10, 2011 through [the Preliminary Approval Date] as explained in Section 9 above (the "Release Period"). *That means that, unless you opt out of the settlement as*

provided in section 10, you will have released Defendants for all of these types of claims and cannot later bring a lawsuit against Defendants for any claims that arose during the Release Period that have been released by this settlement.

17. How Do I Get More Information?

This notice summarizes the proposed settlement. More details are in the written "Joint Stipulation of Settlement and Release" (the "Settlement Agreement"). You can get a copy of the Settlement Agreement by contacting Plaintiff's counsel, Arash N. Alizadeh, Esq. at the Law Office of Arash N. Alizadeh at (949) 606-2845 or Crown's Counsel Douglas J Farmer or Michael D. Thomas with Ogletree, Deakins, Nash, Smoak & Steward, P.C. at 415-442-4810.

If you wish to review the Court's docket in this case, you may do so by visiting the Court's public access website. To do this, you must:

1. Direct your browser to: <http://www.occourts.org/online-services/case-access/>
2. Click "Civil Case & Document Access" in the middle of the screen.
3. Accept Terms
4. Where it says "Case Number" type "00839857" and year is "2016" and press the search button;
5. Your browser will be directed to information regarding this case. You may view the Court's docket from here, including but not limited to documents filed with the Court, rulings and orders, and other information by clicking on "register of actions."

18. What Do I Do If I Am Moving?

If your address has changed or you plan to change your address in the next six months, please contact the Claims Administrator, _____, at [phone number]. IT IS YOUR RESPONSIBILITY TO KEEP AN UPDATED ADDRESS ON FILE WITH _____. YOUR FAILURE TO UPDATE YOUR ADDRESS WITH _____ COULD RESULT IN YOU RECEIVING NOTHING FROM THIS SETTLEMENT.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

PLEASE DO NOT CONTACT DEFENDANT, THEIR MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

EXHIBIT “B”

CLAIM FORM

NOTE: Please read the enclosed "Notice of Proposed Settlement of Class Action, Conditional Certification of Settlement Class, Preliminary Approval of Settlement, and Hearing Date for Final Approval (the "Class Notice"). All terms that are capitalized in this document are described and/or explained fully in the Class Notice.

DEADLINE: To receive any money from this settlement, you need to complete this form. If you do nothing, you will not receive your share of the Net Settlement Amount in the form of a settlement check. Your estimated share of the Net Settlement Amount, if you submit a signed timely Claim Form, is set forth in Section 2, below. You only need to complete the parts of this form relating to your weeks worked in California, if you believe that Crown Building Maintenance dba Able Building Maintenance's ("Crown") records about your dates of employment or your weeks worked in California during the Class Period (i.e., from June 10, 2011 through [REDACTED] as set forth below are incorrect. If you wish to submit a claim or challenge the weeks worked information, your signed and/or corrected Claim Form must be sent to the Settlement Administrator and POSTMARKED by [REDACTED], 2018.

1. **Your Contact Information**

Please review and, if necessary, correct on the line to the right your contact information:

Name: <<Name>> _____

Address: <<Address>> _____

City, State, Zip: <<City>>, <<State>> <<Zip Code>> _____

Social Security number (last four digits) only: <<SSN>> _____

If you wish, please add further contact information here. This will help the Settlement Administrator and/or Class Counsel to reach you in the event there are questions or difficulties sending you your settlement check.

Telephone number: _____

E-mail: _____

2. **Your Dates of Employment**

The personnel and payroll records of Crown show that you are a member of the class because you were/are a janitor, day porter, foreperson or a similarly situated manual labor employee in California during the class period (June 10, 2011 to [REDACTED], 2017) for [number] work weeks.

Based on this information, your estimated settlement share, if you submit a signed and timely claim form, is \$<<SHARE>>. Your estimated settlement share is calculated under the assumption that (i) the Judge finally approves the settlement and the Court enters Final Judgment based on the Judge's Final Approval Order; (ii) all class members participate in the settlement, i.e., all Class Members submit timely Claim Forms and no Class Members request to be excluded from the settlement; and (iii) the Judge approves the amounts sought for the Class Representative Payment, the Class Counsel Fees and Expenses Payment, the payment to the Labor Workforce Development Agency and the payment to the Settlement Administrator. Your actual settlement share may end up being higher or lower than estimated. If the Settlement is approved, your settlement payment

will be sent out after final approval is granted by the Court, and will be in the estimated amount of [REDACTED].

If you believe that your covered work weeks during the Class Period from June 10, 2011 to _____ 2017 are incorrect as stated, please (i) correct that information in the space below (using additional paper if necessary), and (ii) enclose documentary evidence supporting your correction(s).

Note: If you do not submit a correction, you waive your right to challenge the above pre-printed information. By submitting a correction, you are authorizing the Settlement Administrator to review Crown's records and make a determination based on those records and the records you submit. This determination may increase or decrease the value of your share of the settlement. All such determinations by the Settlement Administrator are final and binding with no opportunity for further appeal.

3. Deadline for Submitting Challenge to Weeks Worked Within the Class Period

If you wish to challenge your weeks worked within the Class Period as stated herein, your correct Claim Form must be submitted to the Settlement Administrator by U.S. mail. To be timely, the Claim Form must be POSTMARKED by [REDACTED], 2018. A corrected Claim Form postmarked to the Settlement Administrator later than this deadline will not be accepted absent good cause shown. This corrected Claim Form must be mailed to the Settlement Administrator at:

SETTLEMENT ADMINISTRATOR

4. Questions?

If you have questions regarding this Claim Form, please contact the Settlement Administrator at the number above.

5. Signature and Confirmation

I wish to claim my portion of the Settlement. I declare under penalty of perjury under the laws of the State of California that my corrective information, if any is set forth above, regarding my employment with Crown Building Maintenance Co dba Able Building Maintenance is true and correct.

I understand that I need to sign and date this form and submit it to the Settlement Administrator on or before _____ in order to claim my portion of the Settlement.

Signature

Print Name and Date

Exhibit 5

1 DOUGLAS J. FARMER, Cal. Bar No. 139646
douglas.farmer@ogletreedeakins.com
2 MICHAEL D. THOMAS, Cal. Bar No. 226129
michael.thomas@ogletreedeakins.com
3 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4 Steuart Tower, Suite 1300
One Market Plaza
5 San Francisco, CA 94105
Telephone: 415.442.4810
6 Facsimile: 415.442.4870

7 Attorneys for Defendant
CROWN BUILDING MAINTENANCE CO.
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12

13 JOSUE URIBE, on behalf of himself and other
current or former employees,

14 Plaintiff,

15 vs.

16 CROWN BUILDING MAINTENANCE CO.;
17 and DOES 1 through 100, inclusive,

18 Defendant.
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Case No. 30-2016-00839857-CU-OE-CXC

[Assigned for all purposes to The Honorable
Hon. Glenda Sanders, Dept. CX101]

**SEPTEMBER 28, 2018 REVISED JOINT
STIPULATION OF REPRESENTATIVE
ACTION AND CLASS ACTION
SETTLEMENT AND RELEASE**

Action Filed: March 9, 2016
Trial Date: None Set

Case No. 30-2016-00839857-CU-OE-CXC

**SEPTEMBER 28, 2018 REVISED JOINT STIPULATION OF REPRESENTATIVE ACTION AND CLASS
ACTION SETTLEMENT AND RELEASE**

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement
3 Agreement”) is made and entered into by and between Plaintiff Josue Uribe (“Plaintiff” or “Class
4 Representative”), as an individual and on behalf of all others similarly situated, and Defendant
5 Crown Building Maintenance Co. dba Able Building Maintenance (“Defendant” or “Able”)
6 (collectively with Plaintiff, the “Parties”). Subject to the approval of the Court, the Action is hereby
7 being fully and finally compromised and, as explained below, is being settled as a Class and
8 Representative action, all pursuant to the terms and conditions set forth in this Settlement
9 Agreement. This Settlement shall be binding on Plaintiff and the class he represents, and
10 Defendant, subject to the terms and conditions hereof and the approval of the Court.

11 **THE PARTIES STIPULATE AND AGREE AS FOLLOWS:**

12 **DEFINITIONS**

13 The following terms, as used throughout this Agreement, are defined as follows:

- 14 1. “Action” means the Second Amended Complaint entitled Josue Uribe v. Crown
15 Building Maintenance Co., filed currently with the Joint Motion for Preliminary Approval,
16 previously Case No. 30-2016-00839857-CU-OE-CXC (Orange County Superior Court May 23,
17 2016).
- 18 2. “Claim Form” means the document, substantially in the form attached as **Exhibit B**,
19 that Class Members must complete and postmark or fax by the Response Deadline (as defined
20 below) to receive a proportional share of the Net Settlement Amount.
- 21 3. “Claims Administrator” means a third-party class action settlement claims
22 administrator agreed to by the Parties and approved by the Court for the purposes of administering
23 this settlement. The Parties each represent that they do not have any financial interest in the
24 Claims Administrator or otherwise have a relationship with the Claims Administrator that could
25 create a conflict of interest.
- 26 4. “Claims Administration Costs” means the costs payable from the Class Settlement
27 Amount to the Claims Administrator for administering this Settlement, including, but not limited
28 to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts

1 per Class Member, tax reporting, distributing the Class Settlement Amount, and providing
2 necessary reports and declarations, and other duties and responsibilities set forth herein to process
3 this Settlement, and as requested by the Parties. The Claims Administration Costs will be paid
4 from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount
5 represented by the Claims Administrator as being the maximum costs necessary to administer the
6 settlement. The Claims Administration Costs are currently estimated to be Fifty Six Thousand,
7 Eight Hundred Twelve Dollars and zero cents (\$56,812.00). To the extent actual Claims
8 Administrations Costs are greater such excess amount will be deducted from the Class Settlement
9 Amount.

10 5. "Class Counsel" means the Law Office of Arash N. Alizadeh.

11 6. "Class Counsel Award" means the amounts that the Court authorizes to be paid to
12 Class Counsel as attorneys' fees and costs for Class Counsel's litigation and resolution of this
13 Action and his expenses and costs incurred in connection with the Action, paid from the Settlement
14 Amount in amount not to exceed \$80,000.00.

15 7. "Class List" means a complete list of all Class Members that Defendant will
16 diligently and in good faith compile from its records and provide to the Claims Administrator and
17 to Class Counsel within twenty-one (21) calendar days after Preliminary Approval of this
18 Settlement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and
19 will include each Class Member's full name; most recent mailing address and telephone number;
20 Social Security number; dates of employment; the respective number of Workweeks that each
21 Class Member worked during the Class Period; and any other relevant information needed to
22 calculate settlement payments.

23 8. "Class Member(s)" or "Settlement Class" means all janitorial employees including
24 day porters, janitors and foremen and similarly situated manual labor employees who were, are, or
25 will be employed by Defendant in the State of California at any time during the period from June
26 10, 2011 to the date on which the Court grants preliminary approval of the Settlement.

27 9. "Class Period" means the period from June 10, 2011 through the date on which the
28 Court grants preliminary approval of the Settlement.

1 10. “Class Representative Enhancement Payment” means the amounts to be paid to
2 Plaintiff in recognition of his effort and work in prosecuting the Action on behalf of Class
3 Members, and for his general release of claims. Subject to the Court granting final approval of this
4 Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request
5 Court approval of Class Representative Enhancement Payment in an amount not to exceed Ten
6 Thousand Dollars (\$10,000.00).

7 11. “Settlement Amount” means the maximum settlement amount of Three Hundred
8 Seventy Dollars and zero cents \$370,000.00 to be paid by Defendant in full satisfaction of all
9 claims arising from the Action and Plaintiff’s Second Amended Complaint defined below, which
10 includes all Individual Settlement Payments to Participating Class Members, the Class
11 Representative Enhancement Payment to Plaintiff, PAGA payments, Claims Administration Costs
12 to the Claims Administrator, the Labor and Workforce Development Agency Payment, and the
13 Attorneys’ Fees and Costs, and employer payroll taxes required by law, including the employer
14 FICA, FUTA, and SDI contributions, which shall be paid out of any unclaimed funds from the
15 Class Settlement Amount.

16 12. “Court” means the Superior Court of the State of California for the County of
17 Orange or any other court taking jurisdiction of the Action.

18 13. “Defendant” means Defendant Crown Building Maintenance Company dba Able
19 Building Maintenance and any of its former and present parents (including Able Services),
20 subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and
21 assigns, as well as all past and present officers, directors, employees, partners, shareholders and
22 agents, attorneys, insurers, and any other successors, assigns, or legal representatives, if any.

23 14. “Effective Date” means the later of: (a) if any timely objections are filed and not
24 subsequently withdrawn, the 60th day after the Court enters an order granting final approval of the
25 Joint Stipulation of Class Action Settlement and Release; (b) if any timely appeals are filed, the
26 resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the
27 Settlement; or (c) if no timely objections are filed, or if all objections are withdrawn, the date upon
28 which the Court enters an order granting final approval of the Joint Stipulation of Class Action

1 Settlement and Release.

2 15. "Individual Settlement Payment" means each Class Member's share of the Net
3 Settlement Amount, to be distributed to the Class Members who timely submit valid and timely
4 Claim Forms.

5 16. "Labor and Workforce Development Agency Payment" means the amount that the
6 Parties have agreed to pay to the Labor and Workforce Development Agency ("LWDA") in
7 connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698,
8 *et seq.*, "PAGA"). The Parties have agreed that Ten Thousand Dollars (\$10,000) of the Class
9 Settlement Amount will be allocated to the resolution of any Class Members' claims arising under
10 PAGA. Pursuant to PAGA, Seventy Five Percent (75%), or seven thousand five hundred dollars
11 and zero cents (\$7,500.00) will be paid to the representative group and Twenty Five Percent (25%)
12 of the PAGA Settlement Amount or two thousand five hundred dollars and zero cents (\$2,500.00)
13 will be paid to the California Labor and Workforce Development Agency.

14 17. "Net Settlement Amount" means the portion of the Class Settlement Amount
15 remaining after deduction of the approved Class Representative Enhancement Payment, Claims
16 Administration Costs, Labor and Workforce Development Agency Payment, and the Attorneys'
17 Fees and Costs.

18 18. "Notice of Objection" means a Class Member's valid and timely written objection
19 to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the
20 objector's full name, signature, address, and telephone number, (b) a written statement of all
21 grounds for the objection accompanied by any legal support for such objection; and (c) copies of
22 any papers, briefs, or other documents upon which the objection is based.

23 19. "Notice Packet" means the Notice of Class Action Settlement and Claim Form,
24 substantially in the forms attached as Exhibits A and B, respectively.

25 20. "Parties" means Plaintiff and Defendant collectively.

26 21. "Participating Class Members" means all Class Members who submit valid and
27 timely Claim Forms and who do not submit valid and timely Requests for Exclusion.

28 22. "Plaintiff" means Plaintiff Josue Uribe.

1 23. "Preliminary Approval" means the Court order granting preliminary approval of the
2 Settlement Agreement.

3 24. "Released Claims" means all causes of action for expense reimbursement and the
4 claims alleged in the Second Amended Complaint filed on September 10, 2018 to the extent these
5 claims are based on a failure to reimburse expenses. The *res judicata* effect of the Judgment will be
6 the same as that of the Release. The definition of Released Claims shall not be limited in any way
7 by the possibility that Plaintiff or Settlement Class Members may discover new facts, legal
8 theories, or legal arguments not alleged in the Second Amended Complaint, but which might serve
9 as an alternative basis for pursuing the same claims, causes of action, or legal theories based on a
10 failure to reimburse expenses. To be clear, the scope of the release does not include individual,
11 class or PAGA non-expense reimbursement claims. Nothing in this release shall prevent an
12 individual Class Member from pursuing an individual claim unrelated to expense reimbursement
13 such as an individual claim for unpaid overtime, unpaid minimum wages or meal and rest period
14 violations.

15 25. "Released Parties" means Defendant and any of its former and present parents
16 (including Able Services), subsidiaries, affiliates, divisions, corporations in common control,
17 predecessors, successors, and assigns, as well as all past and present officers, directors, employees,
18 partners, shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal
19 representatives, if any.

20 26. "Request for Exclusion" means a timely letter submitted by a Class Member
21 indicating a request to be excluded from the settlement. The Request for Exclusion must: (a) be
22 signed by the Class Member; (b) contain the name, address, telephone number and the last four
23 digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state
24 that the Class Member does not wish to be included in the settlement; (d) be returned by fax or
25 mail to the Claims Administrator at the specified address and/or facsimile number; and (e) be faxed
26 or postmarked on or before the Response Deadline. The date of the fax or postmark on the return
27 mailing envelope will be the exclusive means to determine whether a Request for Exclusion has
28 been timely submitted. A Class Member who does not request exclusion from the settlement will

1 be deemed a Class Member and will be bound by all terms of the Settlement Agreement if the
2 settlement is granted final approval by the Court.

3 27. "Response Deadline" means the deadline by which Class Members must postmark
4 or fax to the Claims Administrator valid Claim Forms, Requests for Exclusion, or postmark
5 Notices of Objection to the Settlement. The Response Deadline will be sixty (60) calendar days
6 from the initial mailing of the Notice Packet by the Claims Administrator, unless the 60th day falls
7 on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next
8 day on which the U.S. Postal Service is open. The Response Deadline for Claim Forms or
9 Requests for Exclusion will be extended fifteen (15) calendar days for any Class Member who is
10 re-mailed a Notice Packet by the Claims Administrator, unless the 15th day falls on a Sunday or
11 Federal holiday, in which case the Response Deadline will be extended to the next day on which
12 the U.S. Postal Service is open. The Response Deadline may also be extended by express
13 agreement between Class Counsel and Defendant. Under no circumstances, however, will the
14 Claims Administrator have the authority to unilaterally extend the deadline for Class Members to
15 submit a Claim Form, Request for Exclusion, or objection to the settlement.

16 28. "Workweeks" means the number of weeks each Class Member was employed by
17 Defendant as non-exempt a non-exempt hourly employee at any time during the period from June
18 10, 2011 to the date on which the Court grants preliminary approval of the Settlement. Defendant
19 will determine the number of Workweeks by calculating the number of days each Class Member
20 was employed by Defendant a janitor during the period from June 10, 2011 to the date on which
21 the Court grants preliminary approval of the Settlement, dividing by seven (7), and rounding up to
22 the nearest whole number.

23 29. "Workweek Value" means the value of each compensable Workweek, as
24 determined by the formula set forth in herein.

25 RECITALS

26 30. Class Certification. The Parties stipulate and agree to the certification of this Action
27 for purposes of this Settlement only. Should the Settlement not become final and effective as
28 herein provided, class certification will be set aside (subject to further proceedings on motion of

1 any party to certify or deny certification thereafter). The Parties' willingness to stipulate to class
2 certification as part of the Settlement will have no bearing on, and will not be admissible in or
3 considered in connection with, the issue of whether a class should be certified in a non-settlement
4 context in this Action and will have no bearing on, and will not be admissible or considered in
5 connection with, the issue of whether a class should be certified in any other lawsuit.

6 31. Procedural History. On March 9, 2016, Plaintiff filed an initial complaint on behalf
7 of himself and other current and former hourly employees including janitors and day porters
8 throughout California. Plaintiff's original complaint included a claim for unreimbursed expenses
9 under Labor Code Section 2802 for his uniform and clothing, and slip-resistant shoes.

10 32. In March 2016, Defense counsel informed Plaintiff that Defendant intended to file a
11 notice of related cases because a separate action *Gama v. Crown Building Maintenance Co*, Case
12 No. RG15773582 was pending in the Alameda County Superior Court that alleged unreimbursed
13 expenses for required cell phone use on behalf of hourly employees performing janitorial work.
14 Defendant was concerned of the duplication of discovery and court time on the same subject of
15 Defendant's expense reimbursement practices.

16 33. On April 4, 2016, Plaintiff filed a Notice of Related cases. [Dkt. 10].

17 34. On May 23, 2016, Plaintiff filed his First Amended Complaint ("FAC"). Plaintiff
18 alleges in the FAC that his former employer, Defendant, failed to provide reimbursement for
19 expenses and losses for required uniform and clothing and slip-resistant shoes in violation of
20 California Labor Code Section 2802. (FAC ¶¶ 4, 5, and 29). Plaintiff further alleges that because
21 the unreimbursed expenses for his uniform and clothing, and slip-resistant shoes are considered
22 "wages" or "compensation", he is entitled to damages based on the following additional causes of
23 action: (1) failure to pay all earned wages; (2) failure to pay minimum wages; (3) failure to pay
24 overtime compensation; (4) failure to provide accurate wage statements; (5) conversion; and (6)
25 violation of Labor Code section 2698 et seq., the Private Attorneys General Act of 2004
26 ("PAGA"). (FAC ¶¶ 4, 5, 13-26 and 31-45).

27 35. In response to Plaintiff's allegations, Defendant filed a demurrer.

28 36. Defendant argued Plaintiff's generic "slip-resistant shoe" claim is preempted by

1 federal OSHA and California OSHA. Moreover, Plaintiff failed to allege facts that his generic
2 “slip-resistant shoes” require compensation under either federal OSHA or Cal OSHA because they
3 are not specialty shoes. Defendant also argued Plaintiff was not entitled to compensation for his
4 uniform because there are minimal facts regarding why his wearable items could not be washed
5 with his regular clothes or could not be exchanged for a new uniform from his employer.
6 Defendant further argued that an expense reimbursement claim is not a wage and therefore
7 Plaintiff’s claims for unpaid minimum wages and overtime fail. Finally, Plaintiff’s remaining
8 wage claims are derivative and therefore fail.

9 37. The Court subsequently denied Defendant’s Demurrer.

10 38. The parties subsequently engaged in written discovery which included exchanging
11 records regarding Defendant’s expense reimbursement practices, safety and orientation practices,
12 practices regarding safety and personnel protective equipment and documentation of Defendant’s
13 payroll practices.

14 39. On September 15, 2016, Defendant took Plaintiff’s deposition which confirmed
15 Defendant’s position in its Demurrer. Plaintiff also testified that he could perform his job without
16 the use of a personal cell phone but on minimal and infrequent occasions he was contacted by a
17 manager on his personal cell phone for work related purposes.

18 40. Subsequently, the parties began settlement discussions.

19 41. The parties also engaged in written discovery regarding Plaintiff’s potential claim of
20 expense reimbursement based on required cell phone use.

21 42. The Parties have conducted significant discovery and investigation of the facts and
22 law regarding Plaintiff amending his complaint to include a cell phone reimbursement claim. Such
23 discovery and investigation have included the exchange of hundreds of pages of cell phone records
24 including the cell phone records of Plaintiff and his supervisors; analyses by both Parties of a
25 representative sample of company issued cell phone records to identify the number of phone calls
26 made to putative class members within a three month period; the informal exchange of
27 information; discussions and meetings between representatives of the Parties; interviews of
28 potential witnesses and Class Members; analysis of relevant records and engaging an expert to

1 review cell phone records. In addition, the Parties have investigated the applicable law regarding
2 the claims and defenses to such claims, as well as the damages alleged by Plaintiff.

3 43. The conclusion of the investigation into Plaintiff's claims supported Defendant's
4 demurrer on Plaintiff's safety shoe and uniform reimbursement claims and there was no evidence a
5 cell phone is "required" to perform the duties of a janitor. Indeed, the evidence revealed that
6 Defendant does not have a phone number for more than half of the putative class members and
7 some putative class members share a cell phone.

8 44. Following Defendant's decision to file a motion for summary judgment on
9 Plaintiff's claims, the parties agreed to attend mediation.

10 45. On July 12, 2017, with the assistance of experienced mediator Alan Berkowitz, Esq.
11 of Judicate West, the Parties reached a Settlement Agreement.

12 46. Defendant also agreed to audit its supervisor use of company issued cell phones to
13 implement changes when needed. Based on Plaintiff's litigation efforts, the employer has begun
14 providing some janitors in the Los Angeles Area and in Orange County a monthly phone
15 allowance.

16 47. Benefits of Settlement to Settlement Class Members. Plaintiff has taken into
17 account the uncertainty and risk of the outcome of further litigation, and has also taken into
18 account the ability of Plaintiff and Class Members to collect on any judgment. Specifically,
19 Plaintiff has taken into account that his case has minimal settlement value and Defendant would
20 likely be successful in filing a motion for summary judgment and/or opposing class certification.
21 Plaintiff has taken into consideration that the policies and practices regarding uniform
22 compensation and cell phone use vary throughout California and is governed by policies and
23 practices narrowly tailored for each property and property owner, various collective bargaining
24 agreements and agreements with each individual property. Finally, Plaintiff has taken into
25 consideration, some of Plaintiffs' claims on behalf of the same class have already been denied
26 certification by Judge Gail Andler in Orange County Superior Court, Complex Division for lack of
27 commonality and as unmanageable. All of the aforementioned are barriers to commonality and
28 manageability. Plaintiff and Class Counsel recognize the expense and length of continued

1 proceedings necessary to litigate their disputes through trial and through any possible appeals.
2 Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a
3 settlement that confers substantial relief upon Settlement Class Members. Based on the foregoing,
4 Plaintiff and Class Counsel have determined that the Settlement set forth in this Settlement
5 Agreement is a fair, adequate and reasonable settlement, and is in the best interests of Class
6 Members.

7 48. Defendants' Reasons for Settlement. Defendant has concluded that any further
8 defense of this litigation would be protracted and expensive for all Parties because Plaintiff's
9 claims lack merit and are not subject to certification. Substantial amounts of time, energy, and
10 resources of Defendant have been consumed and, unless this Settlement is made, will continue to
11 be devoted to the defense of the claims asserted by Plaintiff and Class Members. Defendant has
12 also taken into account the risks of further litigation in reaching its decision to enter into this
13 Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by
14 Plaintiff in the Action, Defendant has, nonetheless, agreed to settle in the manner and upon the
15 terms set forth in this Agreement to put to rest the claims as set forth in the Action.

16 49. Defendant's Defenses and Denial of Wrongdoing. Defendant has claimed and
17 continues to claim that Plaintiff's claims have no merit and do not give rise to liability.

18 50. This Settlement Agreement is a compromise of disputed claims. Nothing contained
19 in this Settlement Agreement and no documents referred to herein and no action taken to carry out
20 this Agreement may be construed or used as an admission by or against Defendants as to the merits
21 or lack thereof of the claims asserted.

22 51. Maximum Amount Payable by Defendant. Under the terms of this Settlement, the
23 maximum amount payable by Defendant will not exceed the Class Settlement Amount of Three
24 Hundred Seventy Thousand Dollar and zero cents (\$370,000.00).

25 **TERMS OF AGREEMENT**

26 52. The Plaintiff, on behalf of himself and the Settlement Class, and Defendant, agree as
27 follows:

28 53. Release As To All Class Members. As of the Effective Date, in exchange for the

1 consideration set forth in this Settlement Agreement, Plaintiff and the Settlement Class will be
2 deemed to have, and by operation of the Final Approval Order and Judgment, will have, expressly
3 waived and released the Released Parties of the Released Claims (as defined in paragraph 24) to
4 the fullest extent permitted by the law. Additionally, Settlement Class Members who do not opt
5 out of the Settlement will be bound by a release of all claims and causes of action falling within the
6 definition of "Released Claims" (above), whether known or unknown. However, to be clear, the
7 scope of the release is limited to the Released Claims. Plaintiff and the Settlement Class Members
8 may hereafter discover facts or legal arguments in addition to or different from those they now
9 know or currently believe to be true with respect to the claims, causes of action and legal theories of
10 recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way
11 limit the scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and
12 the Settlement Class Members shall be deemed to have, and by operation of the final judgment
13 approved by the Court, shall have, fully, finally, and forever settled and released all of the Released
14 Claims.

15 54. Second Amended Complaint. As a condition of settlement, Plaintiff will file a
16 Second Amended Complaint ("SAC") seeking class action relief and including a claim of failure to
17 provide expense reimbursement for required personal cell phone use in violation of Labor Code
18 Section 2802, a Business and Professions Code claim, a class period from June 10, 2011 to the
19 present, a PAGA period from April 22, 2014 to the present, and conform the pleadings with the
20 scope of the Settlement and Released Claims, in the form attached hereto as **Exhibit C**. Defendant
21 will not be required to file an answer or other responsive pleading to the SAC. If, for any reason,
22 the Court does not grant final approval of the Settlement, or if the Settlement does not become final
23 and effective for any reason, then the SAC will be deemed withdrawn and the FAC will again
24 become the operative complaint without prejudice to Plaintiff's right to seek leave to file another
25 amended complaint. Defendant does not impliedly or expressly waive any arguments or defenses
26 to the SAC.

27 55. Funding of the Class Settlement Amount. Within twenty one (21) calendar days
28 after the Effective Date of the Settlement, Defendant will make a one-time deposit of all Court

1 approved and claimed amounts from the Class Settlement Amount into a Qualified Settlement
2 Fund ("QSF") to be established by the Claims Administrator. The Claims Administrator shall then
3 disburse the funds as approved per this Agreement.

4 56. Attorneys' Fees and Costs. Class Counsel will apply to the Court for an award of
5 not more than eighty thousand dollars and zero cents (\$80,000.00) or twenty-one and half (21.5)
6 percent of the Net Settlement Amount as his Fees and Cost award. Defendant agrees not to oppose
7 any such applications which are consistent with this paragraph. The amount of attorneys' fees and
8 costs shall include payment for time expended by Class Counsel up to and including the final
9 approval of the Settlement, but not any time expended on an appeal.

10 57. Class Representative Enhancement Payment. In exchange for a general release, and
11 in recognition of his effort and work in prosecuting the Action on behalf of Class Members,
12 Defendant agrees not to oppose or impede any application or motion for a Class Representative
13 Enhancement Payment up to Ten Thousand Dollars and zero cents (\$10,000.00). The Class
14 Representative Enhancement Payment will be paid from the Class Settlement Amount and will be
15 in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement. Plaintiff
16 will not be required to submit a Claim Form to receive his Individual Settlement Payment.
17 Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the payments
18 made pursuant to this paragraph and will indemnify and hold Defendant harmless from any claim
19 or liability for taxes, penalties, or interest arising as a result of the payments.

20 58. Claims Administration Costs. The Claims Administrator will be paid for the
21 reasonable costs of administration of the Settlement and distribution of payments from the Class
22 Settlement Amount, which is currently estimated to be Fifty Six Thousand, Eight Hundred Twelve
23 Dollars and zero cents (\$56,812.00). These costs, which will be paid from the Class Settlement
24 Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments,
25 the issuing of 1099 and W-2 IRS Forms, distributing the Notice Packet, calculating and distributing
26 the Class Settlement Amount, and providing necessary reports and declarations.

27 59. Labor and Workforce Development Agency Payment. Subject to Court approval,
28 the Parties agree that the amount of Ten Thousand Dollars (\$10,000.00) of the Class Settlement

1 Amount will be allocated to the resolution of any Class Members' claims arising under PAGA.
2 Pursuant to PAGA, Seventy Five Percent (75%), or Seven Thousand, Five Hundred Dollars and
3 zero cents (\$7,500.00), of the PAGA Settlement Amount will be paid to the California Labor and
4 Workforce Development Agency. Twenty Five Percent (25%), or Two Thousand Five Hundred
5 Dollars and zero cents (\$2,500.00), of the PAGA Settlement Amount will be included in the Net
6 Settlement Amount.

7 60. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
8 Individual Settlement Payments to Participating Class Members from the Settlement Class in
9 accordance with the terms of this Settlement. Plaintiff and Defendant agree that if there are any
10 unclaimed Individual Settlement Payments, the Claims Administrator will proportionately increase
11 the Individual Settlement Payment for each Participating Class Member so that the amount actually
12 distributed to Participating Class Members equals One Hundred Percent (100%) of the Net
13 Settlement Amount. No Settlement Amount will revert to Defendant.

14 61. Individual Settlement Payment Calculations. Individual Settlement Payments will
15 be calculated and apportioned from the Net Settlement Amount based on the number of
16 Workweeks a Class Member worked during the Class Period. Specific calculations of Individual
17 Settlement Payments will be made as follows:

- 18 a. Defendant will calculate the total number of Workweeks worked by each
19 Class Member ("Individual Workweeks") and the total number of
20 Workweeks worked by all Class Members ("Class Workweeks") during the
21 Class Period.
- 22 b. To determine each Class Member's Individual Settlement Payment,
23 the Claims Administrator will use the following formula: Individual
24 Settlement Payment = (Individual Workweeks ÷ Class Workweeks)
25 × Net Settlement Amount.
- 26 c. If there are any unclaimed Individual Settlement Payments, the
27 Claims Administrator will proportionately increase the
28 Individual Settlement Payment for each Participating Class Member
so that the amount actually distributed to Participating Class
Members equals One Hundred Percent (100%) of the Net Settlement
Amount.
- d. The Individual Settlement Payment will be reduced by any required
deductions for each Participating Class Members as set forth herein,
including employee-side tax withholdings or deductions.

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

9 63. Claims Administration Process. The Parties agree to cooperate in the administration
10 of the settlement and to make all reasonable efforts to control and minimize the costs and expenses
11 incurred in administration of the Settlement.

12 64. Delivery of the Class List. Within twenty one (21) calendar days of Preliminary
13 Approval, Defendant will provide the Class List to the Claims Administrator and to Class Counsel.

14 65. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the
15 Class List from Defendant, the Claims Administrator will mail a Notice Packet to all Class
16 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
17 identified in the Class List.

18 66. Response Deadline. Response Deadline" means the deadline by which Class
19 Members must postmark or fax to the Claims Administrator valid Claim Forms, Requests for
20 Exclusion, or postmark Notices of Objection to the Settlement. The Response Deadline will be
21 sixty (60) calendar days from the initial mailing of the Notice Packet by the Claims Administrator,
22 unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will
23 be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
24 Claim Forms or Requests for Exclusion will be extended fifteen (15) calendar days for any Class
25 Member who is re-mailed a Notice Packet by the Claims Administrator, unless the 15th day falls
26 on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next
27 day on which the U.S. Postal Service is open. The Response Deadline may also be extended by
28 express agreement between Class Counsel and Defendant. Under no circumstances, however, will

1 the Claims Administrator have the authority to unilaterally extend the deadline for Class Members
2 to submit a Claim Form, Request for Exclusion, or objection to the settlement.

3 67. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
4 Packet will provide: (a) information regarding the nature of the Action; (b) a summary of the
5 Settlement's principal terms; (c) the Settlement Class definition; (d) the total number of
6 Workweeks each respective Class Member worked for Defendant during the Class Period; (e) each
7 Class Member's estimated Individual Settlement Payment and the formula for calculating
8 Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) instructions on
9 how to submit valid Claim Forms, Requests for Exclusion, or Notices of Objection; (h) the
10 deadlines by which the Class Member must postmark or fax Claim Forms or Requests for
11 Exclusions, or postmark Notices of Objection to the Settlement; (i) the claims to be released, as set
12 forth herein; and (j) the date for the final approval hearing.

13 68. Disputed Information on Notice Packets. Class Members will have an opportunity
14 to dispute the information provided in their Notice Packets. To the extent Class Members dispute
15 the number of Workweeks to which they have been credited or the amount of their Individual
16 Settlement Payment, Class Members may produce evidence to the Claims Administrator showing
17 that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's
18 records will be presumed determinative. However, if a Class Member produces evidence to the
19 contrary, the Claims Administrator will evaluate the evidence submitted by the Class Member and
20 will make the final decision as to the number of eligible Workweeks that should be applied and/or
21 the Individual Settlement Payment to which the Class Member may be entitled. All such disputes
22 are to be resolved not later than fourteen (14) calendar days after the Response Deadline.

23 69. Claim Form Procedures (Plaintiff's Exception). To receive Individual Settlement
24 Payments, all Class Members will be required to submit a timely Claim Form by the Response
25 Deadline. However, Plaintiff is not required to submit Claim Forms to receive his Individual
26 Settlement Payment. All Claim Forms must be signed and returned to the Claims Administrator
27 via fax or first class mail postmarked by the Response Deadline. The date of the postmark or fax
28 on the return mailing envelope will be the exclusive means to determine whether a Claim Form has

1 been timely submitted. However, it is not the intention of the Parties to exclude Class Members
2 from participating in the Settlement for technical reasons that do not interfere with the orderly
3 administration of the Settlement. Therefore, the Claims Administrator will compile a list of claims
4 rejected for (1) failure to cure an unsigned Claim Form or (2) late submission of the Claim Form.
5 As to the Class Members on that rejected claims list, any Class Member who requests, in a signed
6 letter, the ability to participate in the Settlement will be included as a Participating Class Member
7 so long as that written request is received by the Effective Date.

8 70. Cure for Defective Claim Forms. If a Class Member's Claim Form is not signed or
9 lacks required information, the Class Member will be given an opportunity to cure the defect. Any
10 such Claim Form will be returned to the Class Member no later than three (3) business days after
11 receipt of the defective Claim Form with a cure letter stating that the Class Member has fifteen (15)
12 calendar days from the date of the cure letter or from the Response Deadline, whichever date is
13 later, to submit, by mail or facsimile transmission, a revised Claim Form. If the revised Claim
14 Form is not postmarked or fax stamped within that period, it shall be deemed untimely and that
15 Class Member will receive an Individual Settlement Payment only if the Parties so agree. If a
16 Class Member submits both a Claim Form and Request for Exclusion, the Class Member will be
17 given an opportunity to clarify his or her response. The Claims Administrator will send a cure letter
18 no later than three (3) business days after receiving the conflicting response stating that the Class
19 Member has fifteen (15) calendar days from the date of the cure letter or from the Response
20 Deadline, whichever date is later, to clarify his or her response. If no clarification is provided, the
21 Request for Exclusion shall be invalidated, the Class Member will be bound by the Settlement, and
22 the Class Member will receive an Individual Settlement Payment. Class Members who receive
23 Notice Packets but do not submit a valid and timely Claim Form may not receive an Individual
24 Settlement Payment; however, such persons shall nonetheless be deemed Class Members and will
25 be bound by all terms of the Settlement and any Final Judgment entered in this Action if the
26 Settlement receives final approval by the Court.

27 71. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
28 Settlement Agreement must sign and postmark or fax a written Request for Exclusion to the Claims

1 Administrator within the Response Deadline. The date of the postmark on the return mailing
2 envelope or fax receipt confirmation will be the exclusive means to determine whether a Request
3 for Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the
4 Claims Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the
5 Requests for Exclusion that were timely submitted.

6 72. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
7 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely
8 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
9 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
10 approval to the Settlement.

11 73. Objection Procedures. To object to the Settlement Agreement, a Class Member
12 must postmark a valid Notice of Objection to the Claims Administrator on or before the Response
13 Deadline. The Notice of Objection must be signed by the Class Member and contain all
14 information required by this Settlement Agreement. The postmark date will be deemed the
15 exclusive means for determining that the Notice of Objection is timely. Class Members who fail to
16 object in the specific and technical manner specified above will be deemed to have waived all
17 objections to the Settlement and will be foreclosed from making any objections and seeking any
18 adjudication or review, whether by appeal or otherwise, to the Settlement Agreement. Class
19 Members who postmark timely Notices of Objection will have a right to appear at the Final
20 Approval Hearing in order to have their objections heard by the Court. At no time will any of the
21 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
22 objections to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel
23 will not represent any Class Members with respect to any such objections to this Settlement.

24 74. Reminders. Not earlier than twenty (20) calendar days or later than thirty (30)
25 calendar days after the initial mailing, the Claims Administrator will send a Reminder Postcard to
26 all Class Members who have not returned a Claim Form or a Request for Exclusion. All Reminder
27 Postcards will include the Response Deadline, and the contact information for the Claims
28 Administrator.

1 75. Certification Reports Regarding Individual Settlement Payment Calculations. The
2 Claims Administrator will provide Defendant's counsel and Class Counsel a weekly report which
3 certifies: (a) the number of Participating Class Members from the Settlement Class who have
4 submitted valid Claim Forms; (b) the number of Class Members who have submitted valid
5 Requests for Exclusion; (c) the Net Settlement Amount claimed by Participating Class Members;
6 and (d) whether any Class Member has submitted a challenge to any information contained in their
7 Claim Form or Notice Packet. Additionally, the Claims Administrator will provide to counsel for
8 both Parties any updated reports regarding the administration of the Settlement Agreement as
9 needed or requested.

10 76. Uncashed Settlement Checks. Any checks issued by the Claims Administrator to
11 Participating Class Members will be negotiable for at least one hundred twenty (120) calendar days. Those
12 funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-
13 cashed for more than one hundred twenty (120) calendar days after issuance will be tendered to back to the
14 Claims Administrator. The Claims Administrator will proportionately increase the Individual
15 Settlement Payment for each Participating Class Member who cashed their initial settlement check
16 so that the amount actually distributed to Participating Class Members equals One Hundred Percent
17 (100%) of the Net Settlement Amount. The Claims Administrator will issue a second round of
18 settlement checks to Participating Class Members for this purpose. The second settlement check will be
19 negotiable for at least one hundred twenty (120) calendar days. Those funds represented by settlement
20 checks returned as undeliverable and those settlement checks remaining un-cashed for more than one
21 hundred twenty (120) calendar days after issuance will be distributed to the Justice Fund of the State
22 Bar of California and as otherwise provided for by the Code of Civil Procedure §384.

23 77. Certification of Completion. Upon completion of administration of the Settlement,
24 the Claims Administrator will provide a written declaration under oath to certify such completion
25 to the Court and counsel for all Parties.

26 78. Tax Treatment of Individual Settlement Payments. All Individual Settlement
27 Payments will be allocated as follows: one-third (1/3) of each Individual Settlement Payment will
28 be allocated as wages, one-thirds (1/3) will be allocated as penalties and one-third (1/3) will be

1 allocated as interest. The portion allocated to wages will be reported on an IRS Form W-2 and the
2 portions allocated to penalties and interest will be reported on an IRS Form-1099 by the Claims
3 Administrator.

4 79. Administration of Taxes by the Claims Administrator. The Claims Administrator
5 will be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any W-
6 2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this
7 Settlement. The Claims Administrator will also be responsible for forwarding all payroll taxes and
8 penalties to the appropriate government authorities.

9 80. Tax Liability. Defendant makes no representation as to the tax treatment or legal
10 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not
11 relying on any statement, representation, or calculation by Defendant or by the Claims
12 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that
13 they will be solely responsible for the payment of any taxes and penalties assessed on the payments
14 described herein.

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

1 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
2 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
3 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
4 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
5 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
6 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
7 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
8 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
9 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
10 AGREEMENT.

11 82. No Prior Assignments. The Parties and their counsel represent, covenant, and
12 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
13 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
14 action, cause of action or right herein released and discharged.

15 83. Release of Additional Claims & Rights by Plaintiff. Upon the Effective Date, and
16 as a condition of receiving any portion of his Class Representative Enhancement Payment, Plaintiff
17 will agree to the additional following General Release: In consideration of Defendant's promises
18 and agreements as set forth herein, Plaintiff hereby fully releases the Released Parties from any and
19 all Released Claims and also generally releases and discharge the Released Parties from any and all
20 claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or
21 could have been asserted against the Released Parties arising out of or relating to Plaintiff's
22 employment by Defendant or termination thereof, including but not limited to claims for wages,
23 restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of
24 employment. This release specifically includes any and all claims, demands, obligations and/or
25 causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except
26 provided by the Settlement Agreement) relating to or in any way connected with the matters
27 referred to herein, whether or not known or suspected to exist, and whether or not specifically or
28 particularly described herein. Specifically, Plaintiff waives all rights and benefits afforded by

1 California Civil Code Section 1542, which provides:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
3 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
4 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
5 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

6 84. Settlement Class Size. The Class Settlement Amount was calculated based on the
7 understanding that there are approximately Nineteen Thousand and thirty eight (19,038) Class
8 Members including approximately Nine Thousand Two Hundred and Four Class Members (9,240)
9 who have provided Defendant a phone number.

10 85. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right
11 to void and withdraw from the Settlement if, at any time prior to Final Approval, two percent (2%)
12 or more of Class Members submit valid Requests for Exclusion. If the option to rescind is
13 exercised, then Defendant will be solely responsible for all Claims Administration Costs incurred
14 to the date of rescission.

15 86. Nullification of Settlement Agreement. In the event that: (a) the Court does not
16 finally approve the Settlement as provided herein; or (b) the Settlement does not become final for
17 any other reason, then this Settlement Agreement, and any documents generated to bring it into
18 effect, will be null and void, and all amounts deposited into the QSF will be returned to Defendant.
19 Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
20 likewise be treated as void from the beginning.

21 87. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
22 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
23 Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes
24 only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a
25 Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the
26 Notice Packet to be sent to all Class Members as specified herein. In conjunction with the
27 Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the
28 terms of this Settlement, and will include the proposed Notice Packet; i.e., the proposed Notice of

1 Class Action Settlement and Claim Form, attached as Exhibits A and B. Class Counsel will be
2 responsible for drafting all documents necessary to obtain preliminary approval.

3 88. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
4 deadlines to postmark Claim Forms, Requests for Exclusion, or objections to the Settlement
5 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be
6 conducted to determine the Final Approval of the Settlement Agreement along with the amounts
7 properly payable for: (a) Individual Settlement Payments; (b) the Labor and Workforce
8 Development Agency Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative
9 Enhancement Payment; and (e) all Claims Administration Costs. The Final Approval/Settlement
10 Fairness Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline.
11 Class Counsel will be responsible for drafting all documents necessary to obtain final approval.
12 Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be
13 heard at the final approval hearing.

14 89. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
15 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
16 Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing
17 jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms
18 of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as
19 may be appropriate under court rules or as set forth in this Settlement.

20 90. Destruction of Company Records. Plaintiff and Class Counsel agree to immediately
21 destroy any and all records provided to them by Defendant in this Action, including photocopies,
22 electronic copies, and all reproductions. This includes, but is not limited to copies of Defendant's
23 policies and procedures, electronic data, pay records, and time records.

24 91. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
25 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
26 herein. Any Exhibits to this Settlement are an integral part of the Settlement.

27 92. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
28 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral

1 agreements may be deemed binding on the Parties.

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

5 94. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
6 and represent they are expressly authorized by the Parties whom they represent to negotiate this
7 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
8 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
9 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
10 counsel will cooperate with each other and use their best efforts to effect the implementation of the
11 Settlement. If the Parties are unable to reach agreement on the form or content of any document
12 needed to implement the Settlement, or on any supplemental provisions that may become necessary
13 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
14 such disagreement.

15 95. Binding on Successors and Assigns. This Settlement Agreement will be binding
16 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
17 defined.

18 96. California Law Governs. All terms of this Settlement Agreement and Exhibits
19 hereto will be governed by and interpreted according to the laws of the State of California.

20 97. Execution and Counterparts. This Settlement Agreement is subject only to the
21 execution of all Parties. However, the Settlement Agreement may be executed in one or more
22 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
23 of the signature page, will be deemed to be one and the same instrument provided that counsel for
24 the Parties will exchange among themselves original signed counterparts.

25 98. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
26 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
27 arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation,
28 taking into account all relevant factors, present and potential. The Parties further acknowledge that

1 they are each represented by competent counsel and that they have had an opportunity to consult
2 with their counsel regarding the fairness and reasonableness of this Settlement. In addition, the
3 Mediator may execute a declaration supporting the Settlement and the reasonableness of the
4 Settlement and the Court may, in its discretion, contact the Mediator to discuss the Settlement and
5 whether or not the Settlement is objectively fair and reasonable.

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

10 100. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
11 class certification for purposes of this Settlement only; except, however, that Plaintiff or Class
12 Counsel may appeal any reduction in the Attorneys' Fees and Costs below the amount they
13 requests from the Court, and either party may appeal any court order that materially alters the
14 Settlement Agreement's terms.

15 101. Class Action Certification for Settlement Purposes Only. The Parties agree to
16 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
17 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
18 that certification for purposes of the Settlement is not an admission that class action certification is
19 proper under the standards applied to contested certification motions and that this Settlement
20 Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a
21 class action should be certified or (b) Defendant are liable to Plaintiff or any Class Member, other
22 than according to the Settlement's terms.

23 102. Captions. The captions and section numbers in this Settlement Agreement are
24 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or
25 intent of the provisions of this Settlement Agreement.

26 103. Waiver. No waiver of any condition or covenant contained in this Settlement
27 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
28 to imply or constitute a further waiver by such party of the same or any other condition, covenant,

1 right or remedy.

2 104. Enforcement Action. In the event that one or more of the Parties institutes any legal
3 action or other proceeding against any other Party or Parties to enforce the provisions of this
4 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
5 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees
6 and costs, including expert witness fees incurred in connection with any enforcement actions.

7 105. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
8 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
9 construed more strictly against one party than another merely by virtue of the fact that it may have
10 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
11 length negotiations between the Parties, all Parties have contributed to the preparation of this
12 Settlement Agreement.

13 106. Representation By Counsel. The Parties acknowledge that they have been
14 represented by counsel throughout all negotiations that preceded the execution of this Settlement
15 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
16 counsel, and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there
17 are no liens on the Settlement Agreement.

18 107. All Terms Subject to Final Court Approval. All amounts and procedures described
19 in this Settlement Agreement herein will be subject to final Court approval.

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

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

28 110. Confidentiality: The Parties and their counsel agree that they will not issue any

1 press releases, initiate any contact with the press, respond to any press inquiry, or have any
2 communication with the press about the fact, amount or terms of the Settlement. In addition, the
3 Parties and their counsel agree that they will not engage in any advertising or distribute any
4 marketing materials relating to the Settlement of this case prior to preliminary approval, including
5 but not limited to any postings on any websites maintained by Class Counsel. Any communication
6 about the Settlement to Class Members prior to the court approved mailing will be limited to a
7 statement that a settlement has been reached and the details will be communicated in a forthcoming
8 Court-approved notice.

9 111. Plaintiff and Class Counsel represent that they are not currently aware of any
10 unalleged claims in addition to, or different from, those which are finally and forever settled and
11 released against the Released Parties by this Settlement. Plaintiff and Class Counsel further
12 represent that they have no current intention of asserting any claims against Defendant in any
13 judicial or administrative forum. Plaintiff and Class Counsel further represent that they do not
14 currently know of or represent any persons who have expressed any interest in litigation against
15 Defendant, or that Class Counsel believes to have potential claims against Defendant, excepting
16 only the Settlement Class. The Parties further acknowledge understand and agree that this
17 representation is essential to the Agreement and that this Agreement would not have been entered
18 into were it not for this representation.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

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27 ///

28 ///

1
2
3 **APPROVED AND ACCEPTED**

4
5 Dated: _____, 2018

Josue Uribe

6 By _____

7
8 **APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

9
10 Dated: _____, 2018

LAW OFFICE OF ARASH N. ALIZADEH

11 By _____
12 Arash N. Alizadeh
13 Attorney for Plaintiff

14 **APPROVED AND ACCEPTED**

15
16 Dated: _____, 2018

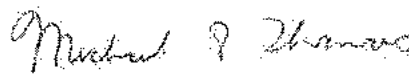
Defendant Crown Building Maintenance Co. dba
Able Building Maintenance Co.

17
18 By _____
19 Title _____

20 **APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

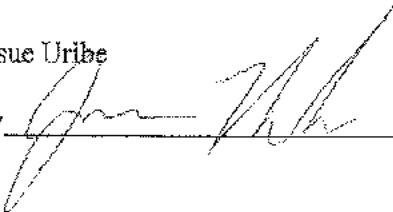
21
22 Dated: September 14, 2018

OGLETREE DEAKINS NASH SMOAK &
STEWART, P.C.

23
24 By:  _____
25 Douglas J. Farmer
26 Michael D. Thomas
27 Attorneys for Defendant CROWN
28 BUILDING MAINTENANCE CO.

1
2
3 Dated: September 13, 2018

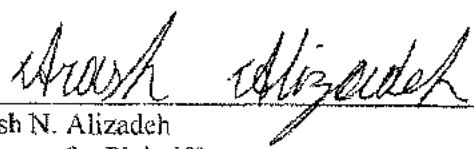
Josue Uribe

4 By 

5
6 **APPROVED AS TO FORM AND**
7 **ATTORNEY OBLIGATIONS ONLY**

8 Dated: September 13, 2018

LAW OFFICE OF ARASH N. ALIZADEH

9
10 By 

11 Arash N. Alizadeh
12 Attorney for Plaintiff

13
14 **APPROVED AND ACCEPTED**

15
16 Dated: September ___, 2018

Defendant Crown Building Maintenance Co. dba
Able Building Maintenance Co.

17
18 By _____

19 Title _____

20 **APPROVED AS TO FORM AND**
21 **ATTORNEY OBLIGATIONS ONLY**

22 Dated: September ___, 2018

OGLETREE DEAKINS NASH SMOAK &
STEWART, P.C.

23
24 By _____

25 Douglas J. Farmer
26 Michael D. Thomas
27 Attorneys for Defendant
28

1
2
3 Dated: September __, 2018

Josue Uribe

4 By _____

5
6 **APPROVED AS TO FORM AND**
7 **ATTORNEY OBLIGATIONS ONLY**

8 Dated: September __, 2018

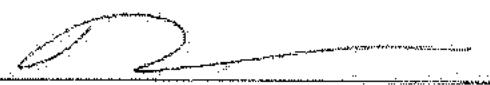
LAW OFFICE OF ARASH N. ALIZADEH

9
10 By _____
11 Arash N. Alizadeh
12 Attorney for Plaintiff

13
14 **APPROVED AND ACCEPTED**

15
16 Dated: September 14, 2018

Defendant Crown Building Maintenance Co. dba
Able Building Maintenance Co.

17
18 By 
19 Title Claude Perasso
Able Services
SVP. General Counsel

20 **APPROVED AS TO FORM AND**
21 **ATTORNEY OBLIGATIONS ONLY**

22 Dated: September __, 2018

OGLETREE DEAKINS NASH SMOAK &
STEWART, P.C.

23
24 By _____
25 Douglas J. Farmer
26 Michael D. Thomas
27 Attorneys for Defendant
28

Exhibit 6

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Civil Complex Center
751 W. Santa Ana Blvd
Santa Ana, CA 92701

SHORT TITLE: Uribe vs. Crown Building Maintenance Co.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2016-00839857-CU-OE-CXC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 10/19/18, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on October 22, 2018, at 10:17:01 AM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART P.C.
DOUGLAS.FARMER@OGLETREEDEAKINS.COM

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART P.C.
MICHAEL.THOMAS@OGLETREEDEAKINS.COM

Clerk of the Court, by: Mary L. White, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 10/19/2018

TIME: 01:30:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Glenda Sanders

CLERK: Mary White

REPORTER/ERM: (ACRPT) Cheri Violette CSR# 3584

BAILIFF/COURT ATTENDANT: Carolyn J Reza

CASE NO: 30-2016-00839857-CU-OE-CXC CASE INIT.DATE: 03/09/2016

CASE TITLE: **Uribe vs. Crown Building Maintenance Co.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 72892002

EVENT TYPE: Motion to Strike

MOVING PARTY: Crown Building Maintenance Co.

CAUSAL DOCUMENT/DATE FILED: Motion to Strike to strike paragraphs 1-6(C) of the complaint in intervention, 03/20/2018

EVENT ID/DOCUMENT ID: 72909461

EVENT TYPE: Motion for Approval of Class Settlement

APPEARANCES

Arash N Alizadeh, from Law Office of Arash N. Alizadeh, present for Plaintiff(s).

Michael Thomas & Douglas J Farmer, from Ogletree, Deakins, Nash, Smoak & Stewart P.C., present for Defendant(s).

Todd Jackson, from Feinberg, Jackson, Worthman & Wasow, present for Intervenor, Interested Party(s).

Hunter Pyle, from Hunter Pyle Law, present for Intervenor, Interested Party(s) telephonically.

In re motion for approval of class settlement and motion to strike:

Tentative Ruling posted on the Internet and in the courtroom.

Counsel for Intervenor indicates that he does not contest the courts ruling re motion to strike.

Ruling re motion to strike:

The court adopts its tentative ruling as to the motion to strike.

Motion to Strike. Defendant's motion to strike ¶¶ 1-6 of the Complaint in Intervention is **denied**.

Argument re motion for preliminary approval:

Argument by counsel for Intervenor.

Argument by counsel for defendant.

Rebuttal argument by counsel for Intervenor.

Ruling re motion for preliminary approval.

The court adopts its tentative ruling as the final order of the court.

Motion for Preliminary Approval. The Court has reviewed the supplemental materials submitted by moving parties on 9/14/18 and finds that they address the concerns of the court set forth in its minute order of 8/31/18. Accordingly, the motion for preliminary approval is granted.

For final approval as to any proposed enhancement, counsel should state the amounts the representative is expected to recover as a class member, and any other factors pertinent to the enhancement request. The high, low, and average recoveries for the class members as a whole should also be stated.

For final approval as to any fees and cost requests, evidence should be presented as to the services provided by counsel, including time records, to allow the court to evaluate the lodestar, and as to the basis for the costs claimed, including supporting documentation for all claimed costs. Plaintiffs' counsel must also either address any fee-splitting arrangement with any other counsel, or confirm that there is none. CRC 3.769(b), and *Barnes, Crosby, Fitzgerald & Zeman, LLP v. Ringler* (2012) 212 Cal.App.4th 172, 184. The court will reserve any decision on fees, costs, administrator costs, and enhancements until the final fairness hearing: preliminary approval should not be construed as approval of those sums. Defendant to give notice.

As a place holder: The Status Conference is scheduled for 03/01/2019 at 01:30 PM in Department CX101.

Clerk to give notice to defendant and defendant to give notice to all other parties.