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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

Coordination Proceeding
Special Title (Rule 3.550)

**ABLE SERVICES WAGE AND HOUR
CASES**

Included actions:

Garibay, et al. v. Able Services, et al.

Uribe v. Building Maintenance Co.

**JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 5231**

Superior Court of California, County of
Alameda Case No. RG15773582

Superior Court of California, County of
Orange Case No. 30-2016-00839857

NOTICE OF ERRATA

Hearing: June 9, 2023
Time: 9:00 a.m.
Ctrm: CX104
Reservation: 73975212

1 **TO THIS HONORABLE COURT AND ALL PARTIES:**

2 **PLEASE TAKE NOTICE** that plaintiff, Josue Uribe (“Plaintiff”) hereby files this Notice
3 of Errata with respect to its previously filed motion for preliminary approval of settlement. Plaintiff
4 files this notice in reference to the following documents, filed by Plaintiff on March 17, 2023:

5 – TABLE OF AUTHORITIES. The table of authorities currently on file with the court
6 within the Notice of Motion and Renewed Motion For Approval of Class Settlement contains
7 incorrect page numbers with respect to the table of authorities. Plaintiff has filed a corrected table
8 of authorities [which adds page numbering and page references that were inadvertently omitted].
9 The corrected Notice of Motion and Renewed Motion for Approval of Class Settlement is attached
10 as **Exhibit 1** hereto.

11 – EXHIBIT BOOKMARKS. The exhibits attached to the declaration of Arash Alizadeh
12 currently on file with the Court contains errors to the bookmarking of exhibits. For the Court’s
13 convenience the corrected Declaration of Arash Alizadeh corrects these bookmarking errors. The
14 corrected Declaration of Arash Alizadeh is attached as **Exhibit 2** hereto.

15 There are no changes to any of the substance of the Motion.

16 DATED: March 23, 2023

ALIZADEH EMPLOYEES LAW, PROF.
CORP.



17 By: _____
18 ARASH N. ALIZADEH

19 Attorneys for Plaintiff
20 Josue Uribe
21
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Exhibit 1

ALIZADEH EMPLOYEES LAW, PROF. CORP.

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Uribe v. Building Maintenance Co.

Case No. JCCP 5231

[Assigned for all purposes to The Honorable
Hon. William Claster, Dept. CX104]

JCCP Able Wage and Hour Case

Superior Court of California, County of
Alameda Case No. RG15773582

Superior Court of California, County of
Orange Case No. 30-2016-00839857

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

Date: June 9, 2023

Time: 9:00 a.m.

Department: CX104

Filed: March 9, 2016

Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on June 9, 2023 at 9:00 a.m., before the Hon. William Claster, in Department CX104 of the above-referenced Court located at 751 W. Santa Ana Blvd, California, Plaintiff Josue Uribe ("Plaintiff") will and hereby does move the Court for an Order (1) preliminarily approving the class action and representative action settlement; (2) provisionally certifying a settlement class and appointing Arash N. Alizadeh as Class Counsel; (3) approving the settlement administrator ("Administrator") jointly selected by the Parties for the purposes of this settlement; (4) approving and directing distribution to the Class the Class Notice and Claim Form; and (5) setting a final fairness and approval hearing.

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

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

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

DATED: March 17, 2023

ALIZADEH EMPLOYEES LAW, PROF.
CORP.



By: _____
ARASH N. ALIZADEH

Attorneys for Plaintiff
Josue Uribe

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I. INTRODUCTION

Plaintiff Josue Uribe (“Plaintiff”) presents this renewed motion for the Court’s consideration. Following a comprehensive process in 2017-2019 that included numerous hearings and detailed briefing, the Honorable Glenda Sanders approved this settlement over the objections of intervenor Isabel Garibay (“Intervenor”). Specifically, Judge Sanders found that a settlement of \$370,000 was fair and reasonable in resolving the expense reimbursement claims of Plaintiff and 20,000 other settlement class members (“Class” or “Class Members”) who worked as current and former non-exempt janitorial employees, including janitors, day porters and foremen, for Defendant Crown Building Maintenance Co., dba Able Building Maintenance (“Defendant” or “Able” used interchangeably) at various properties throughout California. This included Judge Sanders specifically considering the release of reimbursement claims stemming from any use of personal cell phones for work.

Following an appeal by Intervenor, the Court of Appeal reversed and remanded the case for further proceedings. *Uribe v. Crown Building Maintenance Co.*, 70 Cal. App. 5th 986 (2021), as modified on denial of reh’g (Oct. 26, 2021). Although Intervenor raised a host of objections to the settlement, including that it was a “reverse auction” (*id.* at 990), the Court of Appeal reversed on the narrow grounds that Plaintiff’s PAGA notice did not specifically identify use of personal cell phones as a basis for the reimbursement claim (*id.* at 1005).

Following remittitur, Plaintiff amended his PAGA notice to more clearly inform the Labor & Workforce Development Agency (the “LWDA”) that his reimbursement claim encompassed cell phone reimbursement. Because Plaintiff has now resolved the only issue identified by the Court of Appeal, he has perfected the settlement and it again merits approval by this Court.

Approval of the class-action portion of the settlement is an even simpler matter. The Court

1 of Appeal did not identify any issues with the non-PAGA components of the settlement, which
2 were fully vetted by Judge Sanders.

3 Although Plaintiff could have simply amended his PAGA notice and then presented the
4 same 2018 settlement to the Court, he has done more. Without disturbing the key components of
5 the original settlement, Plaintiff has sought to strengthen it, including eliminating the “claims
6 made” process in favor of automatically sending checks to all Class Members who do not opt out
7 of the settlement. Plaintiff also proposes improved and narrower release language and other
8 adjustments to make the settlement and notice easier for Class Members to understand. Plaintiff
9 has conducted additional investigation, including commissioning an updated exposure model based
10 on an additional 26 million phone record, 500,000 test messages, and further deposition testimony.
11 Since the initial settlement, Intervenor’s class claims were also dismissed because she was subject
12 to an arbitration agreement. **Most importantly, Plaintiff has negotiated a significant increase in**
13 **the settlement amount from the \$370,000 approved by Judge Sanders to the \$1,050,000 now**
14 **sought.**

17 As Judge Sanders already found, the settlement is fair, reasonable, and in the best interests
18 of the Class. It should again be approved by the Court.

19 **II. BACKGROUND OF THE SETTLEMENT**

21 **A. Summary Of Original Litigation**

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

24 On March 9, 2016, after exhausting the administrative requirements set forth in Labor Code
25 § 2699.3(a), Plaintiff filed a PAGA representative action on behalf of himself and all “aggrieved”
26 employees. (Arash N. Alizadeh Decl. at ¶6, **Exh. 1**). Plaintiff alleged that Defendant failed to
27 provide reimbursement for certain business expenses, including reimbursement for a required
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1 uniform, clothing and slip-resistant shoes in violation of California Labor Code Section 2802.
2 Plaintiff further alleged that because the unreimbursed expenses for his uniform, clothing, and slip-
3 resistant shoes are considered “wages” or “compensation,” he is entitled to damages based on these
4 causes of action for: (1) failure to pay all earned wages; (2) failure to pay minimum wages,
5 including overtime; (3) failure to pay overtime compensation; (4) failure to provide accurate wage
6 statements; (5) conversion; and (6) violation of PAGA. (*Id.*). Plaintiff subsequently filed a First
7 Amended Complaint (“FAC”) that modified his allegations, but retained the same causes of action
8 for unreimbursed business expenses as his original Complaint. (Alizadeh Decl. at **Exh. 2** at ¶¶ 4, 5,
9 13-26 and 31-45).

11 The parties then engaged in extensive written discovery. Plaintiff served formal discovery,
12 propounding numerous written discovery requests, including interrogatories, form interrogatories
13 and requests for production of documents. Defendant responded to those requests and the parties
14 engaged in substantive meet and confer communications regarding certain discovery disputes.
15 Defendant produced documentation pertaining to its policies and practices regarding expense
16 reimbursement generally, policies and practices regarding uniform and safety shoe requirements,
17 policies and practices regarding personal cell phone use, and related information and
18 documentation. (Alizadeh Decl. at ¶ 14). Defendant also produced multiple sources of documents
19 governing the wages, hours and conditions of employment at properties where putative class
20 members are assigned to work, including collective bargaining agreements and service agreements
21 applicable to the property, (Alizadeh Decl. at ¶¶ 17, 28, **Exh. 14**), documentation of individual
22 manager’s discretion to enforce policies at his or her property, (Alizadeh Decl. at ¶ 29, **Exh. 15**),
23 and Able policies prohibiting personal cell phone use signed by Plaintiff, (Alizadeh Decl. at ¶ 30,
24 **Exh. 16**).

27 On September 15, 2016, Defendant took Plaintiff’s deposition. Plaintiff testified day
28

1 porters and janitors wore tennis shoes and not specialty shoes. (Alizadeh Decl. at ¶ 9, **Exh. 5**,
2 Josue Uribe Depo. at 74:8-75:8)¹. Moreover, Plaintiff testified Defendant instructs employees
3 during orientation they need only wear non-slip shoes which could include tennis shoes or shoes
4 worn for purposes other than work. (*Id.* at 31:3-19). Pictures of footwear worn by other day
5 porters and janitors exchanged in discovery revealed Plaintiff did not have to purchase special
6 shoes. (Alizadeh Decl. at ¶ 10, **Exh. 6**, (Crown-Uribe 0000110-111)).

8 In deposition, Plaintiff admitted that on most occasions he could wash his uniform with his
9 other clothes. (**Exh. 5** at 135:12-136:12). He also testified that whether he could wash his
10 uniform with his other clothes depended on the property/type of work. (*Id.*).

11 As to personal cell phone usage, Plaintiff testified he could perform his job without the use
12 of a personal cell phone but occasionally his manager left him a message on his cell phone. (*Id.* at
13 160:19-161:14). He testified he typically kept his cell phone in his car. (*Id.*). Moreover, at some
14 locations he communicated with his manager on a company provided radio. (*Id.* at 162:1-16).

16 Defendant also produced data regarding Plaintiff's potential claim of expense
17 reimbursement based on required cell phone use. Defendant provided Plaintiff with a sample of
18 cell phone records from company issued cell phones and the cell phone records of his own
19 managers to cross-reference with the cell phone numbers of class members and with Plaintiff's
20 own cell phone so Plaintiff's counsel could determine cell phone usage. (Alizadeh Decl. at ¶ 14-
21 15). Defendant also produced Plaintiff's signed copy of Defendant's prohibition on personal cell
22 phone use. (Alizadeh Decl. at ¶ 11, **Exh. 7**). Defendant further produced documentation
23 demonstrating that it does not require job applicants provide a phone number in its application for
24 employment or other new hire paperwork. (Alizadeh Decl. at ¶ 27, **Exh. 13**).

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

Based on the foregoing, Plaintiff filed a Motion for Preliminary Approval on November 13, 2017, including a proposed Second Amended Complaint adding class action claims, a claim for expense reimbursement for personal cell phone use, and a claim under the Business and Professions Code. (Alizadeh Decl. at ¶ 15, **Exh. 9** and ¶26 (original Second Amended Complaint)).

B. The Original Settlement, Appeal, And Further Settlement.

On February 2, 2018, the Court granted Isabel Garibay's Motion to Intervene.

On October 19, 2018, after multiple rounds of briefing and requests by Judge Sanders for various modifications to the settlement, the Court granted Plaintiff's Motion for Preliminary Approval of Settlement based on a September 28, 2018 Revised Joint Stipulation of Representative Action and Class Action Settlement and Release.

On September 17, 2019, the Court granted Plaintiff's Motion for Final Approval of Settlement and entered Judgment, with Intervenor then appealing that Judgment.

On October 26, 2021, the Court of Appeal issued its opinion in *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal. App.5th 986 (modified and certified for publication on November 25, 2021; remittitur issued December 28, 2021). The Court of Appeal reversed this Court's approval of the settlement, determining that Plaintiff's PAGA notice was technically deficient because it did not expressly reference cell phones as a basis for Plaintiff's reimbursement claim. 70 Cal. App. 5th at 1006. The Court of Appeal remanded the case for Plaintiff to correct the deficiency. *Id.*

On June 24, 2022, Plaintiff filed a supplemental and amended PAGA Notice Letter with the LWDA. (Alizadeh Decl. at ¶ 31, **Exh. 17.**) The 65-day exhaustion period expired without the LWDA commencing an investigation or issuing a citation. (*Id.*)

Thereafter, Plaintiff and Able resumed discussions as to a renewed settlement. (Alizadeh Decl. at ¶ 32). In furtherance of those discussions, Defendant provided Plaintiff with additional

1 company cell phone records covering the period from 2016 through 2022, as well as other policy
2 and other documents. (*Id.*). The parties also agreed that Defendant would nearly triple the original
3 amount of the settlement from \$370,000 to the \$1,050,000 now sought through this motion. (*Id.*)

4
5 On January 27, 2023, the Court held a status conference and Plaintiff informed the Court
6 that he intended to file a renewed motion for preliminary approval of settlement.

7 **C. The Parties' Respective Views Of The Claims.**

8 Here, Defendant contends the documents and evidence established the following:

9
10 (1) There is minimal evidence of company policies uniformly applied to create class-wide
11 expense reimbursement liability. Multiple sources of evidence demonstrate support this position,
12 including the policies and practices applicable at each property regarding safety shoes, uniforms,
13 and personal cell phone use, including service agreements between Able and its customers,
14 collective bargaining agreements, (Alizadeh Decl. at ¶ 28, **Exh. 14**), individual manager's
15 discretion to enforce policies at his or her property, (Alizadeh Decl. at ¶ 29, **Exh. 15**), and Able
16 policies prohibiting personal cell phone use signed by Plaintiff and others (Alizadeh Decl. at ¶ 30,
17 **Exh. 16**).

18
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 ¶ 17).

25
26 (3) Class member cell phone records and company issued cell phone records demonstrate
27 janitors do not have to use a cell phone to perform their job duties. For example, many telephone
28 numbers associated with janitors were never contacted by an Able-owned phone. (Alizadeh Decl.

1 at ¶ 16). Moreover, Plaintiff conceded he could perform his job without a cell phone.

2 (4) Documentary evidence demonstrates Plaintiff was not required to have a phone to
3 perform his job duties. Plaintiff was employed with Defendant from January 26, 2013 through
4 March 21, 2015, a period of just over two years. The cell phone records of his supervisors
5 demonstrate 67 instances where a call was made to Plaintiff or received from Plaintiff on a
6 company issued cell phone during that two year period. This amounts to a call two or three times a
7 month. (Alizadeh Decl. at ¶ 18).

9 (5) Finally, an analysis of a broad cross-section of cell phone data across a several-year
10 period reveals similar patterns. While a small percentage of janitors appear to communicate
11 frequently with company-issued phones, the vast majority of janitors appear to either have only
12 episodic or no interactions with company-owned phones (Alizadeh Decl. at ¶ 18). Further,
13 determining whether a phone call or text, even if it occurred, was required by work rather than
14 voluntary or simply a convenience for the employee, is a fact-intensive exercise (*Id.*)

16 Plaintiff contends the documents and testimony establish the following:

17 (1) Able maintains uniform policies regarding safety shoes and uniforms. Able
18 uniformly informs janitors of its policies during orientation. Able uniformly does not provide
19 janitors with instructions regarding compensation for replacing safety shoes nor for maintaining a
20 clean uniform. Able knows janitors have to replace safety shoes and uniforms. Able therefore
21 knew that janitors incurred expenses for work-related purposes yet did nothing to ensure that
22 janitors were reimbursed for such expenses. (Alizadeh Decl. at ¶ 51(a)).

24 (2) Able supervisors and managers collected cell phone numbers from janitors on the
25 job and provided those cell phone numbers to Able supervisors and foremen. Those supervisors
26 and foremen use their company issued cell phones to communicate with janitors and provide them
27 with instructions on how to perform their job. Those supervisors and foremen communicate with
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1 janitors on janitors' personal cell phones to communicate unique tasks, changes in assignments and
2 additional information directed from the client. Able knew janitors were incurring expenses for
3 work-related purposes, yet did nothing to ensure that janitors were reimbursed for such expenses.
4 (Alizadeh Decl. at ¶ 51(b)).

5
6 (3) Prior to 2017, it was not common for any janitors to be reimbursed for work-related
7 use of a personal device. (Alizadeh Decl. at ¶ 55). Based on Plaintiff's litigation efforts, it appears
8 that Able began providing some janitors with a monthly phone allowance. (*Id.*)

9 (4) The purpose of Labor Code Section 2802 is "to prevent employers from passing
10 their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42
11 Cal.4th 554, 562. Able has passed on the operating expenses to employees related to safety shoe
12 replacement, uniform maintenance and required cell phone use. (Alizadeh Decl. at ¶ 51(c)).

13 14 **D. The Settlement Has Already Been Fully Vetted By This Court.**

15 As the above record shows, this settlement has already been determined—after an approval
16 process that lasted two years—to be fair and reasonable and in the best interests of the class. This
17 approval was over the heated objections of Intervenor, who challenged virtually every aspect of the
18 settlement. The only reason that this settlement is again before the Court is due to an appellate
19 determination that Plaintiff's original PAGA notice did not contain sufficient "facts and theories"
20 related to cell phone reimbursement, an issue that Plaintiff has now resolved. The settlement
21 should be approved again for numerous reasons.
22

23 24 **1. The Original Settlement Resulted From Arms' Length Negotiations**

25 After counsel's independent investigation and discovery was completed, and after multiple
26 informal attempts to reach a settlement, the parties agreed to mediation before Alan Berkowitz,
27 Esq. of Judicate West, an experienced and highly regarded mediator with extensive mediation
28 experience in wage and hour class actions and representative actions under PAGA. (Alizadeh

Decl. ¶¶ 21, 36, 44, and 47). On July 12, 2017, with the assistance of Mr. Berkowitz, the parties reached the original agreement. (*Id.*)

2. The Increased Settlement Resulted From Arms' Length Negotiations.

Because the Court had already found that \$370,000 was fair and reasonable to cover a release period through 2018, a primary issue was determining what amount to further increase the settlement. Based on the natural increase in workweeks, a proportionate increase of the settlement through the end of the class period in June 2023 was approximately \$320,000, which would have increased the settlement to approximately \$700,000. (Alizadeh Decl. at ¶ 56).

Rather than accept the same valuation that was already approved by the Court, Plaintiff negotiated to further increase the settlement to \$1,050,000. Consequently, even if you account for the additional passage of time, the Class is effectively getting 150% more than the amount already blessed by the Court in 2019. (Alizadeh Decl. at ¶ 57).

3. Class Wide Settlement.

As in 2017, the Parties have reached a class-wide settlement resolving all claims alleged in the Second Amended Complaint. (Alizadeh Decl. at ¶¶24, **Exh. 10** (March 2023 Settlement Agreement)). The parties also agreed to improve in various ways the original settlement, including departing from the claims-made process to instead automatically send checks to all Class Members (Alizadeh Decl. at ¶26). To aid the Court, Plaintiff submits a redline showing changes made to the 2018 long-form agreement to achieve the current settlement. (Alizadeh Decl. at ¶26, **Exh. 12**).

4. Review of Settlement by Experts.

Both the original and now renewed settlement have been reviewed by experts. The original settlement was supported by G. Michael Phillips, Ph.D. of Phillips, Fractor & Company LLC. (Alizadeh Decl. at ¶ 58, **Exh. 18 (Containing Phillips' report and CV)**). Doctor Phillips was the

1 plaintiff's expert in *Cochran v. Schwan's Home Service Inc.*, 228 Cal. App. 4th 1137 (2014)
2 (authorizing expense reimbursement for required personal cell phone use under Labor Code section
3 2802).

4 In connection with this renewed motion, Plaintiff has retained a second expert, Justin Regus
5 of Agility Economics. (see Regus Decl. concurrently filed herewith). Mr. Regus has analyzed an
6 even larger data set than what was provided to Dr. Phillips, including an additional 26 million
7 phone records and 500,000 text messages, covering a longer time period and for a significantly
8 larger group of company-owned phones. Accounting for the entirety of the proposed class period
9 (2011-2023), Mr. Regus found statistically credible a class exposure range between \$88,685 and
10 \$553,855 **without discounting** (Regus Decl.; Alizadeh Decl. at ¶ 35).

11 **E. Summary of Settlement.**

12 Under the March 2023 Revised Joint Stipulation of Class Action and PAGA Settlement and
13 Release ("Stipulation" or "Settlement Agreement"), the settlement now provides for \$1,050,000.00
14 as the gross settlement amount. (See Alizadeh Decl., **Exh. 10** at ¶74). The settlement payments to
15 each Class Member will be determined based on the number of weeks worked by each Class
16 Member. (*Id.* at ¶¶ 13, 80). The reason for such allocation is so that the Class Members who
17 allegedly suffered higher damages will be allocated greater recovery. (Alizadeh Decl. at ¶ 33).

18 Based upon class lists and other records, the estimated number of Class Members is
19 approximately 30,000. (Alizadeh Decl. at ¶ 34). The amount any particular Class Member will be
20 entitled to recover will depend on the number of weeks he or she worked during the Class Period.
21 (Alizadeh Decl. at ¶ 39). No settlement amount will revert to Defendant and any unclaimed funds
22 will be sent to the Unclaimed Property Fund. (Alizadeh Decl. at ¶ 40). While the settlement
23 directly allocates greater recovery to individual Class Members who have allegedly suffered
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greater harm, Class Members may choose to exclude themselves and not participate in the Settlement. (Alizadeh Decl. at ¶ 41).

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

As part of the Settlement, Defendant does not oppose Plaintiff’s Counsel’s request for attorney’s fees up to 30% of the total settlement sum, or an amount equal to \$315,000.00 including litigation costs.² (See Alizadeh Decl. **Exh. 10** at ¶ 75). Also as part of the Settlement, Defendant does oppose Named Plaintiff’s request for an enhancement of up to \$7,500.00.³ (Alizadeh Decl. **Exh. 10** at ¶ 76).

The Settlement calls for a \$100,000.00 payment to the California Labor and Workforce Development Agency (“LWDA”) for PAGA penalties. (Alizadeh Decl. **Exh. 10** at ¶ 78). Finally, the Settlement Agreement also provides for the payment of the claims administrator for settlement administration in an amount not to exceed \$144,000.00. The parties have received a quote from RG2 Claims Administration LLC to administer this current settlement for approximately \$144,000. (Alizadeh Decl. at ¶ 25, **Exh. 11**).

² Plaintiff’s counsel recognizes that this is a higher percentage of the total settlement amount (30% vs. 21.5%) than was previously requested and ordered by Judge Sanders. Plaintiff’s counsel believes this is justified based on the years of additional work and effort required by the case, and will submit prior to final approval the required facts so that the Court can evaluate whether an increased percentage is appropriate.

³ Judge Sanders previously approved an enhancement of \$5,000 to Plaintiff. Given further work performed in achieving this renewed settlement, including activities since 2018 and continuing, Plaintiff submits a modest upward adjustment to \$7,500. If this is not acceptable to the Court at final approval based on the further proof submitted, Plaintiff will not dispute a continued enhancement of \$5,000.

1 **III. LEGAL ANALYSIS**

2 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 Preliminary Approval Date or June 15, 2023, whichever occurs sooner.” (Alizadeh Decl.
8 **Exh. 10** at ¶ 5). The Parties have agreed and stipulated that the Class be certified on a provisional,
9 non-mandatory basis for the purposes of this settlement only.
10

11 Plaintiff filed a PAGA representative action on behalf of himself and all “aggrieved”
12 employees. The proposed “PAGA Members” means “all individual who are or were previously
13 employed by Defendant Crown Building Maintenance Co. in California as a janitorial employee at
14 any time” from April 22, 2014 through the Preliminary Approval Date or June 15, 2023, whichever
15 occurs sooner.
16

17 **B. The Applicable Legal Standard**

18 At this stage in the proceeding, the Court need only determine whether the proposed
19 settlement is within the range of possible final approval, and thus whether notice to the class of the
20 settlement terms and conditions and the scheduling of a formal fairness hearing is worthwhile.
21 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 234-235; *North County Contractor’s*
22 *Assn., Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal.App.4th 1085, 1090; *In re Traffic Exec., Ass’n*,
23 (2nd Cir. 1980) 627 F.2d 631, 633-34.
24

25 Importantly, the Orange County Superior Court—through Judge Sanders—already
26 conducted a rigorous analysis over an extended period beginning in late 2017 and ultimately
27 approving the settlement in September 2019. The only reason that the settlement was not affirmed
28 by the Court of Appeal was because Plaintiff needed to amend his PAGA notice, which he has now

1 done. As such, the only further determination for the Court is whether this settlement continues to
2 be fair and reasonable, including for the period between 2019 and 2023 that is now also covered by
3 the release. As shown here, the enhanced Settlement should be preliminarily approved.

4 5 **C. The Risks Inherent in Plaintiff's Case**

6 Among the many risks faced by Plaintiff, the two largest are: (1) Plaintiff could not certify
7 a class or establish liability in a manageable way and (2) damages, even if proven, might be
8 limited. (Alizadeh Decl. at ¶ 42).

9
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 ¶ 17). Second, Managers and foremen adapt
14 Able policies to fit the unique needs of the property or customer. (*Id.*). Third, the available
15 evidence—including voluminous cell phone data—suggests that telephone contact between Class
16 Members and Able managers was highly variable. (*Id.*) Fourth, proving that telephone contact
17 between Class Members and Able managers was required by work, rather than for reasons that do
18 not trigger a reimbursement obligation, would be highly individualized and fact dependent. (*Id.* at
19 ¶ 20) Fifth, as Intervenor's own case shows, at least some of the Class Members are subject to
20 arbitration agreements with class-actions waivers during the relevant period, potentially limiting
21 the scope of any Class. (*Id.*)

22
23 Ultimately, even if Plaintiff could overcome these obstacles and prevail as to some portion
24 of his claims, the potential damages are also potentially low value. The Class Members would be
25 principally entitled to reimbursement for a "reasonable percentage" of their monthly cell phone
26 bills. Yet, the available data suggests that many Class Members might only be entitled to \$1 or \$2
27 per month in reimbursement because of relatively limited communications.
28

1 In addition to the substantial risks and uncertainty inherent in continued litigation, the
2 Parties faced the *certainty* that further litigation would be expensive, complex, and time
3 consuming. (Alizadeh Decl. at ¶ 43). Indeed, even after a judgment was obtained here, the
4 subsequent appeal by Intervenor has already extended this litigation by four years and counting.
5 Both Plaintiff and Defendant have experience in employment and wage and hour class action
6 litigation. (Alizadeh Decl. at ¶¶2-4). Moreover, Plaintiff’s counsel conducted an extensive
7 investigation of the factual allegations involved in this case. Each side has apprised the other of
8 their respective factual contentions, legal theories and defenses, resulting in extensive arms-length
9 negotiations taking place among the parties. (Alizadeh Decl. at ¶ 43).

12 **D. The Amount Offered In Settlement**

13 Originally with the assistance of experienced mediator Berkowitz, the parties agreed to a
14 total settlement amount of \$370,000. (Alizadeh Decl. at ¶ 44). Judge Sanders found that this
15 amount was fair and reasonable to resolve the reimbursement claims of 20,000 class members
16 through 2019.

17 The current settlement generally mirrors the previous settlement. It seeks to release the
18 same types of claims that would have been released through the \$370,000 settlement. The only
19 meaningful change is that the settlement now covers an additional 4-year period since 2019.
20 Despite the liability period increasing by only 150%, the settlement amount has increased by nearly
21 300% from \$370,000 to \$1,050,000. This more than outpaces any additional liability since the
22 original settlement was approved and it instead allows for a more lucrative amount per Class
23 Member.
24

25 Based on Plaintiff’s Counsel’s analysis of the relevant California decisional law, and the
26 facts, Plaintiff’s Counsel believes that the total value was properly discounted for the risks, and the
27 Settlement terms are reasonable and justified under these circumstances. (Alizadeh Decl. ¶ 45).
28

1 As with virtually every wage-and-hour class action in California involving a large number
2 of employees, the paper value of this case could be in the tens of millions of dollars, including
3 particularly if Plaintiff could establish 100% liability and recover 100% damages on all penalty
4 claims. The core harm to the Class Members, however, relates to unreimbursed expenses for work-
5 related use of personal cell phones, along with uniforms and shoes. Based on Plaintiff's
6 calculations, the actual amount of unreimbursed amounts likely ranges from \$88,685 to \$553,855.
7 Thus, depending on the amounts actually incurred, the \$1,050,000 either fully or largely
8 reimburses the Class Members. (Alizadeh Decl. at ¶35).

10 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness
11 of the Settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
12 prevailing on one or more of the causes of action or theories alleged in his Second Amended
13 Complaint and in the possibility of non-certification. (Alizadeh Decl. at ¶ 46).

15 The Settlement for each participating Class Member is fair, reasonable and adequate, given
16 the inherent risk of litigation, the likelihood that most Class Members would recover nothing, the
17 risk relative to class certification, and the fact that the Settlement will largely or entirely make
18 Class Members whole for any amounts not previously reimbursed. (Alizadeh Decl. at ¶46).

20 **E. Fees and Costs**

21 The attorneys' fee and cost request of 30% of the \$1,050,000 is preliminarily justified. "In
22 general, questions whether a settlement was fair and reasonable, whether certification of the class
23 was proper, and whether the attorney fee award was proper are matters addressed to the trial court's
24 broad discretion." *Wershba*, 91 Cal.App.4th at 234-235.

26 **F. Incentive payments**

27 An incentive payment of \$7,500 is justified. Plaintiff participated in discovery, was
28 deposed and travelled from Orange County to San Francisco to participate in mediation. (Alizadeh

Decl. at ¶ 48; Josue Uribe Decl. at ¶¶2-8). Judge Sanders found those previous activities justified a \$5,000 enhancement, and a further increase to \$7,500 is warranted due to subsequent and continuing activities.

G. Costs of Administration

Administration costs are estimated at \$144,000.00. The administrator is a reputable class action claims administrator that has successfully administered over a thousand class action settlements. (Alizadeh, ¶ 25, **Exh. 11**). This bid from CPTgroup represents what Plaintiff's counsel believes is a highly competitive bid with extremely low margins on the administrator's side. *Id.* The costs will be paid out of the \$1,050,000 Gross Settlement Amount prior to calculation of the Net Settlement Fund.

H. Plaintiff requests that the Court approve the PAGA portion of the settlement.

Labor Code § 2699(1) requires that the Court review and approve the settlement of penalties sought under PAGA. In this case, as part of the settlement, Defendant has agreed to pay \$100,000.00 to settle the PAGA penalty claims. This is a ten-fold increase from the original \$10,000 payment approved by Judge Sanders. While the parties continue to prefer to allocate the larger portion of settlement funds to the class portion to maximize the recovery for Class Members, the enhanced PAGA payment recognizes this portion of the case and the 10-to-1 ratio (\$1,050,000 to \$100,000) is consistent with many class-action settlements. Plaintiff requests that the Court preliminary approval of this portion of the settlement.

IV. \$1,050,000 SATISFIES THE KULLAR STANDARD

In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court laid out various factors to be considered in determining if a class action settlement should be approved. Among those factors are: (1) the strength of the Plaintiff's case, (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial;

1 and (4) the amount offered in settlement. Those and other factors support the settlement and,
2 indeed, Judge Sanders already found that \$370,000 was an appropriate amount for these claims.

3 Here, there are four primary categories of claims: (1) cell phone reimbursement; (2)
4 uniform and shoe reimbursement; (3) derivative statutory claims; and (4) PAGA penalties based on
5 reimbursement claims.
6

7 **A. The Cell Phone Reimbursement Claim.**

8 Here, if Plaintiff assumes that 100% of interactions between janitor phones and company-
9 owned phones are reimbursable, the class recovery ranges from \$709,486 to \$1,476,978.⁴ (Regus
10 Decl. ¶¶ 5, 21). This includes estimated interest.
11

12 But, some of those communications are likely not subject to a reimbursement obligation.
13 This includes purely personal communications between co-workers. And it also includes
14 communications that may relate to work—like a janitor calling their manager to say that they will
15 be late—which are not reimbursable. There is also the reality that some of those communications
16 could be voluntary, because it is more convenient for the Class Members to use a personal device
17 even if another means of communication was available. Assuming Plaintiff could establish either
18 25% or 75% of the actual activity was reimbursable and again looking at both methodologies, that
19 means the actual harm to class members and reimbursable amounts range between \$177,371 and
20 \$369,237 using 25% valuation or between \$532,114 and \$1,107,711 using 75% valuation.
21

22 The preceding numbers assume Plaintiff prevails in certifying a class and then establishing
23 not just liability but damages. There are reasons why Plaintiff might not be able to certify a class,
24 in whole or in part. Prior to 2018, there were already risks given the potential individualized issues
25 that were accounted for in the \$370,000 settlement that covered that period. The challenges related
26

27
28 ⁴ The higher estimates are based on a more conservative and pro-Plaintiff method that only relies on janitor phones that interacted with company-owned phones.

1 to certification have potentially increased since then, including not only evidence that Able is
2 reimbursing some janitors and the implementation of arbitration agreements with class-action
3 waivers. Even if Plaintiff assumes a 50% chance of establishing certification for the entire class
4 period, that reduces the potential exposure and recovery to between \$88,685 and \$184,618 using
5 25% valuation or between \$266,057 and \$553,855 using 75% valuation. Consequently, even
6 relatively conservative assumptions and the more conservative methodology results in a recovery
7 of only \$553,855 for the Class Members on the high end, and perhaps less than \$100,000.
8

9
10 **B. Other Reimbursement Claims.**

11 Plaintiff also pursued reimbursement based on other expenses related to uniforms and work
12 shoes. These amounts were included in the \$370,000 release previously approved for the period
13 through October 19, 2018. Plaintiff anticipates there would be even greater challenges in certifying
14 a class or establishing damages at trial compared to the cell phone allegations. Based on the
15 evidence in the case, Able has strong arguments that uniforms do not require special cleaning and
16 could instead be washed with normal clothing, such that no reimbursement is owed. Similarly,
17 Able has strong arguments that regular shoes can be and are worn by many or all Class Members.
18 This does not even account for certification and other defenses, including based on any arbitration
19 agreements and class action or PAGA waivers by Class Members.
20

21 If each Class Member was entitled, on average, to \$100 in reimbursement, the total amount
22 owed to the approximately 30,000 Class Members is \$3,000,000. Given the difficulty in proving
23 any violations and the fact that many Class Members might not even be entitled to reimbursement,
24 Plaintiff's Counsel judges it appropriate to discount this claim by 95% which results in a valuation
25 of \$150,000.
26

27 **C. Derivative Claims.**
28

While the settlement includes a proposed release of other statutory claims related to things

1 like minimum wage and inaccurate wage statements, such claims are wholly derivative of the
2 expense reimbursement claim. As such, if Plaintiff did not prove the underlying claims, the
3 derivative claims would automatically fail. Further, even if Plaintiff prevailed in part as to the
4 reimbursement claim, however, that would not establish the derivative claims.

5
6 The strongest derivative claim for Plaintiff is for minimum wage, since a reimbursement
7 obligation could theoretically create a minimum wage obligation. The problem for Plaintiff is that
8 his continuing investigation in this case, including the Declaration of Justin Regus, suggests that
9 the reimbursement amount potentially owed is small, perhaps \$1 or \$2 per month or less. Given
10 that Class Members earn more than minimum wage, such amounts are unlikely to drop them below
11 California's minimum wage during any period.

12
13 The other derivative claims are even more tenuous. Many of them require a showing of
14 willfulness and/or intentionality, including the claims for wage statement and waiting time
15 penalties. Further, it is not clear that a reimbursement obligation can even support those claims.
16 For example, reimbursement is not a category of information specifically required by Labor Code
17 section 226(a). As such, Able has before and would again argue that even if amounts were owed
18 because of reimbursement, that does not support wage statement penalties.

19
20 Given these challenges, Plaintiff has not sought to allocate specific amounts to these
21 derivative claims, and instead sought to value more highly the amounts potentially owed for any
22 actual expenses incurred. Specifically, Plaintiff has sought to assess the exposure on the
23 underlying reimbursement claim at the higher end of the \$88,685 to \$553,855 range, but has not
24 assigned specific value to the derivative claims given the challenges.

25 26 **D. The PAGA Reimbursement Claim**

27 With respect to the claim for PAGA civil penalties based on expense reimbursement,
28 Plaintiff has similarly focused on the claimed harm to the workers, including the amounts that he

1 contends they were not reimbursed for.

2 The potential “full” value of the PAGA claim ranges from \$0 to \$17,691,950 if PAGA
3 penalties were assessed once per month to between \$0 and \$34,136,300 if PAGA penalties were
4 applied each pay period. It is far from clear, however, that Plaintiff can establish PAGA penalties
5 for the reasons discussed above, including the fact that not all cell phone activity was necessarily
6 required by work, since it could instead be for personal reasons or based on convenience. There
7 also appears to be a PAGA waiver that might apply to some janitors beginning January 1, 2022.
8

9 There are at least three ways that PAGA penalties could be assessed in this matter:

- 10 1. Based on every pay period where a phone was used;
- 11 2. Based on every month where a phone bill was paid; and
- 12 3. In a manner where the penalties are proportionate to the reimbursement owed.
13

14 With respect to those first two methodologies, additional discounts need to account for: (1)
15 the fact that not all cell phone activity is necessarily work related; (2) the difficulties that Plaintiff
16 will face establishing liability and damages; and (3) the likelihood that a Court would exercise its
17 discretion to reduce penalties. Assuming Plaintiff could establish either 25% or 75% of the actual
18 activity was reimbursable, that means the upper limit for PAGA penalties ranges between
19 \$4,267,038 and \$8,534,075 using 25% valuation or between \$12,801,113 and \$25,602,225 using
20 75% valuation.
21

22 As with the class claim, Plaintiff thinks is fair to further discount the PAGA penalties by
23 50% to account for the possibility that he would not prevail at trial. Finally, even if Plaintiff
24 prevailed at trial, the Court has discretion to reduce PAGA penalties and might be inclined to do
25 so, including at ranges as high as 80% or 90%. A significant reduction may be particularly likely
26 here where the claimed harm appears to be a relatively modest amount per month or pay period.
27 Applying first a 50% discount (to account for potential loss through trial) and a 90% further
28

discount to (account for potential judicial reduction) results in potential outcomes ranging between \$213,351 and \$426,703 using 25% valuation or between \$640,055 and \$1,280,111 using 75% valuation.

Alternatively, the Court might instead award PAGA penalties that are equivalent to the amount allegedly owed to the Class Members, which would effectively serve as double damages. If the Court opted to award PAGA penalties that were equivalent to the class damages, that award might range from \$100,912 to \$629,387, depending on whether a 25% or 75% valuation was used and limited or not to only janitor phones that were active in the data. (Regus Decl. para. 27, Table 9).

For these reasons, including the likely outcomes and recoveries for the Class, a settlement amount of \$1,050,000 meets or exceeds even a favorable result at trial. As such, the settlement is in the best interests of the Class.

V. THE COURT SHOULD ORDER CONDITIONAL CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS.

The Parties request that the Court certify the following Settlement Class and PAGA group:

Class = all 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 at any time during the period from June 10, 2011 to the Preliminary Approval Date or June 15, 2023, whichever occurs sooner. (Alizadeh Decl. **Exh. 10** at ¶5).

PAGA Group = all individual who are or were previously employed by Defendant Crown Building Maintenance Co. in California as a janitorial employee at any time

1 from April 22, 2014 through the Preliminary Approval Date or June 15, 2023,
2 whichever occurs sooner.

3
4 In California, proposed classes are appropriate for class treatment: “[W]hen the question is
5 one of a common or general interest, of many persons, or when the parties are numerous, and it is
6 impracticable to bring them all before the court, one or more may sue or defend for the resulting in
7 common questions of law and fact.” *Daar v. Yellow Cab Co.*(1967) 67 Cal.2d 695, 706.

8
9 **A. The Proposed Settlement Class Is Ascertainable**

10 Here, the proposed Class and PAGA members are ascertainable, as they have been
11 identified through Defendant’s employee and payroll records. (Alizadeh Decl. at ¶ 49). *See Rose*
12 *v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (“Class Members are ‘ascertainable’ where
13 they may be readily identified without unreasonable expense or time by reference to official
14 records.”).

15
16 **B. The Proposed Settlement Class Is Sufficiently Numerous**

17 The numerosity requirement is met if a class is so large that joinder would be impracticable.
18 *See Gay v. Waiters’ & Dairy Lunchmen’s Union* (9th Cir. 1977) 549 F.2d 1330. Due to the
19 significant size of the class, joinder would be impracticable and a class-wide proceeding is
20 preferable. (Alizadeh Decl. at ¶ 50). *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030.

21
22 **C. The Commonality Requirement Is Satisfied**

23 The commonality requirement requires that there be questions of law or fact common to the
24 class. *See Brown v. The Regents of the University of California* (1984) 151 Cal.App.3d 982,989;
25 *Caro v. Proctor & Gamble Co.* (1993) 18 Cal.App.4th 644, 667-668. Plaintiff has made a credible
26 argument that Defendant’s expense reimbursement practices are uniform, uniformly applied and
27 systematically deprived all class members of compensation for required safety shoes, washing a
28

uniform and required personal cell phone use. (Alizadeh Decl. ¶ 51(a-c)). The main individualized differences between Class Members relate to the amount of compensation each is entitled to receive. (Alizadeh Decl. ¶ 51). Differences as to the amount of damages among Class Members is not sufficient to prevent certification. *Acree v. General Motors Acceptance Corp.*, 92 Cal. App. 4th 385, 387 (2001).

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

D. Typicality and Adequacy Are Met.

The typicality requirement requires that the claims of the class representatives be "typical of the claims or defenses of the class." *See Classen v. Weller* (1983) 145 Cal.App.3d 27, 45. Here, the requisite nexus for typicality exists between Plaintiff and absent Class Members, as Plaintiff is asserting the same claims and seeking the same remedies. (Alizadeh Decl.¶ 52).

The representative parties must fairly and adequately protect the interests of the class. *See City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 463; *Cummings v. Connell* (9th Cir. 2005) 402 F.3d 936, 944. The adequacy of representation requirements is met by fulfilling two conditions: first, a named plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named plaintiff's interests cannot be antagonistic to those of the class. *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal.App.3d 442, 451 (1976). Plaintiff here meets both of these requirements. Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and diligently reviewed the Settlement terms. (Alizadeh Decl.¶ 53).

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

Here, class wide resolution is superior to other methods because the amount sought in recovery per Class Member is likely to be too small for an attorney to pursue and the issues are so

1 complicated that an individual Class Member might not pursue his or her claim.

2 Plaintiff believes the settlement for each Class Member to be fair, reasonable and adequate,
3 given the inherent risk of litigation and the costs of pursuing such litigation. The settlement shall
4 finally resolve the claims arising out of or related to the alleged violation of Labor Code 2802 and
5 related Labor Code and PAGA violations, (all as specified in the Settlement), as well as costs and
6 attorneys' fees.
7

8 **VI. THE COURT SHOULD APPROVE THE CLASS NOTICE PACKET.**

9 The Class Notice Packet includes the Class Notice and Claim Form. The Class Notice is
10 attached as **Exhibit A** to the **Exh. 10** (the Parties Settlement Agreement) of the Alizadeh Decl. The
11 Request for Exclusion and Dispute Forms are attached as **Exhibits B** and **C** to **Exh. 10.**(*Id.*) Both
12 satisfy due process.
13

14 The Class Notice process described above is consistent with class certification notices
15 approved by numerous state and federal courts, this Court, and is, under the circumstances of this
16 case, the best notice practicable. Such notice satisfies all due process requirements. *See Cartt v.*
17 *Superior Court* (1975), 50 Cal. App. 3d 960 at 973-74. Moreover, the notice to the class must
18 fairly apprise the class members of the terms of the proposed compromise and of the options open
19 to the dissenting class members. The notice must be structured to enable class members rationally
20 to decide whether to intervene or object, 'opt out,' or accept the settlement. *Cooper v. Am. Savings*
21 *(1976)* 55 Cal.App.3d 274, 285; *Phillips Petrol. Co. v. Schutts* (1985) 472 U.S.797, 811-12. Here,
22 the proposed Class Notice provides complete information regarding the scope of the proposed
23 Class, the terms and provisions of the Settlement, the relief available to Class Members, the
24 amount of the Fee Award, Incentive Award, and the date, time, and place of the Final Approval
25 Hearing, and the procedure and deadline for objecting to and opting out of the Settlement.
26
27 (Alizadeh Decl. **Exh. A to Exhibit 10.**)
28

1 **VII. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION**

2 Here, as Judge Sanders previously found, the proposed Settlement is fair, adequate, and
3 reasonable. Once again, it should be preliminarily approved by the Court.

4 Respectfully Submitted,

5
6 DATED: March 23, 2023

ALIZADEH EMPLOYEES LAW, PROF.
CORP.

8
9 

10 By: _____

11 Arash N. Alizadeh

12 Attorneys for Plaintiff Josue Uribe
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Exhibit 2

1 **ALIZADEH EMPLOYEES LAW, PROF. CORP.**
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5 Attorney for Plaintiff JOSUE URIBE

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**
8

9 Coordination Proceeding
10 Special Title (Rule 3.550)

11 **ABLE SERVICES WAGE AND HOUR**
12 **CASES**

13 Included actions:

14 *Garibay, et al. v. Able Services, et al.*

15 *Uribe v. Building Maintenance Co.*
16

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 5231

Superior Court of California, County of
Alameda Case No. RG15773582

Superior Court of California, County of
Orange Case No. 30-2016-00839857

DECLARATION OF ARASH ALIZADEH
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT

Hearing: June 9, 2023
Time: 9:00 a.m.
Ctrm: CX104
Reservation: 73975212

17
18
19
20 I, ARASH N. ALIZADEH, declare:

21 1. I am attorney licensed to practice law before this Court. I am over 18 years of age.
22 I have personal knowledge of the facts set for thin this declaration and could would testify
23 competently to them.

24 2. I am the founder of the Alizadeh Employees Law, Prof. Corp., attorney of record
25 for Plaintiff Josue Uribe (“Plaintiff”) and the proposed settlement class (the “Class”) in the
26 above-captioned matter.

27 3. I have practiced exclusively Plaintiff’s employment law since January 2015, I
28 have been the attorney of record in over sixty employment cases and have helped recover over \$3

1 million dollars in settlement. A few of my case are listed below:

- 2 a. *Fayyad v. Flectcher Jones Motor Cars* O.C.S.C. filed on May 6, 2015.
- 3 This case involved claims for sexual harassment and retaliation, as well as
- 4 typical wage and hour claims including PAGA. A confidential settlement
- 5 was reached in mediation pending court of approval on the PAGA
- 6 disbursements.
- 7 b. *Roman v. FedEx Freight, Inc.* CIVDS1506540 San Bernardino Superior
- 8 Court (S.B.S.C.) filed on May 8, 2015. This case involved claims for age
- 9 harassment/discrimination as well as claims for work place conditions that
- 10 relating to workplace temperature and heat. This case was settlement in
- 11 mediation under confidential terms.
- 12 c. *Singleton v. Harbor Distributing LLC* 30-2015-00808269 filed September
- 13 4, 2015. This cases involved disability discrimination and numerous wage
- 14 and hour claims. The case settled in mediation under confidential terms.
- 15 d. *Cruz v. General Tools* 30-2016-00837942 O.C.S.C. filed February 29,
- 16 2016. This case involved claims for retaliation and numerous wage and
- 17 hour violations. The case settled in mediation under confidential terms.
- 18 e. *Stump v. Rolling Frito Lays Sales, LLP* 37-2016-0011545 San Diego
- 19 Superior Court filed April 11, 2016. This case involved claims for
- 20 disability discrimination and related claims. The case settled in mediation
- 21 under confidential terms.
- 22 f. *Hamilton v. BlueYield, Inc.* 30-2015-00826139 O.C.S.C. filed December
- 23 21, 2015. This case involved numerous wage and hour claims due to
- 24 misclassification, PAGA, and fraud. The case settled through attorney
- 25 negotiations.
- 26 g. *Maixner v. Cap Diagnostics LLC*, 30-2016-00882099 O.C.S.C. filed on
- 27 October 18, 2016. This case involved claims for disability discrimination
- 28 and numerous wage and hour claims. The case settled for a confidential

1 sum in mediation.

- 2 h. *Ramirez v. My Fit Foods, LLC* BC616917 L.A.S.C. filed on April 12,
3 2016. This case involved sexual harassment and battery. The case was
4 settled for a confidential sum in mediation.
- 5 i. *Singleton v. Avcorp* BC634929 L.A.S.C. filed on September 20, 2016. This
6 case involved race discrimination and numerous wage and hour claims.
7 This case settled through attorney negotiations under confidential terms.
- 8 j. *Adams v. Machining Time Savers, Inc.* CIVDS1606579 filed April 27,
9 2016. This case involved race discrimination/harassment, PAGA, and
10 numerous wage and hour claims. This case settled through attorney
11 negotiations under confidential terms.
- 12 k. *Doe v. Citrus, LLC* BC643923 L.A.S.C. filed January 4, 2017. This case
13 involved misclassification of a nonexempt employee as well as wrongful
14 termination in violation of public policy. This case settled through
15 mediation under confidential terms.
- 16 l. *Ellsmore vs. Bazz Houston Co.* 30-2015-00802355 filed August 4, 2015.
17 This case involved battery, wrongful termination in violation of public
18 policy, wage/hour claims based on misclassification and PAGA. The case
19 settled a week before trial under confidential terms.
- 20 m. *Dabbah v. Dell Software Inc.* 30-2016-00875101 filed on September 14,
21 2016. This case involved numerous wage and hour claims based on
22 misclassification of nonexempt employee. This case settled through
23 mediation under confidential terms.
- 24 n. *Ferrer v. Easter Seals Southern California, Inc.* 30-2016-00842944-CU-
25 OE-CXC, filed in 2016. This is a pending wage and hour class and PAGA
26 action. I am co-counsel on the case and have participated on all stages,
27 including discovery, motion practice, and summary judgment. I attended a
28 mediation in the case in July 2022 that resulted in a settlement agreement

1 of \$2.9 million. We will be filing a motion for preliminary approval of
2 class settlement in the next few months.

3 o. *DeGuia v. Standard Parking*, LA Superior Court BC667294 was a wage
4 and hour class and PAGA action involving parking attendants. I was co-
5 counsel on the case, helped with discovery and summary judgment motion.
6 Case settled for \$1.5 million and court approval obtained.

7 4. From 2017-2023, I was named to the Super Lawyers Magazine Rising Stars list
8 for Employment Litigation: Plaintiff.

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

11 6. A true and correct copy of Plaintiff's First Amended Complaint is attached hereto
12 as **Exhibit 2**.

13 7. A true and correct copy of Defendant's Demurrer filed on June 21, 2016 is
14 attached hereto as **Exhibit 3**.

15 8. A true and correct copy of the Court's Order denying Defendant's Demurrer is
16 attached hereto as **Exhibit 4**.

17 9. Attached as **Exhibit 5** are relevant portions of the deposition testimony of Plaintiff
18 Josue Uribe.

19 10. Attached as **Exhibit 6** are documents produced in this matter bates labelled
20 Crown-Uribe 000110-111).

21 11. Attached as **Exhibit 7** are true and correct copies of Plaintiff's signed copy of
22 Defendant's prohibition on personal cell phone use.

23 12. Attached as **Exhibit 8** is a true and correct copy of Plaintiff's original Second
24 Amended Complaint filed simultaneously with its first motion for preliminary approval filed on
25 November 13, 2023.

26 13. Attached as **Exhibit 9** is a true and correct copy of the Parties stipulation of
27 settlement signed at mediation.

28 14. 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 15. 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 16. Plaintiff's claim for reimbursement for personal cell phone use faces uphill
19 challenges. There is very little if any evidence to suggest a cell phone is required to perform
20 Plaintiff's job. Plaintiff testified he frequently left his cell phone in his car during his shift.

21 17. First, there is no company policy uniformly applied to create class-wide liability.
22 Multiple sources dictate the policies and practices applicable at each property including Able
23 policies, service agreements between Able and its customers, collective bargaining agreements,
24 individual manager's discretion to tailor policies to the property, and the individual janitor's own
25 decision making. These are not questions susceptible of class wide proof or class wide answers.
26 Second, Managers and foremen adapt Able policies to fit the unique needs of the property or
27 customer. The question of what relevant directives each janitor received, and to what practices
28 each Manager adhered, varies based on where each individual is working, the

1 foreperson/manager issuing directives, to whom each individual was reporting, the individual's
2 own unique understanding of the relevant policies and practices, and their own highly
3 individualized decision-making.

4 18. Plaintiff was employed with Defendant from January 26, 2013 through March 21,
5 2015. The cell phone records of his supervisors reveal 67 instances where a call was made to
6 Plaintiff or received from Plaintiff. This amounts to a call two or three times a month.

7 19. In connection with the original \$370,000 settlement, Plaintiff analyzed a three-
8 month sample of cell phone records. The records revealed only 321 employees during this period
9 out of 525 employees received or made a phone call to or from a company issued cell phone-only
10 61.14%. In connection with the further and renewed \$1,050,000 settlement now before the
11 Court, Plaintiff's expert analyzed millions of lines of call data, which revealed extremely variable
12 communications that were not consistent with a uniform requirement that cell phones were
13 required for work.

14 20. Finally, company cell phone records and class cell phone records do not accurately
15 reveal the sender or recipient of a call, much less call content, imposing substantial requirements
16 of individualized proof on Plaintiff to establish liability. Able does not track the end user of
17 company issued cell phones. Some janitors share a cell phone. Moreover, there is no way to
18 determine whether the content of a call is personal or work related. Also, as Intervenor's own
19 case shows, at least some of the Class Members are subject to arbitration agreements with class-
20 actions waivers during the relevant period, potentially limiting the scope of any Class.

21 21. In 2017, After all such investigation and discovery was completed, the Parties
22 agreed to mediation before Alan Berkowitz, Esq. of Judicate West, an experienced and highly
23 regarded mediator with extensive mediation experience in wage and hour class actions and
24 representative actions under PAGA. As a result, the Parties reached the first class-wide
25 settlement.

26 22. Defendant has begun a review of its policies and practices regarding expense
27 reimbursement, including revising its expense reimbursement practices to reimburse employees
28 for certain business expenses challenged in the proposed Second Amended Complaint.

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

4 24. Attached as **Exhibit 10** is a true and correct copy of the parties Stipulation of
5 Settlement of Class Action and Representative Action and Release of Claims signed by the
6 Parties (“Stipulation” or “Settlement Agreement”).

7 25. Attached as **Exhibit 11** is a true and correct copy of quote of \$144,000 received
8 from CPT to administer this current settlement.

9 26. The parties agreed to improve in various ways the original settlement, including
10 departing from the claims-made process to instead automatically send checks to all Class
11 Members. Attached as **Exhibit 12** are true and correct copies of a redlined comparison of the
12 2023 settlement agreement and the 2017 settlement agreement.

13 27. Attached as **Exhibit 13** are true and correct copies of Able applications without a
14 phone number.

15 28. Attached as **Exhibit 14** are true and correct copies for collective bargaining
16 agreements that apply at various Able properties throughout California with different terms
17 regarding personal cell phone use.

18 29. Attached as **Exhibit 15** are true and correct copies of individual manager write up
19 for cell phone use in the workplace.

20 30. Attached as **Exhibit 16** are true and correct copies of Able policies prohibiting
21 personal cell phone used signed by Plaintiff.

22 31. On June 24, 2022, Plaintiff filed a supplemental and amended PAGA Notice
23 Letter with the LWDA. (a true and correct copy of the June 24, 2022 PAGA Notice Letter is
24 attached as **Exhibit 17**.) The 65-day exhaustion period expired without the LWDA commencing
25 an investigation.

26 32. Thereafter, the parties resumed discussions as to a renewed settlement. In
27 furtherance of those discussions, Defendant provided Plaintiff with additional company cell
28 phone records covering the period from 2016 through 2022, as well as other policy and other

1 documents. The parties also agreed that Defendant would nearly triple the original amount of the
2 settlement from \$370,000 to the \$1,050,000 now sought through this motion.

3 33. The parties also agreed to improve in various ways the original settlement,
4 including departing from the claims-made process to instead automatically send checks to all
5 Class Members.

6 34. Based upon Defendant's records and representation, the estimated number of
7 Class Members is approximately 30,000. Class Members may opt-out of the Settlement if they
8 so choose.

9 35. As shown by the supporting declaration of Justin Regus, Plaintiff alleges that the
10 realistic liability exposure for Defendant on the cell phone reimbursement claim, once counsel
11 applies appropriate discounts, likely ranges from was approximately \$88,685 to \$553,855 if a
12 class action succeeded. Some further amounts might be recovered through the other expense
13 reimbursement and PAGA claims (and less likely through other derivative claims), including
14 approximately \$150,000 for uniform and shoe reimbursement and additional amounts through
15 PAGA. Defendant maintains that even these figures are unrealistically high based on the
16 evidence, Plaintiff's own testimony, and the risk of certification.

17 36. In agreeing to the Settlement, Plaintiff took into consideration the aforementioned.
18 Plaintiff also took into consideration that the policies and practices regarding safety shoe, uniform
19 compensation and cell phone use vary throughout California and are governed by policies and
20 practices narrowly tailored for each property and property owner, various collective bargaining
21 agreements and agreements with each individual property. Plaintiff also considered the potential
22 defenses to both class certification and the merits of the case, Defendant's own calculation of
23 potential exposure in the case, and the independent views on all of these topics expressed by the
24 neutral mediator. Finally, Plaintiff took into consideration Defendant's willingness to review
25 policies to benefit the entire Class.

26 37. Based on their own respective independent investigations and evaluations, the
27 Parties and their respective counsel are of the opinion that settlement for the consideration and on
28 the terms set forth in their Agreement is fair, reasonable, and adequate and is in the best interests

1 of the Class and the Defendant in light of all known facts and circumstances and the expenses and
2 risks inherent in litigation.

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

6 39. The amount any particular class member will be entitled to recover will depend on
7 the number of weeks he or she worked during the Class Period, with some entitled to receive
8 more, and others less. Class Members who worked during the PAGA Period will also recover
9 some additional amount as their individual share of the portion that goes to the workers.

10 40. No settlement amount will revert to Defendant.

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

14 42. Among the many risks faced by Plaintiff, the two largest are: (1) Plaintiff could
15 not certify a class or establish liability in a manageable way and (2) damages, even if proven,
16 might be limited.

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

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

23 45. Based on Plaintiff's Counsel's analysis of the relevant California decisional law,
24 and the facts, and the strong likelihood a class would not be certified, Plaintiff's Counsel believes
25 that the total value was properly discounted for the risks, and the Settlement terms are reasonable
26 and justified under these circumstances, especially where class members could choose to opt out
27 and Defendant has agreed to review policies and practices..

28 46. Plaintiff believes that a class can be certified; however, Plaintiff also believes in

1 the fairness of the Settlement that is based on factoring in the uncertainty and risks to Plaintiff
2 involved in not prevailing on one or more of the causes of action or theories alleged in his Second
3 Amended Complaint and in the possibility of non-certification. Defendant adamantly disputes
4 the ability of Plaintiff to certify a class and disputes liability.

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

11 48. Plaintiff participated in discovery, was deposed and travelled from Orange County
12 to San Francisco to participate in mediation.

13 49. The proposed Class members are ascertainable, as they have been identified
14 through Defendant's employee and payroll records.

15 50. Due to the significant size of the class, joinder of all Class Members would be
16 impracticable and a class-wide proceeding is preferable.

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

20 a. Able maintains uniform policies regarding safety shoes and uniforms.
21 Able uniformly informs janitors of its policies during orientation. Able
22 uniformly does not provide janitors with instructions regarding
23 compensation for replacing safety shoes nor for maintaining a clean
24 uniform. Able knows janitors have to replace safety shoes and uniforms.
25 Able therefore knew that janitors incurred expenses for work-related
26 purposes yet did nothing to ensure that janitors were reimbursed for such
27 expenses.

28 b. Able supervisors and managers collected cell phone numbers from janitors

1 on the job and provided those cell phone numbers to Able supervisors and
2 foremen. Those supervisors and foremen use their company issued cell
3 phones to communicate with janitors and provide them with instructions on
4 how to perform their job. Those supervisors and foremen communicate
5 with janitors on janitors' personal cell phones to communicate unique
6 tasks, changes in assignments and additional information directed from the
7 client. Able knew janitors were incurring expenses for work-related
8 purposes, yet did nothing to ensure that janitors were reimbursed for such
9 expenses.

- 10 c. The purpose of Labor Code Section 2802 is "to prevent employers from
11 passing their operating expenses on to their employees." *Gattuso v. Harte-*
12 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562. Able has passed on the
13 operating expenses to employees related to safety shoe replacement,
14 uniform maintenance and required cell phone use.

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

17 52. Here, the requisite nexus for typicality exists between the named Plaintiff and
18 absent Class Members, as Plaintiff is asserting the same claims and seeking the same remedies as
19 the absent Class Members.

20 53. Plaintiff has no conflicts, and Plaintiff has, with counsel, litigated this case and
21 diligently reviewed the Settlement terms.

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

25 55. Prior to 2017, it was not common for any janitors to be reimbursed for work-
26 related use of a personal device. Based on Plaintiff's litigation efforts, it appears that Able began
27 providing some janitors with a monthly phone allowance.

28 56. Because the Court had already found that \$370,000 was fair and reasonable to

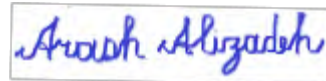
1 cover a release period through 2018, a primary issue was determining what amount to further
2 increase the settlement. Based on the natural increase in workweeks, a proportionate increase of
3 the settlement through the end of the class period in June 2023 was approximately \$320,000,
4 which would have increased the settlement to approximately \$700,000.

5 57. Rather than accept the same valuation that was already approved by the Court,
6 Plaintiff negotiated to further increase the settlement to \$1,050,000. Consequently, even if you
7 account for the additional passage of time, the Class is effectively getting 150% more than the
8 amount already blessed by the Court in 2019.

9 58. Attached as **Exhibit 18**, is a true and correct copy of the report submitted by
10 Expert, Michael Phillips in review of the settlement in this matter and his CV.

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

13
14 March 17, 2023



15 _____
Arash N. Alizadeh

EXHIBIT 1

1 **LAW OFFICE OF ARASH N. ALIZADEH**
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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.

16 **Parties**

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

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

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

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

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.

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

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

12 **First Cause of Action**

13 **For Failure to Pay Earned Wages**

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

15 **by Plaintiff Against All Defendants**

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

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

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

22 **Second Cause of Action**

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

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

25 **by Plaintiffs Against All Defendants**

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

28 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 Oder 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.

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

3 **Fifth Cause of Action**

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

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

6 **By Plaintiff Against All Defendants**

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

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

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

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

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

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

28 **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.

45. Plaintiff mailed the PAGA Notice to the Labor and Workforce Development Agency (LWDA) and Division of Occupational Safety and Health (DOSH) by certified mail 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.

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

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays the following against defendants:

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

1 Dated: March 9, 2016

LAW OFFICE OF ARASH N. ALIZADEH

Arash N. Alizadeh

ARASH N. ALIZADEH, attorney for plaintiff

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

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-OE-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.

39. 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.

40. 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.

41. 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)**

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

43. 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.

44. Plaintiff mailed the PAGA Notice to the Labor and Workforce Development Agency (LWDA) and Division of Occupational Safety and Health (DOSH) by certified mail 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

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 cursive script, reading "Arash 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

COMPLETE THIS SECTION ON DELIVERY

A. Signature: (☒ Addressee or ☐ Agent)

X

FEB 08 2016

B. Received By: (Please Print Clearly)

LABOR STANDARDS ENFORCEMENT

C. Date of Delivery DISTRICT OFFICE

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

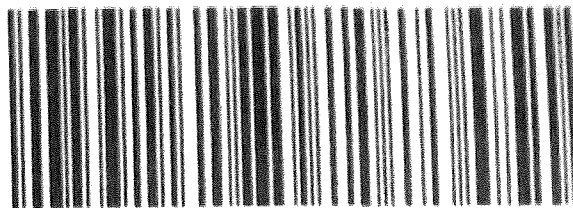
Secondary Address / Suite / Apt. / Floor (Please Print Clearly)

Delivery Address

City

State

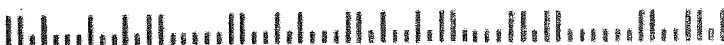
ZIP + 4 Code



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.

PS Form 3800 6/02

COMPLETE THIS SECTION ON DELIVERY

A. Signature: (☒ Addressee or ☐ Agent)

X

Parla Glaverde

B. Received By: (Please Print Clearly)

Parla Glaverde

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)

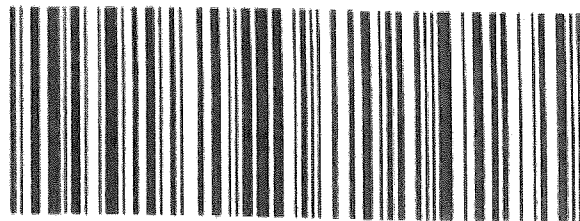
Delivery Address

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

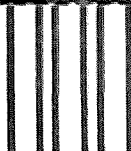
PS FORM 3811, 2/2004
USA CMF-134 06/14

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

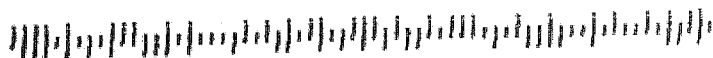


EXHIBIT 3

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

Clerk of the Superior Court
By Olga Lopez, Deputy Clerk

DOUGLAS J. FARMER, Cal. Bar No. 139646
douglas.farmer@ogletreedeakins.com
MICHAEL D. THOMAS, Cal. Bar No. 226129
michael.thomas@ogletreedeakins.com
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

Attorneys for Defendant
Crown Building Maintenance Co.

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. 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

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6. The Sixth Cause of Action for conversion fails to state facts sufficient to constitute a

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: 
18 Douglas J. Farmer
Michael D. Thomas

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
16 equipment that he pushed around in his job site. Employee’s job duties were
17 essentially similar to a janitor. Employee was required to wear a uniform provided
18 by the company, but the company did not maintain the uniform. Due to heavy and
19 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
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
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
21 maintaining their uniform and purchase slip-resistant shoes, they caused their wages
22 to fall below minimum wages, failed to pay their full overtime wages, failed to
23 timely pay wages, and failed to provide accurate wage statement, among other
violations as a result. This is because the unreimbursed expenses and uniform
maintenance costs are considered “wages.” (emphasis added)(FAC ¶¶ 3-5).

24 Plaintiff’s FAC is subject to Demurrer.

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.

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

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

23 Moreover, the California Supreme Court in *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.
24 4th 554, 572 (2007), analyzed whether an expense reimbursement is a wage. In ruling that an
25 expense reimbursement is not a wage, the Supreme Court ruled as follows:

26 Section 200 highlights a valid and important distinction between wages (as payment
27 for labor performed) and business expense reimbursement. The amount payable as
28 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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26
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 _____
27 ² A true and correct copy of California Occupational Safety and Health Act, 8 CCR § 3380; Appendix A, ¶ 10
28 ("Selection guidelines for foot protection") is attached to the Request for Judicial Notice as Exhibit B. Pursuant to
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.

24 By: _____

Douglas J. Farmer
Michael D. Thomas

Attorneys for Defendant Crown Building Maintenance Co.

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 4

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:

LAW OFFICE OF ARASH N. ALIZADEH
AALIZADEH@LAWYERFOREMPLOYEES.COM

OGLETREE, DEAKINS, NASH, SMOAK &
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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: 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.

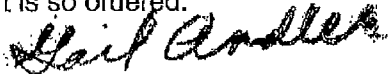
Defendant also argues that the FAC lacks specificity as to what the uniform claim entails and is thus uncertain. But a demurrer for uncertainty should be sustained only where the pleading is so poorly pled that defendant cannot reasonably respond. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 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. Ul 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 5

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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,)
)
Plaintiffs,)

vs.)

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

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

- - - - -)

DEPOSITION OF
JOSUE URIBE
COSTA MESA, CALIFORNIA
SEPTEMBER 15, 2016

Atkinson-Baker, Inc.
Court Reporters
www.depo.com
(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.

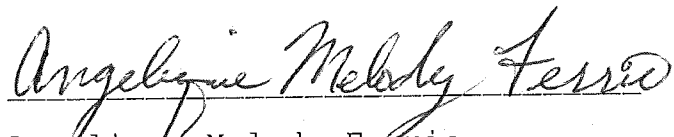
21
22 
23 _____
24 Angelique Melody Ferrio
25 CSR No. 6979

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
15

16 
17

18 Angelique Melody Ferrio
19 CSR No. 6979
20
21
22
23
24
25

EXHIBIT 6



CROWN-URIBE000111



EXHIBIT 7



868 Folsom Street, San Francisco, CA 94107 | T: 415.981.8070 | F: 415.546.5190

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: 10-25-15

EXHIBIT 8

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

10 **751 W. SANTA ANA BLVD., SANTA ANA, CA 92701**

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

13 Plaintiff,

14 v.

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

17 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 ///

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
23 duties and for time spend maintaining their uniforms.
- 24 ii. Whether Defendant's failure to indemnify employees for their necessary
25 employment-related expenses and losses constitute an unlawful, unfair
26 and/or fraudulent business practice under Business and professions
27 Code sections 17200 *et seq*; and
- 28 iii. What relief is necessary to remedy Defendant's unfair and unlawful
conduct as herein alleged.

///

- 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.

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

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

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

51. Under Code section 226, subsections (e) and (f), 1198, Wage Order § 20(A), and based on Defendant's conduct as alleged herein, Plaintiff and other Class Members are 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.

52. 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

53. Plaintiff incorporates by reference and re-alleges the foregoing paragraphs as 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:

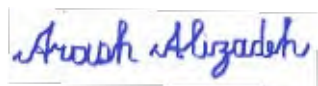
28 a. Certification of this action as a class action, pursuant to Code of Civil Procedure section

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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 9

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.

Δ 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 press; no reversion; Class period for
purpose 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.

7/11/17 Josue Uribe

[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). ^{ATA basis.}

This agreement subject to ~~that~~ ^{final} terms agreed to by the parties for motion for preliminary approval.

EXHIBIT 10

1 Arash N. Alizadeh, SBN 302290
2 **ALIZADEH EMPLOYEES LAW, PROF. CORP.**
3 7545 Irvine Center Drive, Ste. 200
4 Irvine, CA 92618
5 Telephone (949) 606-2845
6 alizadeh@lawyerforemployees.com
7 *Attorney for Plaintiff*

8 DOUGLAS J. FARMER, Cal. Bar No. 139646
9 douglas.farmer@ogletreedeakins.com
10 CAROLYN B. HALL, Cal. Bar No. 212311
11 carolyn.hall@ogletreedeakins.com
12 OGLETREE, DEAKINS, NASH,
13 SMOAK & STEWART, P.C.
14 One Embarcadero Center, Suite 900
15 San Francisco, CA 94111
16 Telephone: 415.442.4810
17 Facsimile: 415.442.4870

18 Attorneys for Defendant
19 Crown Building Maintenance Co.

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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. William Claster, Dept. CX104]

**MARCH 2023 REVISED JOINT
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT AND RELEASE**

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

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

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Josue Uribe
4 (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly
5 situated, and Defendant Crown Building Maintenance Co. dba Able Building Maintenance
6 (“Defendant” or “Able”) (collectively with Plaintiff, the “Parties”).

7 **THE PARTIES STIPULATE AND AGREE AS FOLLOWS:**

8 **DEFINITIONS**

9 The following terms, as used throughout this Agreement, are defined as follows:

- 10 1. “Action” means the civil action filed by Plaintiff entitled *Josue Uribe v. Crown*
11 *Building Maintenance Co.*, pending in the Superior Court of the State of California, County of
12 Orange, Case No. 30-2016-00839857-CU-OE-CXC.
- 13 2. “Class Counsel” means Alizadeh Employees Law, Prof. Corp.
- 14 3. “Class Counsel Award” means the amounts that the Court authorizes to be paid to
15 Class Counsel as attorneys’ fees for Class Counsel’s litigation and resolution of this Action and his
16 expenses and costs incurred in connection with the Action, paid from the Settlement Amount in
17 amount not to exceed \$315,000.00.
- 18 4. “Class Information” means information regarding Class Members that Defendant
19 will diligently and in good faith compile from its records and provide to the Settlement
20 Administrator within twenty-one (21) calendar days after Preliminary Approval of this Settlement.
21 The Class Information will be formatted in a readable Microsoft Office Excel spreadsheet and will
22 include each Class Member’s full name; last known mailing address and telephone number;
23 employee ID number, Social Security number; dates of employment; and additional information
24 sufficient for the Settlement Administrator to determine the respective number of Eligible
25 Workweeks for each Class Member and each PAGA Member; and any other relevant information
26 needed to calculate settlement payments.
- 27 5. “Class Member(s)” or “Settlement Class” means all janitorial employees including
28 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 at any time during the period from June 10, 2011 to the Preliminary Approval Date or June 15, 2023, whichever occurs sooner.

6. “Class Representative Enhancement Payment” means the amount to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment and Individual PAGA Payment, in recognition of Plaintiff’s effort and work in prosecuting the Action on behalf of Class Members and PAGA Members, and for his general release of claims. Subject to the Court granting final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of Class Representative Enhancement Payment in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00).

7. “Class Settlement Period” means the period from June 10, 2011 through the Preliminary Approval Date or June 15, 2023, whichever occurs sooner.

8. “Complaint” means the operative Complaint in the Action, including the Second Amended Complaint that the Parties anticipate Plaintiff will file in connection with the Settlement and that will be deemed filed on the Preliminary Approval Date, if granted.

9. “Court” means the Superior Court of the State of California for the County of Orange or any other court taking jurisdiction of the Action.

10. “Defendant” means Defendant Crown Building Maintenance Company dba Able Building Maintenance.

11. “Effective Date” means the later of: (a) if any timely objections are filed and not subsequently withdrawn, the sixty-first (61st) calendar day after the Court enters an order granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release; (b) if any timely appeals are filed, the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement; or (c) if no timely objections are filed, or if all objections are withdrawn, the date upon which the Court enters an order granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release.

12. “Eligible Pay Period” means any pay period in which a PAGA Member performed any work for Defendant during the PAGA Settlement Period according to Defendant’s records.

13. “Eligible Workweek” means any workweek in which a Class Member performed

any work for Defendant during the Class Settlement Period, according to Defendant's records.
[Defendant will determine the number of Eligible Workweeks by calculating the number of weeks each Class Member was employed by Defendant as a janitor during the period from June 10, 2011 to the Preliminary Approval Date or June 15, 2023, whichever occurs sooner, and rounding up to the nearest whole number.]

14. "Final Approval Hearing" means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

15. "Individual PAGA Payment" means the amounts paid from the PAGA Payment to PAGA Members that shall in the aggregate comprise 25% of the PAGA Payment, namely \$25,000.00 as consideration for settlement of claims for civil penalties under PAGA.

16. "Individual Settlement Payment" means the amount paid from the Net Settlement Amount to a Participating Class Member. Any Class Member who timely submits a Request for Exclusion pursuant to the procedures set forth herein is not a Participating Class Member and is not eligible to receive an Individual Settlement Payment.

17. "LWDA" means the California Labor and Workforce Development Agency.

18. "LWDA PAGA Payment" means to payment to be made to the LWDA as its 75% share of the PAGA Payment, namely \$75,000.00, as consideration for settlement of claims for civil penalties under PAGA.

19. "Net Settlement Amount" means the Total Settlement Amount less Court-approved Class Counsel Award, Class Representative Enhancement Award, PAGA Payment and Settlement Administration Costs. The Net Settlement Amount is the total amount that will be paid to Participating Class Members, in the form of Individual Settlement Payments.

20. "Notice of Class Action Settlement" means the notice approved by the Parties and subject to Court approval, substantially in the form of **Exhibit A** hereto, explaining the terms of this Settlement Agreement and the settlement process, which the Settlement Administrator will mail to each Class Member.

21. "PAGA" refers to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2699 et seq.

22. “PAGA Members” means all individual who are or were previously employed by Defendant Crown Building Maintenance Co. in California as a janitorial employee at any time during the PAGA Settlement Period.

23. “PAGA Notice Letters” refers to (a) the February 3, 2016 PAGA Notice Letter filed by Plaintiff with the LWDA; and (b) the June 24, 2022 supplemental and amended PAGA Notice Letter filed by Plaintiff with the LWDA.

24. “PAGA Payment” means a gross payment in the aggregate of \$100,000.00 that is comprised of the LWDA PAGA Payment and all of the Individual PAGA Payments to PAGA Members in settlement of all claims for PAGA civil penalties as defined in this Settlement Agreement.

25. “PAGA Settlement Period” means the period from April 22, 2014 through the Preliminary Approval Date or June 15, 2023, whichever occurs sooner.

26. “Parties” means Plaintiff and Defendant collectively.

27. “Participating Class Members” means those Class Members who do not submit a valid and timely Request for Exclusion.

28. “Plaintiff” means Plaintiff Josue Uribe.

29. “Preliminary Approval Date” means the date on which the Court issues an order granting preliminary approval of the proposed Settlement.

30. “Released Class Claims” shall mean any and all claims based on the factual or legal theories alleged in the Complaint, including claims for (i) failure to reimburse and the following “derivative” claims based on that reimbursement claim for (ii) failure to timely pay wage; (iii) failure to pay minimum wage; (iv) failure to pay overtime; (v) failure to timely pay wages upon termination; (vi) inaccurate wage statements; (vii) conversion; (viii) unfair competition; and (ix) and all damages, penalties, interest and other amounts recoverable under all claims under California and federal law, to the extent permissible, including but not limited to the California Labor Code and IWC Wage Order No. 5, based on the facts and theories alleged in the Action on which the reimbursement claim is predicated (collectively, the “Released Claims”). To be clear, the Released Class Claims do not extend to claims for minimum wage, inaccurate wage statements, etc. based on

any theory other than expense reimbursement. The period of the Release shall extend to the limits of the Class Settlement Period.

31. “Released PAGA Claims” shall mean all claims and causes of action for civil penalties under PAGA against the Released Parties that were alleged or that could have been alleged based on the facts asserted in the Complaint as well as in the PAGA Notice Letters, including for failure to reimburse (Labor Code section 2802) and the following “derivative” claims based on that reimbursement claim under Labor Code sections 201-204, 210, 226(a), 226.3, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 6401, 6401.7, and 6403 and IWC Wage Order No. 5 based on the facts and theories alleged in the Action on which that reimbursement claim is predicated. To be clear, the Released PAGA Claims do not extend to civil penalties based on any theory other than expense reimbursement. The period of the Released PAGA Claims will be the PAGA Settlement Period.

32. “Released Parties” means Defendant and any of its former and present parents (including Able Services), subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, as well as all past and present officers, directors, members, employees, partners, shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal representatives, if any, and all persons acting under, by, through, or in concert with any of them, and each of them.

33. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a request to be excluded from the class settlement. Specific details of how to submit a “Request for Exclusion” will be provided by the Notice of Class Action Settlement.

34. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator valid Requests for Exclusion, or postmark Notices of Objection to the Settlement. The Response Deadline will be sixty (60) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 60th 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. The Response Deadline for Requests for Exclusion will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by

1 the Claims Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case
2 the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.
3 The Response Deadline may also be extended by express agreement between Class Counsel and
4 Defendant. Under no circumstances, however, will the Settlement Administrator have the
5 authority to unilaterally extend the deadline for Class Members to submit a Request for Exclusion,
6 or objection to the settlement.

7 35. "Settlement" or "Settlement Agreement" means this Joint Stipulation of Class
8 Action and PAGA Settlement and Release.

9 36. "Settlement Administrator" means a third-party class action settlement administrator
10 agreed to by the Parties and approved by the Court for the purposes of administering this
11 settlement. The Parties each represent that they do not have any financial interest in the Settlement
12 Administrator or otherwise have a relationship with the Settlement Administrator that could create
13 a conflict of interest.

14 37. "Settlement Administration Costs" means the costs payable from the Total
15 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
16 but not limited to, printing, distributing, and tracking documents for this Settlement, calculating
17 estimated amounts per Class Member, tax reporting, distributing the Total Settlement Amount, and
18 providing necessary reports and declarations, and other duties and responsibilities set forth herein
19 to process this Settlement, and as requested by the Parties. The Settlement Administration Costs
20 will be paid from the Total Settlement Amount, including, if necessary, any such costs in excess of
21 the amount represented by the Settlement Administrator as being the maximum costs necessary to
22 administer the settlement. The Settlement Administration Costs are currently estimated to be One
23 Hundred Forty-Four Thousand Dollars and zero cents (\$144,000.00). To the extent actual
24 Settlement Administration Costs are greater such excess amount will be deducted from the Total
25 Settlement Amount.

26 38. "Total Settlement Amount" means the total maximum amount payable under the
27 terms of this Settlement Agreement, which is the gross sum of One Million Fifty Thousand Dollars
28 and zero cents (\$1,050,000.00) to be paid by Defendant in full satisfaction of all claims arising

1 from the Action and Plaintiff's Second Amended Complaint defined below, which includes all
2 Individual Settlement Payments to Participating Class Members, any Class Representative
3 Enhancement Payment to Plaintiff as approved by the Court, the PAGA Payment, Settlement
4 Administration Costs as approved by the Court, and a payment to Class Counsel of attorneys' fees
5 and reasonable litigation costs. The Settlement Administrator will make all required tax deductions
6 and payments using a Qualified Settlement Fund. As set forth herein, the Settlement Administrator
7 will issue all of the above-referenced payments from the Qualified Settlement Fund in accordance
8 with the applicable provisions of this Settlement Agreement.

9 39. "Workweek Value" means the value of each Eligible Workweek, as determined by
10 the formula set forth in herein.

11 **RECITALS**

12 40. 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 41. 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 42. 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 43. On April 4, 2016, Plaintiff filed a Notice of Related cases.

3 44. On May 23, 2016, Plaintiff filed his First Amended Complaint ("FAC"). Plaintiff
4 alleges in the FAC and further amended Complaint that his former employer, Defendant, failed to
5 provide reimbursement for expenses and losses for required use of cell phones, uniform and other
6 clothing, and slip-resistant shoes in violation of California Labor Code Section 2802. Plaintiff
7 further alleges that because the unreimbursed expenses for his cell phone, uniform and clothing,
8 and slip-resistant shoes are considered "wages" or "compensation", he is entitled to damages based
9 on the following additional causes of action: (1) failure to pay all earned wages; (2) failure to pay
10 minimum wages; (3) failure to pay overtime compensation; (4) failure to timely pay wages upon
11 termination; (5) failure to provide accurate wage statements; (6) conversion; and (7) violation of
12 Labor Code section 2698 et seq., the Private Attorneys General Act of 2004 ("PAGA").

13 45. In response to Plaintiff's allegations in the FAC, Defendant filed a demurrer.

14 46. 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 47. The Court subsequently denied Defendant's Demurrer.

24 48. 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 49. 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 50. Subsequently, the parties began settlement discussions.

5 51. The parties also engaged in written discovery regarding Plaintiff's potential claim of
6 expense reimbursement based on required cell phone use.

7 52. 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 53. 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 54. Following Defendant's decision to file a motion for summary judgment on
23 Plaintiff's claims, the parties agreed to attend mediation.

24 55. On July 12, 2017, with the assistance of experienced mediator Alan Berkowitz, Esq.
25 of Judicate West, the Parties reached a Settlement Agreement.

26 56. 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

allowance.

57. On February 2, 2018, the Court granted Isabel Garibay's Motion to Intervene.

58. On October 19, 2018, the Court granted Plaintiff's Motion for Preliminary Approval of Settlement, based on the September 28, 2018 Revised Joint Stipulation of Representative Action and Class Action Settlement and Release.

59. On September 17, 2019, the Court granted Plaintiff's Motion for Final Approval of Settlement and entered Judgment.

60. On September 19, 2019, Intervenor Isabel Garibay filed a copy of the Judgment with Court of Appeal and thereby commenced her appeal as to the Judgment.

61. On October 26, 2021, the Court of Appeal issued its opinion in *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal. App.5th 986 (modified and certified for publication on November 25, 2021; remittitur issued December 28, 2021). The Court of Appeal reversed this Court's approval of the settlement, determining that Plaintiff's PAGA notice was technically deficient because it did not expressly reference cell phones as a basis for Plaintiff's reimbursement claim. 70 Cal. App. 5th at 1006. The Court of Appeal remanded the case for Plaintiff to correct the deficiency. *Id.*

62. On June 24, 2022, Plaintiff filed a supplemental and amended PAGA Notice Letter with the LWDA.

63. Thereafter, the Parties resumed discussions as to a renewed settlement process. In furtherance of those discussions, Defendant provided Plaintiff with additional company cell phone records covering the period from 2016 through 2022, as well as other policy and other documents. The Parties also agreed that Defendant would nearly triple the original amount of the settlement from \$370,000 to the \$1,050,000 now sought through this Settlement.

64. On January 27, 2023, the Court held a status conference and the Parties informed the Court that Plaintiff intended to file a renewed motion for preliminary approval of settlement. The Court set March 17, 2023 as the deadline for Plaintiff to file a motion for preliminary approval.

65. Benefits of Settlement to Settlement Class Members. Plaintiff has taken into

1 account the uncertainty and risk of the outcome of further litigation, and has also taken into
2 account the ability of Plaintiff and Class Members to collect on any judgment. Specifically,
3 Plaintiff has taken into account that his case has minimal settlement value and Defendant would
4 likely be successful in filing a motion for summary judgment and/or opposing class certification.
5 Plaintiff has taken into consideration that the policies and practices regarding uniform
6 compensation and cell phone use vary throughout California and is governed by policies and
7 practices narrowly tailored for each property and property owner, various collective bargaining
8 agreements and agreements with each individual property. Finally, Plaintiff has taken into
9 consideration, some of Plaintiffs' claims on behalf of the same class have already been denied
10 certification by Judge Gail Andler in Orange County Superior Court, Complex Division for lack of
11 commonality and as unmanageable [*Cervantes v. Crown Building Maintenance Co.*, Case No. 30-
12 2013-00684702]. All of the aforementioned are barriers to commonality and manageability.
13 Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary
14 to litigate their disputes through trial and through any possible appeals. Plaintiff and Class Counsel
15 have also taken into account Defendant's agreement to enter into a settlement that confers
16 substantial relief upon Settlement Class Members. Based on the foregoing, Plaintiff and Class
17 Counsel have determined that the Settlement set forth in this Settlement Agreement is a fair,
18 adequate and reasonable settlement, and is in the best interests of Class Members.

19 66. Defendants' Reasons for Settlement. Defendant has concluded that any further
20 defense of this litigation would be protracted and expensive for all Parties because Plaintiff's
21 claims lack merit and are not subject to certification. Substantial amounts of time, energy, and
22 resources of Defendant have been consumed and, unless this Settlement is made, will continue to
23 be devoted to the defense of the claims asserted by Plaintiff and Class Members. Defendant has
24 also taken into account the risks of further litigation in reaching its decision to enter into this
25 Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by
26 Plaintiff in the Action, Defendant has, nonetheless, agreed to settle in the manner and upon the
27 terms set forth in this Agreement to put to rest the claims as set forth in the Action. Defendant
28 contends that it has complied with all applicable state, federal and local laws.

67. Defendant's Defenses and Denial of Wrongdoing. Defendant has claimed and continues to claim that Plaintiff's claims have no merit and do not give rise to liability.

68. This Settlement Agreement is a compromise of disputed claims. Defendant has claimed and continues to claim that the Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability. Settlement Class Members and PAGA Members have claimed and continue to claim that the Released Class Claims and the Released PAGA Claims have merit and give rise to liability on the part of Defendant. Nothing contained in this Settlement Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendants as to the merits or lack thereof of the claims asserted in this Action.

69. Maximum Amount Payable by Defendant. Under the terms of this Settlement, the maximum amount payable by Defendant will not exceed the Total Settlement Amount of One Million Fifty Thousand Dollars and zero cents (\$1,050,000.00). The employer's share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to the FICA and FUTA contributions, if applicable, shall be paid separately from, and in addition to, the Total Settlement Amount.

TERMS OF AGREEMENT

70. The Plaintiff, on behalf of himself and the Settlement Class, and Defendant, agree as follows:

71. Release As To All Participating Class Members. As of the Effective Date, in exchange for the consideration set forth in this Settlement Agreement, Plaintiff and the Participating Class Members, as well as well as their spouses, heirs, executors, administrators, trustees and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all Released Class Claims. These releases will take effect whether or not a Participating Class Member receives his or her Individual Settlement Payment or cashes and deposits any check for the Individual Settlement Payment.

72. Release as To All PAGA Members. Upon the Effective Date, as representatives of

1 the State of California and on behalf of the LWDA, the PAGA Employees fully and finally release
2 the Released Parties from the PAGA Released Claims for the PAGA Settlement Period. These
3 releases will take effect whether or not a PAGA Member receives his or her Individual PAGA
4 Payment or cashes and deposits any check for the Individual PAGA Payment.

5 73. Second Amended Complaint. As a condition of settlement, Plaintiff will file a
6 Second Amended Complaint (“SAC”) seeking class action relief and including a claim of failure to
7 provide expense reimbursement for allegedly required personal cell phone use in violation of Labor
8 Code Section 2802, a Business and Professions Code claim, a class period from June 10, 2011 to
9 the present, a PAGA period from April 22, 2014 to the present, and conform the pleadings with the
10 scope of the Settlement and Released Claims, in the form attached hereto as **Exhibit D**. Defendant
11 will not be required to file an answer or other responsive pleading to the SAC. If, for any reason,
12 the Court does not grant final approval of the Settlement, or if the Settlement does not become final
13 and effective for any reason, then the SAC will be deemed withdrawn and the FAC will again
14 become the operative complaint without prejudice to Plaintiff’s right to seek leave to file another
15 amended complaint. Defendant does not impliedly or expressly waive any arguments or defenses
16 to the SAC.

17 74. Funding of the Total Settlement Amount. Within seven (7) calendar days after the
18 Effective Date, the Settlement Administrator shall send Defendant’s Counsel electronic wiring
19 instructions for paying the Total Settlement Amount (\$1,050,000.00) into a Qualified Settlement
20 Fund (“QSF”) to be established by the Settlement Administrator. The Settlement Administrator
21 will also inform Defendant of the amount to be sent to the QSF to pay for the employer’s share of
22 payroll taxes. No later than twenty-one (21) calendar days after the Effective Date, Defendant shall
23 fund the QSF. To the extent that Defendant previously funded some portion of the Settlement
24 based on the original settlement, it shall receive a credit against that amount and only need to wire
25 the additional amount to make up the difference to the Total Settlement Amount. The Settlement
26 Administrator shall then disburse the funds as approved per this Agreement.

27 75. Attorneys’ Fees and Costs. Class Counsel will apply to the Court for an award of
28 not more than Three Hundred Fifteen Thousand Dollars and zero cents (\$315,000.00) of the Net

Settlement Amount as his Fees and Cost award. Defendant agrees not to oppose any such applications which are consistent with this paragraph. The amount of attorneys' fees and costs shall include payment for time expended by Class Counsel up to and including the final approval of the Settlement, but not any time expended on an appeal.

76. Class Representative Enhancement Payment. In exchange for a general release, and in recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendant agrees not to oppose or impede any application or motion for a Class Representative Enhancement Payment up to Five Thousand Five Hundred Dollars and zero cents (\$7,500.00). The Class Representative Enhancement Payment will be paid from the Total Settlement Amount and will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the payments made pursuant to this paragraph and will indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

77. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Total Settlement Amount, which is currently estimated to be One Hundred Forty-Four Thousand Dollars and zero cents (\$144,000.00). These costs, which will be paid from the Total Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing the Notice Packet, calculating and distributing the Total Settlement Amount, and providing necessary reports and declarations.

78. PAGA Payments. Subject to Court approval, the Parties agree that the amount of One Hundred Thousand Dollars (\$100,000.00) of the Total Settlement Amount will be allocated to the resolution of any PAGA Members' claims for civil penalties arising under PAGA. Pursuant to PAGA, Seventy Five Percent (75%), or Seven-Five Thousand Dollars and zero cents (\$75,000.00), of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency. Twenty Five Percent (25%), or Twenty-Five Thousand Dollars and zero cents (\$25,000.00), of the PAGA Payment will be paid to PAGA Members. Any portion of the PAGA Payment not approved by the Court will be added to the Net Settlement Amount and any additional

amount ordered by the Court shall be paid from the Total Settlement Amount; in no event shall Defendant be required to pay in excess of the Total Settlement Amount. The LWDA PAGA Payment will be paid to the LWDA within fifteen (15) days after Defendant fully funds the settlement. The remaining 25% of the PAGA Payment to be distributed to the PAGA Members as Individual PAGA Payments and shall be distributed based on a pro rata share based on the number of Eligible Pay Periods during the PAGA Settlement Period. To establish the pay period value, the Settlement Administrator will first determine the total number of Eligible Pay Periods during the PAGA Settlement Period. The pay period value will be equal to 25% of the PAGA Payment divided by the total number of Eligible Pay Periods worked by PAGA Members during the PAGA Settlement Period. The pay period value will be rounded to the nearest cent. The amount of the Individual PAGA Payment to be paid to each PAGA Member will be determined by multiplying the pay period value by the total number of Eligible Pay Periods. Individual PAGA Payments shall be mailed, together with Individual Settlement Payments, within fifteen (15) days after Defendant fully funds the settlement.

79. Net Settlement Amount.

The Net Settlement Amount will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Class Representative Enhancement Award, PAGA Payment, and Settlement Administrator Costs from the Total Settlement Amount. The anticipated Net Settlement Amount is \$483,500.00. The Parties estimate the amount of the Net Settlement Amount to be calculated as follows:

Total Settlement Amount:	\$1,050,000.00
Requested Class Rep. Award:	\$7,500.00
Requested Class Counsel Fees:	\$315,000.00
PAGA Payment to LWDA:	\$75,000.00
PAGA Payment to PAGA Members	\$25,000.00
Settlement Administrator Costs:	\$144,000.00
Net Settlement Amount	\$483,500.00

This is a non-reversionary Settlement in which Defendant will pay the entire Total

1 Settlement Amount. No portion of the Total Settlement Amount will revert to Defendant. The
2 employer's share of payroll taxes and other required withholdings from Individual Settlement
3 Payments, including but not limited to the FICA and FUTA contributions, if applicable, shall be
4 paid separately from, and in addition to, the Total Settlement Amount. Any award of less than the
5 amounts requested for class representative enhancement, administrative costs, litigation costs, or
6 attorneys' fees will be returned to the Net Settlement Amount and distributed to the Participating
7 Settlement Class Members.

8 80. Individual Settlement Payment Calculations. Individual Settlement Payments will
9 be calculated and apportioned from the Net Settlement Amount based on the number of
10 Workweeks a Participating Class Member worked during the Class Settlement Period. Specific
11 calculations of Individual Settlement Payments will be made as follows:

- 12 a. Defendant will calculate the total number of Workweeks worked by each
13 Participating Class Member ("Individual Workweeks") and the total number
14 of Workweeks worked by all Participating Class Members ("Class
 Workweeks) during the Class Period.
- 15 b. To determine each Participating Class Member's Individual Settlement
16 Payment, the Settlement Administrator will use the following formula:
 Individual Settlement Payment = (Individual Workweeks ÷ Class
17 Workweeks) × Net Settlement Amount.
- 18 c. If there are any unclaimed Individual Settlement Payments, the Settlement
19 Administrator will proportionately increase the Individual Settlement
20 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.
- 21 d. The Individual Settlement Payment will be reduced by any required
22 deductions for each Participating Class Members as set forth herein,
 including employee-side tax withholdings or deductions.

23 81. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
24 Participating Class Members under this Settlement, as well as any other payments made pursuant
25 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to
26 which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus
27 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any
28 other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect

any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

82. Settlement 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.

83. Delivery of the Class Information. Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Class Information to the Settlement Administrator and to Class Counsel.

84. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class Information from Defendant, the Settlement 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 Information.

85. Response Deadline. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator valid Dispute Forms, Requests for Exclusion, or postmark Notices of Objection to the Settlement. The Response Deadline will be sixty (60) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 60th 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. The Response Deadline for Dispute Forms, Requests for Exclusion, or Notice of Objection will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the Settlement 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. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant. Under no circumstances, however, will the Settlement Administrator have the authority to unilaterally extend the deadline for Class Members to submit a Dispute Form, Request for Exclusion, or objection to the settlement.

86. Disputed Information on Notice Packets. Class Members and PAGA Members who disagree with the number of Eligible Workweeks or Eligible Pay Periods will have an opportunity

1 to dispute the information provided in their Notice Packets. A Dispute Form will be included in
2 the Notice Packets and an example is attached hereto as **Exhibit B**. To the extent Class Members
3 dispute the number of Workweeks to which they have been credited or the amount of their
4 Individual Settlement Payment, Class Members may produce evidence to the Settlement
5 Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's
6 records, Defendant's records will be presumed determinative. However, if a Class Member
7 produces evidence to the contrary, the Settlement Administrator will evaluate the evidence
8 submitted by the Class Member and will make the final decision as to the number of eligible
9 Workweeks that should be applied and/or the Individual Settlement Payment to which the Class
10 Member may be entitled. All such disputes are to be resolved not later than fourteen (14) calendar
11 days after the Response Deadline.

12 87. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
13 Settlement Agreement must sign and postmark or fax a written Request for Exclusion to the
14 Settlement Administrator within the Response Deadline. A Request for Exclusion will be included
15 in the Notice Packets and an example is attached hereto as **Exhibit C**. The date of the postmark on
16 the return mailing envelope or fax receipt confirmation will be the exclusive means to determine
17 whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be
18 submitted to the Settlement Administrator, who will certify jointly to Class Counsel and
19 Defendant's Counsel the Requests for Exclusion that were timely submitted.

20 88. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
21 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely
22 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
23 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
24 approval to the Settlement. Even if a Class Member timely seeks to opt out of the Settlement
25 Agreement, he or she will still be bound by the Released PAGA Claims and receive the Individual
26 PAGA Payment.

27 89. Objection Procedures. To object to the Settlement Agreement, a Class Member
28 must postmark a valid Notice of Objection to the Settlement Administrator on or before the

1 Response Deadline. The Notice of Objection must be signed by the Class Member and contain all
2 information required by this Settlement Agreement. The postmark date will be deemed the
3 exclusive means for determining that the Notice of Objection is timely. Class Members who fail to
4 object in the specific and technical manner specified above will be deemed to have waived all
5 objections to the Settlement and will be foreclosed from making any objections and seeking any
6 adjudication or review, whether by appeal or otherwise, to the Settlement Agreement. Class
7 Members who postmark timely Notices of Objection will have a right to appear at the Final
8 Approval Hearing in order to have their objections heard by the Court. At no time will any of the
9 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
10 objections to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel
11 will not represent any Class Members with respect to any such objections to this Settlement.

12 90. Certification Reports Regarding Individual Settlement Payment Calculations. The
13 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report
14 which certifies: (a) the number of Class Members who have submitted valid Requests for
15 Exclusion; (b) the Net Settlement Amount claimed by Participating Class Members; and (c)
16 whether any Class Member has submitted a challenge to any information contained in their Notice.
17 Additionally, the Settlement Administrator will provide to counsel for both Parties any updated
18 reports regarding the administration of the Settlement Agreement as needed or requested.

19 91. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator to
20 Participating Class Members will be negotiable for at least one hundred twenty (120) calendar days. Those
21 funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-
22 cashed for more than one hundred twenty (120) calendar days after issuance will be treated as void and the
23 amount sent by the Settlement Administrator to the State of California's Unclaimed Property Fund.

24 92. Certification of Completion. Upon completion of administration of the Settlement,
25 the Settlement Administrator will provide a written declaration under oath to certify such
26 completion to the Court and counsel for all Parties.

27 93. Tax Treatment of Individual Settlement Payments. All Individual Settlement
28 Payments will be allocated as follows: one-third (1/3) of each Individual Settlement Payment will

1 be allocated as wages, one-thirds (1/3) will be allocated as penalties and one-third (1/3) will be
2 allocated as interest. The portion allocated to wages will be reported on an IRS Form W-2 and the
3 portions allocated to penalties and interest will be reported on an IRS Form-1099 by the Settlement
4 Administrator. All Individual PAGA Payments shall be allocated as 100% penalties.

5 94. Administration of Taxes by the Settlement Administrator. The Settlement
6 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
7 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
8 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
9 all payroll taxes and penalties to the appropriate government authorities.

10 95. Tax Liability. Defendant makes no representation as to the tax treatment or legal
11 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not
12 relying on any statement, representation, or calculation by Defendant or by the Settlement
13 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that
14 they will be solely responsible for the payment of any taxes and penalties assessed on the payments
15 described herein.

16 96. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
17 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
18 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
19 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
20 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
21 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
22 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
23 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
24 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
25 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
26 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
27 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
28 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE

1 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
2 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
3 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
4 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
5 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
6 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
7 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
8 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
9 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
10 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
11 AGREEMENT.

12 97. No Prior Assignments. The Parties and their counsel represent, covenant, and
13 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
14 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
15 action, cause of action or right herein released and discharged.

16 98. Release of Additional Claims & Rights by Plaintiff. Upon the Effective Date, and
17 as a condition of receiving any portion of his Class Representative Enhancement Payment, Plaintiff
18 will agree to the additional following General Release: In consideration of Defendant's promises
19 and agreements as set forth herein, Plaintiff hereby fully releases the Released Parties from any and
20 all Released Claims and also generally releases and discharge the Released Parties from any and all
21 claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or
22 could have been asserted against the Released Parties arising out of or relating to Plaintiff's
23 employment by Defendant or termination thereof, including but not limited to claims for wages,
24 restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of
25 employment. This release specifically includes any and all claims, demands, obligations and/or
26 causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except
27 provided by the Settlement Agreement) relating to or in any way connected with the matters
28 referred to herein, whether or not known or suspected to exist, and whether or not specifically or

1 particularly described herein. Specifically, Plaintiff waives all rights and benefits afforded by
2 California Civil Code Section 1542, which provides:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
4 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
5 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
6 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
7 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8 99. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right
9 to void and withdraw from the Settlement if, at any time prior to Final Approval, two percent (2%)
10 or more of Class Members submit valid Requests for Exclusion. If the option to rescind is
11 exercised, then Defendant will be solely responsible for all Settlement Administration Costs
12 incurred to the date of rescission.

13 100. Nullification of Settlement Agreement in Whole or Part. In the event that: (a) the
14 Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not
15 become final for any other reason, then this Settlement Agreement, and any documents generated
16 to bring it into effect, will be null and void, and all amounts deposited into the QSF will be
17 returned to Defendant. Any order or judgment entered by the Court in furtherance of this
18 Settlement Agreement will likewise be treated as void from the beginning. The Parties also
19 contemplate that the Settlement may be nullified in part, as follows, if the Settlement is fully
20 approved by the trial Court but thereafter appealed to the Court of Appeal. In the event that the
21 Court of Appeal does not overturn the portion of the Settlement related to the Released Class
22 Claims but instead finds for whatever reason that it cannot affirm only the portion of the Settlement
23 that applies to the Released PAGA Claims, Defendant Crown has the option, within ten (10) days
24 of the appellate stay being lifted by the trial Court, to finalize the Settlement as to only the
25 Released Class Claims. If so, Defendant Crown will continue to fund every portion of the
26 Settlement other than the PAGA Payment. The Parties can thereafter separately address the
27 remaining PAGA claims not covered by the Settlement.

28 101. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to

request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice Packet; *i.e.*, the proposed Notice of Class Action Settlement, Workweeks/Pay Periods Dispute Form, and Request For Exclusion, attached as Exhibits A through C. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval.

102. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to postmark Dispute Forms, Requests for Exclusion, or objections to the Settlement Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments; (b) the Labor and Workforce Development Agency Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative Enhancement Payment; and (e) all Settlement Administration Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the final approval hearing.

103. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

104. Destruction of Company Records. Plaintiff and Class Counsel agree to immediately

1 destroy any and all records provided to them by Defendant in this Action, including photocopies,
2 electronic copies, and all reproductions. This includes, but is not limited to copies of Defendant's
3 policies and procedures, electronic data, pay records, and time records.

4 105. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
5 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
6 herein. Any Exhibits to this Settlement are an integral part of the Settlement.

7 106. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
8 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
9 agreements may be deemed binding on the Parties.

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

13 108. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
14 and represent they are expressly authorized by the Parties whom they represent to negotiate this
15 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
16 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
17 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
18 counsel will cooperate with each other and use their best efforts to effect the implementation of the
19 Settlement. If the Parties are unable to reach agreement on the form or content of any document
20 needed to implement the Settlement, or on any supplemental provisions that may become necessary
21 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
22 such disagreement.

23 109. Binding on Successors and Assigns. This Settlement Agreement will be binding
24 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
25 defined.

26 110. California Law Governs. All terms of this Settlement Agreement and Exhibits
27 hereto will be governed by and interpreted according to the laws of the State of California.

28 111. Execution and Counterparts. This Settlement Agreement is subject only to the

1 execution of all Parties. However, the Settlement Agreement may be executed in one or more
2 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
3 of the signature page, will be deemed to be one and the same instrument provided that counsel for
4 the Parties will exchange among themselves original signed counterparts.

5 112. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
6 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
7 arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation,
8 taking into account all relevant factors, present and potential. The Parties further acknowledge that
9 they are each represented by competent counsel and that they have had an opportunity to consult
10 with their counsel regarding the fairness and reasonableness of this Settlement. In addition, the
11 Mediator may execute a declaration supporting the Settlement and the reasonableness of the
12 Settlement and the Court may, in its discretion, contact the Mediator to discuss the Settlement and
13 whether or not the Settlement is objectively fair and reasonable.

14 113. Invalidity of Any Provision. Before declaring any provision of this Settlement
15 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
16 extent possible consistent with applicable precedents so as to define all provisions of this
17 Settlement Agreement valid and enforceable.

18 114. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
19 class certification for purposes of this Settlement only; except, however, that Plaintiff or Class
20 Counsel may appeal any reduction in the Attorneys' Fees and Costs below the amount they
21 requests from the Court, and either party may appeal any court order that materially alters the
22 Settlement Agreement's terms.

23 115. Class Action Certification for Settlement Purposes Only. The Parties agree to
24 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
25 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
26 that certification for purposes of the Settlement is not an admission that class action certification is
27 proper under the standards applied to contested certification motions and that this Settlement
28 Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a

1 class action should be certified or (b) Defendant are liable to Plaintiff or any Class Member, other
2 than according to the Settlement's terms.

3 116. Captions. The captions and section numbers in this Settlement Agreement are
4 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or
5 intent of the provisions of this Settlement Agreement.

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

10 118. Enforcement Action. In the event that one or more of the Parties institutes any legal
11 action or other proceeding against any other Party or Parties to enforce the provisions of this
12 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
13 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees
14 and costs, including expert witness fees incurred in connection with any enforcement actions.

15 119. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
16 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
17 construed more strictly against one party than another merely by virtue of the fact that it may have
18 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
19 length negotiations between the Parties, all Parties have contributed to the preparation of this
20 Settlement Agreement.

21 120. Representation By Counsel. The Parties acknowledge that they have been
22 represented by counsel throughout all negotiations that preceded the execution of this Settlement
23 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
24 counsel, and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there
25 are no liens on the Settlement Agreement.

26 121. All Terms Subject to Final Court Approval. All amounts and procedures described
27 in this Settlement Agreement herein will be subject to final Court approval.

28 122. Cooperation and Execution of Necessary Documents. All Parties will cooperate in

1 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
2 this Settlement Agreement.

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

8 124. Confidentiality: The Parties and their counsel agree that they will not issue any
9 press releases, initiate any contact with the press, respond to any press inquiry, or have any
10 communication with the press about the fact, amount or terms of the Settlement. In addition, the
11 Parties and their counsel agree that they will not engage in any advertising or distribute any
12 marketing materials relating to the Settlement of this case prior to preliminary approval, including
13 but not limited to any postings on any websites maintained by Class Counsel. Any communication
14 about the Settlement to Class Members prior to the court approved mailing will be limited to a
15 statement that a settlement has been reached and the details will be communicated in a forthcoming
16 Court-approved notice.

17 125. Plaintiff and Class Counsel represent that they are not currently aware of any
18 unalleged claims in addition to, or different from, those which are finally and forever settled and
19 released against the Released Parties by this Settlement. Plaintiff and Class Counsel further
20 represent that they have no current intention of asserting any claims against Defendant in any
21 judicial or administrative forum. Plaintiff and Class Counsel further represent that they do not
22 currently know of or represent any persons who have expressed any interest in litigation against
23 Defendant, or that Class Counsel believes to have potential claims against Defendant, excepting
24 only the Settlement Class. The Parties further acknowledge understand and agree that this
25 representation is essential to the Agreement and that this Agreement would not have been entered
26 into were it not for this representation.

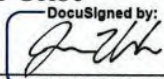
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APPROVED AND ACCEPTED

Dated: March 16, 2023

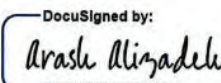
Josue Uribe

By 
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**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: March 16, 2023

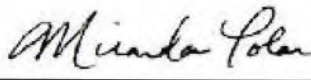
ALIZADEH EMPLOYEES LAW, PROF.
CORP.

By 
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Arash N. Alizadeh
Attorney for Plaintiff

APPROVED AND ACCEPTED

Dated: March 17, 2023

Defendant Crown Building Maintenance Co. dba
Able Building Maintenance Co.

By 
Title _____

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: March 17, 2023

OGLETREE DEAKINS NASH SMOAK &
STEWART, P.C.

By 
Douglas J. Farmer
Carolyn B. Hall
Attorneys for Defendant

EXHIBIT A

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

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 employees, employed full time or part time during the period of June 10, 2011 to **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.

AS EXPLAINED IN THIS NOTICE, IF THE COURT APPROVES THIS CLASS AND PAGA SETTLEMENT THEN YOU MAY RECEIVE PAYMENTS UNDER THIS SETTLEMENT. YOU ARE RECEIVING THIS NOTICE BECAUSE BASED ON CROWN’S RECORDS, YOU ARE A SETTLEMENT CLASS MEMBER AND/OR A PAGA MEMBER.

IF YOU ARE A SETTLEMENT CLASS MEMBER AND/OR A PAGA MEMBER, YOU ARE ELIGIBLE FOR PAYMENT FROM THE SETTLEMENT DESCRIBED IN THIS NOTICE WITHOUT THE NEED TO RETURN A CLAIM FORM. YOUR ESTIMATED SETTLEMENT SHARE IS SET FORTH BELOW. YOUR ACTUAL SETTLEMENT SHARE MIGHT BE HIGHER OR LOWER. PLEASE REVIEW THE INFORMATION BELOW TO CONFIRM THAT IT IS ACCURATE.

IF YOU DO NOT WANT TO PARTICIPATE IN THE CLASS SETTLEMENT, YOU MUST COMPLETE AND RETURN A WRITTEN ELECTION NOT TO PARTICIPATE ON OR BEFORE (**60 DAYS AFTER MAILING**), 2023, 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 WILLIAM CLASTER, 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 William Claster 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 Settlement Class Member and/or PAGA Member and you may be entitled to money from a class action and PAGA settlement.

This Notice informs you of your rights to share in the settlement and, if you so choose, to exclude yourself from the class action settlement or to object to the class action settlement terms. There was a Preliminary Approval hearing on **DATE**, 2023, before Judge William Claster 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 **DATE**, 2023. This Notice informs you of your rights to share in the settlement and, if you so choose, to exclude yourself from the class action settlement or to object to the class action 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 **DATE**, 2023.

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. However, Crown has agreed to settle the Action to avoid continued litigation. The Settlement is not an admission of any wrongdoing by Crown or an indication that any law was violated.

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 others who may 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 \$1,050,000.00 ("Total 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 Total Settlement Amount, the balance, called the "Net Settlement Amount," will be available to pay all participating Settlement Class Members. **Class Counsel's attorney's fees and costs and Plaintiff's Incentive Payment remain subject to Court approval.**

6. *What is the Settlement Amount?*

The proposed Settlement provides for a maximum payment of \$1,050,000.00 to fully and finally resolve all claims in the Action (referred to as the "Total Settlement Amount"). Class Counsel will apply to the Court for attorneys' fees of up to \$315,000.00; a "Class Representative Enhancement Payment" of up to \$7,500 for Plaintiff Josue Uribe for his work and effort in prosecuting this case, risks taken for the payment of costs in the event of loss, and a general release of all claims; settlement administration expenses to RG/2 Settlement Administrators, estimated at \$144,000.00; and a \$100,000.00 "PAGA Payment" to the California Labor Workforce and Development Agency ("LWDA") and PAGA Members in settlement of claims for penalties under PAGA. The exact amount of the attorneys' fees, Class Representative service payments, and settlement administration expenses will be determined by the Court at the Final Approval hearing if the Settlement is approved.

Following the Court-approved deductions, the remaining portion of the Settlement, the Net Settlement Amount is estimated to be \$483,500. The Net Settlement Fund will be apportioned and paid out entirely, automatically, to all "Participating Class Members," who are the Settlement Class Members who do not ask to be excluded from the class action settlement, as "Individual Settlement Payments."

No portion of the Total Settlement Amount will revert to Crown under any circumstances.

7. *How Much Will My Payment Be?*

Participating Class Members will receive a pro rata share of the Net Settlement Amount based on the number

of weeks they worked for Crown during the time period of June 10, 2011 to **DATE**, 2023 (the “Class Settlement Period”).

The Net Settlement Amount will be entirely distributed to the Participating Class Members. It will be allocated to each Participating Class Member will be based on the individual’s total number 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 **DATE**, 2023 in relation to the total number of Participating 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 below.

Based on Crown’s records, you worked weeks during the Class Settlement Period and your estimated Individual Settlement Payment is \$, before applicable tax withholdings, although the actual amount that is paid may be lower or higher than the amount estimated. If you wish to dispute your number of pay periods during the Class Settlement Period, you must notify the Settlement Administrator in writing, no later than sixty (60) days after the mailing of this Notice. A Dispute Form is included in this Notice Packet. Please provide any proof you may have that you were employed by Crown for a different number of pay periods during the Class Settlement Period.

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 Settlement Administrator shall issue to each Participating Class Member an IRS Form W-2 for the portion of the individual settlement that is designated as unpaid wages. The Settlement 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 Participating 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 Participating Class Member’s failure to pay all taxes due.

8. How will the PAGA Payment be distributed?

The Parties will seek approval from the Court to designate \$100,000.00 of the Total Settlement Amount as penalties recoverable under PAGA. 75% of this amount, or \$75,000.00, will be paid to the LWDA, as required by law. The remaining 25% of this amount, or \$25,000.00, will be distributed to the PAGA Members as “Individual PAGA Payments.” The Individual PAGA Payments and are paid in addition to any Individual Settlement Payments (the Individual Settlement Payment and the Individual PAGA Payments are the “Settlement Payment”). 100% of the PAGA Payment will be treated as penalties and interest. You should consult with a tax advisor concerning the tax consequences of the Individual PAGA Payment you could receive under the Settlement.

Not all Class Members are PAGA Members entitled to an Individual PAGA Payment. You are only a PAGA Member if you worked for Crown during the period April 22, 2014, through **DATE**, 2023 (the “PAGA Settlement Period”). The Individual PAGA Payments will be calculated on a pro-rata basis based on the number of pay periods that you worked during the PAGA Settlement Period. Based on Crown’s records, your total number of pay periods during the PAGA Settlement Period is . Based on that, your anticipated approximate Individual PAGA Payment is \$. If you wish to dispute your number of pay periods during the PAGA Settlement Period, you must notify the Settlement Administrator in writing, no later than sixty (60) days after the mailing of this Notice. A Dispute Form is included in this Notice Packet. Please provide any proof you may have that you were employed by Crown for a different number of pay periods during the PAGA Settlement Period.

9. How will the Settlement Payment be distributed?

If the Settlement is approved, you do not need to anything to receive a Settlement Payment. If the Court approves the Settlement at a final approval hearing, your Settlement Payment will be mailed to the address on file with the Settlement Administrator. **It is your responsibility to keep the Settlement Administrator informed of**

any change in your address as your Settlement Payment will be mailed to the last known address it has on file for you if the Court approves the settlement.

10. *When Will I Receive My Settlement Payment?*

If there are no pending objections, the settlement shares and other amounts will be paid approximately 30 days after the Court grants final approval of the settlement. If there are objections and then an appeal, no checks will be sent out until the appeal is fully resolved and the Settlement is affirmed by the appellate court. In the event that only the class-action portion of the Settlement is upheld on appeal, Crown may elect to continue funding the settlement and you will only receive the Individual Settlement Payment, but you will not receive the Individual PAGA Payment and you will not release any claims under the PAGA portion of the Settlement.

11. I received a notice about a similar settlement in 2018 but never received a check. Why not?

If you worked for Crown in 2018 or earlier, you may have received another notice about an earlier settlement in this same matter, including a request to return a claim form if you wished to participate in that settlement. That settlement did not ultimately become final due to an appeal, but this settlement replaces the prior settlement. Assuming that this settlement becomes final, you will receive a single payment covering the period before and after 2018. Unlike the previous settlement, you do not need to return a claim form. As explained here, you will receive your share of the settlement even if you do nothing.

12. *What Am I Giving Up To Get A Settlement Payment?*

Participating Class Members will be giving up or “releasing” the claims described below:

This class action settlement contains a release in which Participating Class Members release Crown, and its former and present parents (including Able Services), subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, as well as all past and present officers, directors, members, employees, partners, shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal representatives, if any, and all persons acting under, by, through, or in concert with any of them (collectively, “Released Parties”), and each of them as of the Date of Final Approval, from the following: any and all claims based on the factual or legal theories alleged in the Complaint, including claims for (i) failure to reimburse and the following “derivative” claims based on that reimbursement claim for (ii) failure to timely pay wage; (iii) failure to pay minimum wage; (iv) failure to pay overtime; (v) failure to timely pay wages upon termination; (vi) inaccurate wage statements; (vii) conversion; (viii) unfair competition; and (ix) and all damages, penalties, interest and other amounts recoverable under all claims under California and federal law, to the extent permissible, including but not limited to the California Labor Code and IWC Wage Order No. 5, based on the facts and theories alleged in the Action on which the reimbursement claim is predicated (collectively, the “Released Claims”). To be clear, the Released Class Claims do not extend to claims for minimum wage, inaccurate wage statements, etc. based on any theory other than expense reimbursement. The period of the Release shall extend to the limits of the Class Settlement Period.

PAGA Members and the State of California will be giving up or “releasing” claims for civil penalties under PAGA:

After the Court grants final approval of the Settlement, then Plaintiff, as representative of the State of California and on behalf of the LWDA and the PAGA Members, will fully and finally release the Released Parties from all claims and causes of action for PAGA civil penalties against the Released Parties that were alleged or that could have been alleged based on the facts asserted in the Complaint as well as in the PAGA Notice Letters IWC Wage Order No. 5, as well as any and all claims for attorneys’ fees, litigation costs, and interest allocated to those claims. The Released PAGA Claims include (1) failure to reimburse (Labor Code section 2802) and the following “derivative” claims based on that reimbursement claim under Labor Code sections 201-204, 210, 226(a), 226.3, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 6401, 6401.7 and 6403; and (2) any other claims and penalties alleged in the Complaint and in the PAGA Notice Letters. The period of the Released PAGA Claims will be the PAGA Settlement Period.

13. How Do I Exclude Myself From The Settlement?

If you do not wish to participate in the class settlement for whatever reason, you could exclude yourself from the class settlement (that is, “opt out” of the Settlement). However, you cannot opt out of the PAGA portion of the Settlement. To opt out and exclude yourself from the Class and this settlement so that you do not become a Participating Settlement Class Member, you must provide a signed and dated letter requesting to be excluded from the *Josue Uribe v. Crown Building Maintenance Co.* class settlement. A Request for Exclusion Form is included in this Notice Packet. 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 **(60 DAYS AFTER MAILING)**, 2023 and addressed to **Uribe-Crown, Settlement Administrator, RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479**. Requests for exclusion postmarked after this date may be disregarded.

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) Released Parties in the future.

14. If I Don’t Exclude Myself, Can I Sue Crown Or Get Money From The Settlement?

If you exclude yourself from this settlement, you can still sue Crown for any of the claims that this settlement resolves. But if you do not exclude yourself from the settlement, you cannot sue Crown for those claims. If you have a pending lawsuit against Crown, 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**, 2023.

Similarly, if you exclude yourself from this settlement, you will not receive an Individual Settlement Payment. You also will not be able to object to the settlement as explained below. The Individual Settlement Payment you would have been entitled to receive will be redistributed to the Participating Class Members. However, if you are a PAGA Member, you will receive an Individual PAGA Payment regardless whether you exclude yourself from the class settlement. .

No portion of the Total Settlement Amount will go back to Crown as a result of any person requesting to be excluded from the Settlement.

15. How Do I Object To The Settlement?

If you are a Participating Class Member, you can object to the settlement if you don’t think the settlement is fair. 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 should send a letter to the Settlement Administrator at Uribe-Crown, Settlement Administrator, RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479, 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 should say so in the letter. Mail the objection letter no later than **60 DAYS AFTER MAILING**, 2023:

The objections will be filed with the court once they have all been received. Whether or not you appear at the Final Approval Hearing, the Court will consider your written objection. Even if you do not submit a written objection, you or your attorney may still appear and be heard at the Final Approval Hearing.

16. 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.

17. Do I Have A Lawyer In This Case?

The Court asked Arash N. Alizadeh of Alizadeh Employees Law, Prof. Corp., 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>.

18. 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 \$1,050,000.00 Total Settlement Amount. Class Counsel will ask for up to \$315,000.00 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.**

19. 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 William Claster, on [REDACTED], 2023, at [REDACTED] a.m., in Department CX104 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.

The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representative Enhancement Award, and the Settlement Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted an objection and indicated an intention to speak at the Final Approval Hearing will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness hearing.

Once final approval is granted by the Court, the Court will enter judgment against Crown, 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 [REDACTED] DATE, 2023 as explained in Section 12 above (the "Release Period"). *That means that, unless you opt out of the settlement as provided in Section 13, you will have released the Released Parties for all of these types of claims and cannot later bring a lawsuit against Released Parties for any claims that arose during the Release Period that have been released by this settlement.*

20. 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. of Alizadeh Employees Law, Prof. Corp. at (949) 606-2845.

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.”

For more information, you may personally inspect the files and the Settlement Agreement at the Superior Court of California, County of Orange located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, during regular Court hours. You may also contact Class Counsel if you need more information or have questions. You may also contact the Settlement Administrator by calling toll free 1-_____, or you can write to Settlement Administrator, at _____ **[insert address]**.

21. *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 Settlement Administrator, RG/2 Claims Administration, at (866) 742-4955. IT IS YOUR RESPONSIBILITY TO KEEP AN UPDATED ADDRESS ON FILE WITH RG/2 CLAIMS ADMINISTRATION. YOUR FAILURE TO UPDATE YOUR ADDRESS WITH RG/2 CLAIMS ADMINISTRATION 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 CROWN, ITS MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT B

WORKWEEKS / PAY PERIODS DISPUTE FORM

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

According to Defendant's records, the number of Eligible Workweeks worked by you from June 10, 2011 to **DATE**, 2023 is **DATE** and the number of Eligible Pay Periods worked by you, from April 22, 2014 to **DATE**, 2023, is **DATE**.

Based on this number of Eligible Workweeks, your estimated Individual Settlement Payment is \$ **DATE**.

Based on this number of Eligible Pay Periods, your estimated Individual PAGA Payment is \$ **DATE**.

If you disagree with the number of Eligible Workweeks or Pay Periods listed on this form, you must:

1. Set forth below the reasons why you disagree with the number of Eligible Workweeks or Eligible Pay Periods;
2. Sign and date this page; and
3. Mail, email, or fax this signed page, along with any supporting documentation that you have to:

Uribe Crown Settlement Administrator
RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479
Email: info@rg2claims.com
Facsimile: (215) 827-5551

I disagree with the number of Qualifying Workweeks and/or Eligible Pay Periods listed above because:

Please enclose all documentation supporting your dispute of the Workweeks and/or Pay Periods.

Dated: _____

Signed: _____

Print Name: _____

Last four digits of Social Security No.: _____

**DO NOT RETURN THIS FORM IF YOU DO NOT DISPUTE THE NUMBER OF QUALIFYING
WORKWEEKS LISTED ABOVE.**

EXHIBIT C

OPT OUT FORM

MAIL OR FAX TO:

c/o Uribe Crown Settlement Administrator
RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479
Email: info@rg2claims.com
Toll-Free: (866) 742-4955
Facsimile: (215) 827-5551

REQUEST FOR EXCLUSION FROM THE SETTLEMENT

Josue Uribe v. Crown Building Maintenance Co.

Orange County Superior Court Case No. 30-2016-00839857-CU-OE-CXC

COMPLETE THIS FORM **ONLY IF** YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS. IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS, YOU **WILL NOT** RECEIVE COMPENSATION FROM THE CLASS SETTLEMENT; HOWEVER, IF YOU ARE A PAGA MEMBER, YOU WILL STILL RECEIVE AN INDIVIDUAL PAGA PAYMENT.

I, _____, request to be excluded from the Settlement Class in the lawsuit *Josue Uribe v. Crown Building Maintenance Co.*, Orange County Superior Court Case No. 30-2016-00839857-CU-OE-CXC. I understand that by submitting this Opt Out Form, I will no longer be eligible for compensation from the class settlement.

Print your name here

Sign your name here

Last 4 digits of Social Security Number

Date

TO BE TIMELY, A REQUEST FOR EXCLUSION SUBMITTED BY MAIL MUST BE SENT ON OR BEFORE _____, 2023, TO THE FOLLOWING ADDRESS:

c/o Uribe Crown Settlement Administrator
RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479
Email: info@rg2claims.com
Toll-Free: (866) 742-4955
Facsimile: (215) 827-5551

[BAR CODE OR CLASS MEMBER ID WILL BE INCLUDED HERE]

EXHIBIT D

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

5 Attorneys for Plaintiff JOSUE URIBE

6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE**
8 **751 W. SANTA ANA BLVD., SANTA ANA, CA 92701**

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

11 Plaintiff,

12 v.

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

15 Defendants.

Case No.: 30-2015-00839587

Assigned For All Purposes To:
Judicial Officer: Hon. William Claster
Dept: CX104

SECOND AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT ACTION
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698, ET SEQ.

- 16 1. Failure to Timely Pay Wages (LC §§ 204, 210)
- 17 2. Failure to Pay Min. Wage (LC §§ 1194, 1194.2, 1197)
- 18 3. Failure to Pay Overtime (LC §§ 510, 1194)
- 19 4. Failure to Timely Pay Wages Upon Termination (LC §§ 201, 202 and 203)
- 20 5. Failure to Reimburse (LC § 2802)
- 21 6. Wage Statement Violation (LC § 226)
- 22 7. Conversion (Civ. C. § 3336)
- 23 8. Unfair Competition (B&P §§ 17200 *et seq.*)
- 24 9. Civil Penalties for Violations of California Labor Code, Pursuant to PAGA (LC §§ 2698 *et seq.*)

25
26
27 Complaint filed: March 9, 2016
First Amended Complaint: May 23, 2016

1 Plaintiff JOSUE URIBE (“Plaintiff” or “Employee”) alleges against CROWN BUILDING
2 MAINTENANCE CO. (“defendant” or “Employer”) the following:

3 **General Allegations**

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

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

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

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

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

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

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

1 **STATEMENT OF FACTS**

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

7 9. At all times alleged herein, Defendant was, and is, America's largest family-owned
8 provider of Janitorial, Engineering, and Facility solutions. Defendant was established in 1926 and
9 serves customers at their facilities throughout California. Plaintiff and other similarly situated day
10 porters, janitors and janitorial employees worked at Defendant's worksites in Costa Mesa, CA and
11 throughout California and their duties included sweeping, mopping, vacuuming, blowing leaves
12 and other similar tasks.

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

24 11. Plaintiff is informed and believes and thereon alleges that, through common
25 practices, policies and/or schemes, Defendant have systematically failed to reimburse employees
26 for out-of-pocket expenses for maintaining their uniform, purchasing slip-resistant shoes, and time
27 spent maintaining their uniform.
28

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

4 13. Because Defendant failed to reimburse Plaintiff and Class Members for cost of
5 maintaining their uniform, and purchase slip-resistant shoes, as well as not paying them for time
6 spent maintaining their uniform, they caused their wages to fall below minimum wages, failed to
7 pay their full overtime wages, failed to timely pay wages, and failed to provide accurate wage
8 statement, among other violations as a result. This is because the unreimbursed expenses and
9 uniform maintenance costs are considered “wages.” (*In re Work Uniform Cases*, 133 Cal.App.4th
10 328 (2005) (holding that payment for uniform maintenance is compensation); *see also Sanchez v.*
11 *Aerogroup Retail Holdings, Inc.*, 12-CV-05445-LHK, Order On Motion to Dismiss at 12 (N.D.
12 Cal. May 8, 2013) (holding that Labor Code sections 1194, 1194.2, 1197, and 1197.1 permit an
13 action based on unreimbursed expenses because they are ‘wages’).

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

17 15. Defendants regularly require Plaintiff and the Class Members to use their personal
18 cell phones as a direct consequence of the discharge of their duties. Defendants through
19 supervisors and managers regularly call or text Plaintiff and the Class Members with work-related
20 communications and require that Plaintiff and the Class Members respond to and/or initiate these
21 work-related communications.

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

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

1 **PARTIES**

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

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

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

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

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

22 23. Plaintiff is informed and believes that each Defendant conspired with, aided and
23 abetted, ratified the conduct of, knowingly acquiesced in, acted with the consent and permission
24 of, and accepted the benefits of each other Defendant with respect to the matters alleged herein.
25 Plaintiff is informed and believes that, except as otherwise alleged herein, each Defendant is, and
26 at all times relevant to this Complaint was, the agent, joint-employer, partner, joint venturer, alter
27 ego, affiliate, and/or co-conspirator with or of each of the other Defendants, and/or otherwise
28 acted on the behalf of each other Defendant.

CLASS ACTION ALLEGATIONS

24. 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.

25. 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 be employed by Defendant in the State of California (hereinafter “Class Members”) during the relevant Class Period (“Class”).

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

- a. Ascertainability and Numerosity: The potential members of the Class, as defined herein, are so numerous that joinder would be impracticable. Plaintiff is informed, believe, and allege that Defendants have employed thousands of Class Members in California during the Class Period. The names and addresses of Class Members are available to Defendants. Notice may be provided to Class Members via first class mail using a form of notice similar to those customarily used in class action lawsuits of this nature.
- b. Commonality: There are questions of law and fact common to Plaintiff and Class Members that predominate any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:
 - i. Whether Defendants have violated Labor Code sections 201, 203, 204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 6401, 6401.1, and 6403 and Business and Professions Code section 17200 by failing to reimburse or indemnify

1 employees for employment related business expenses, including, but not
2 necessarily limited to, the costs incurred in maintaining work uniforms
3 and purchasing slip-resistant shoes in the course of performing their
4 work duties and for time spend maintaining their uniforms, and for costs
5 related to use of personal cell phones for work-related communications.

6 ii. Whether Defendant's failure to indemnify employees for their necessary
7 employment-related expenses and losses constitute an unlawful, unfair
8 and/or fraudulent business practice under Business and professions
9 Code sections 17200 *et seq*; and

10 iii. What relief is necessary to remedy Defendant's unfair and unlawful
11 conduct as herein alleged.

12 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Plaintiff and
13 all Class Members have sustained injuries-in-fact and damages arising out of
14 and caused by Defendant's common course of unlawful conduct, as alleged
15 herein.

16 d. Adequacy of Representation: Plaintiff is a members of the Class that he seeks to
17 represent, and will fairly and adequately represent and protect the interest of the
18 Class Members. Counsel representing Plaintiff is a competent and experienced
19 in litigating wage and hour class actions.

20 e. Superiority of Class Action: A class action is superior to other available means
21 in order to obtain fair and efficient adjudication of this controversy. Individual
22 joinder of all putative Class Members is not practicable, and questions of law
23 and fact common to the proposed Class predominate over any questions
24 affecting only individual members of the proposed Class. Each Class Member
25 has suffered injury and is entitled to recover by reason of Defendant's unlawful
26 policies and practices alleged herein. Class action treatment will allow those
27 similarly situated persons to litigate their claims in the manner that is most
28 efficient and economical for the parties and the judicial system. Further, the
prosecution of separate actions against Defendant by individual members of the

1 proposed Class would create a risk of inconsistent or varying adjudications that
2 would establish incompatible standards of conduct for Defendant.

3 **PAGA ALLEGATIONS**

4 27. At all times herein set forth, PAGA provides that any provision of law under the
5 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
6 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
7 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
8 behalf of themselves and other current or former employees pursuant to procedures outlined in
9 California Labor Code section 2699.3.

10 28. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
11 person who was employed by the alleged violator and against whom one or more of the alleged
12 violations was committed.”

13 29. Plaintiff and other current and former employees of Defendants are “aggrieved
14 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or
15 former employees and one or more of the alleged violations were committed against them.

16 30. On February 3, 2016, Plaintiff provided written notice by online filing to the
17 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
18 Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff’s written notice
20 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
21 PAGA Administrator confirmed receipt of Plaintiff’s written notice and assigned Plaintiff
22 PAGA Case Number LWDA-CM-296711-7. A true and correct copy of Plaintiff’s written
23 notice to the LWDA and Defendants is attached hereto as “Exhibit 1.” As of the filing date of
24 this complaint, over 65 days have passed since Plaintiff sent the notice described above to the
25 LWDA, and the LWDA has not responded that it intends to investigate Plaintiff’s claims and
26 Defendants have not cured the violations.

27 31. On June 24, 2022, Plaintiff provided a second written notice by online filing to
28 the LWDA and by Certified Mail to Defendants supplementing and amending his February 3,

1 2016 notice in accordance with California Labor Code section 2699.3. Plaintiff's June 24, 2022
2 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
3 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice. A true and correct
4 copy of Plaintiff's written notice to the LWDA and Defendants is attached hereto as "Exhibit 2."
5 As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the June 24,
6 2022 notice described above to the LWDA, and the LWDA has not responded that it intends to
7 investigate Plaintiff's claims and Defendants have not cured the violations.

8 32. Thus, Plaintiff has satisfied the administrative prerequisites under California
9 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants. As
10 set forth below, Defendants have violated numerous Labor Code sections as well as the
11 applicable IWC Wage Order. Pursuant to PAGA, and in particular, California Labor Code
12 sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a
13 private attorney general, seeks assessment and collection of civil penalties for himself, all other
14 aggrieved employees, and the State of California against Defendants for violations of California
15 Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.3, 510, 558, 1194, 1194.2, 1197,
16 1197.1, 1198, 1199, 2802, 6401, 6401.7, and 6403.

17 DAMAGES

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

22 First Cause of Action

23 For Failure to Pay Earned Wages 24 (Cal. Labor Code Sections 204, 210) 25 by Plaintiff Against All Defendants

26 34. Plaintiff incorporates by reference and re-alleges paragraphs set forth above 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.

35. 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”).

Second Cause of Action

37. 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.

39. 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.

1 direct and proximate result of Defendants' failure to pay said compensation. Under Code section
2 1194, Plaintiff and Class Members are entitled to recover such amounts, plus interest thereon,
3 reasonable attorney's fees, and costs.

4 42. In addition, under Code section 1194.2, Plaintiff and Class Members are entitled to
5 recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and
6 interest thereon.

7 **Third Cause of Action**

8 **For Failure to Pay Overtime Compensation**

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

10 **by Plaintiff Against All Defendants**

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

14 44. The Labor Code and the Wage Order provide that a workday consists of eight
15 hours, a workweek consists of 40 hours, and an employer must compensate an employee who
16 works overtime hours with either one-and-one-half times or double the employee's regular rate of
17 compensation.

18 45. Defendant employed Plaintiff and other Class Members for more than eight hours
19 per day and more than 40 hours per workweek, but Defendant failed to pay Plaintiff and other
20 Class Members the overtime rate.

21 46. Defendant thus required Plaintiff and other Class Members to work for longer
22 hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those
23 orders.

24 47. Defendant thus deprived Plaintiff and other Class Members of their rightfully
25 earned overtime compensation as a direct and proximate result of Defendants' failure to pay said
26 compensation. Under Code section 1194, Plaintiff is entitled to recover such amounts, plus
27 interest thereon, attorney's fees, and costs.

Fourth Cause of Action
For Failure to Time Pay Wage Upon Termination
(Labor Code Sections 201, 202, 203)
by Plaintiff Against All Defendants

48. 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.

49. This cause of action is dependent upon, and wholly derivative of, the minimum wages and overtime wages that were not timely paid to Plaintiff those class members no longer employed by Defendants upon their termination.

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

51. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages and minimum wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

52. Defendants' failure to pay Plaintiff and those class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

1 **Fifth Cause of Action**

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

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

4 **By Plaintiff Against All Defendants**

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

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

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

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

20 **Sixth Cause of Action**

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

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

23 **By Plaintiff Against All Defendants**

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

27 58. Code section 226(a) and the Wage Order required Defendant, “semimonthly or at
28 the time of each payment of wages,” to furnish Plaintiff and other Class Members “an accurate

1 itemized statement in writing” showing gross and net wages earned, total hours worked by the
2 employee, rates of pay, and other information. Defendant knowingly and intentionally failed to
3 provide Plaintiff and other Class Members with such timely and accurate wage and hour
4 statements.

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

8 60. Plaintiff and other Class Members suffered injury as a result of Defendant’s
9 knowing and intentional failure to provide them with the wage and hour statements required by
10 law.

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

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

21 **Seventh Cause of Action**

22 **For Conversion**

23 **(California Civil Code § 3336)**

24 **By Plaintiff Against All Defendants**

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

28 64. At all relevant times herein, Defendants had and continue to have a legal obligation

1 imposed by statute to pay Plaintiff and other Class Members all earned wages due to them. Such
2 wages belonged to Plaintiff and other Class Members at the time the labor and services were
3 provided to Defendants, and accordingly such wages are the property of Plaintiff and other Class
4 Members, not Defendants.

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

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

17 67. Despite this demand, Defendants refuse to pay Plaintiff and other Class Members
18 the unpaid wages they owe him.

19 **Eighth Cause Of Action**

20 **(Unfair Competition (Business & Professions Code §§ 17200 *et seq.*))**

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

24 69. Defendant's failure to reimburse or indemnify employees for all business expenses
25 incurred and wages, in violation of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 558,
26 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 6401, 6401.7 and 6403 constitutes unlawful and
27 unfair activities prohibited by Business and Professions Code section 17200. Plaintiffs reserve the
28 right to identify additional unfair and unlawful practices by Defendants as further investigation

1 and discovery warrants.

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

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

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

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

27 74. Plaintiffs, on behalf of themselves and Class Members, request restitution of
28 unreimbursed business expenses, wages, injunctive relief and other relief as described below.

1 **Ninth Cause Of Action**

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

3 **Lab. Code §§ 2698 *et seq.*)**

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

5 **Aggrieved Employees, Against All Defendants)**

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

8 76. Plaintiff brings this cause of action pursuant to PAGA on behalf of himself and
9 other current and former aggrieved employees. Plaintiff is an “aggrieved employee” as defined in
10 Labor Code § 2699(c) and brings this cause of action on behalf of himself and other current and
11 former employees (“Plaintiffs”) against Defendants for the violation of the Labor Code sections
12 alleged in this pleading and the attached PAGA Notice, which is attached as **Exhibits 1 and 2** and
13 incorporated herein by reference as if fully set forth in this pleading.

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

17 **PRAYER FOR RELIEF**

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

- 21 a. Certification of this action as a class action, pursuant to Code of Civil Procedure
22 section 382;
- 23 b. Declaratory judgment that Defendants have knowingly and intentionally violated Labor
24 Code section 2802 for failure to reimburse or indemnify Plaintiff and the Class for
25 work-related business expenses they have incurred in carrying out their job duties
26 and/or the Defendants' instructions, and Business and Professions Code sections 17200
27 *et seq.*, by the conduct set forth above;
- 28 c. Declaratory judgment that Defendants' violations as described above are unlawful;

1 Injunctive relief requiring an equitable accounting to identify, locate and restore to all
2 current and former janitorial employees the reimbursement for business expenses that
3 are due;

4 d. An award of damages and restitution to be paid by Defendant, according to proof; Pre-
5 judgment and post-judgment interest;

6 e. An award of civil penalties pursuant to Labor Code sections 2802(c) and 2698 *et seq.*;

7 f. An award of reasonable attorneys' fees and costs, pursuant to Labor Code sections
8 2699(g)(1) and 2802(c) and other applicable law; and

9 g. An award of such other and further relief as this Court deems just and proper.
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11
12

13 Dated: March 17, 2023

LAW OFFICE OF ARASH N. ALIZADEH

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16 ARASH N. ALIZADEH, attorney for plaintiff
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EXHIBIT 11

CASE NAME: URIBE v CROWN BUILDING MAINTENANCE

Date: March 17, 2023
Requesting Attorney: Arash N. Alizadeh
Plaintiff or Defense: Plaintiff
Firm Name: Alizadeh Employees Law
Telephone: (949) 606-2845
Email: aalizadeh@lawyerforemployees.com

All-In Settlement
Class/PAGA Size: 30,000
Opt-Out Rate: 1.5%
No. of Checks Issued: 29,550
Postage Total: \$33,278.42
Grand Total: \$144,139.47

DISCOUNTED FLAT FEE: \$110,000.00

SUMMARY OF SERVICES: STATIC WEBSITE / SPANISH TRANSLATION / 1.5% OPT-OUT RATE / DIRECT MAIL NOTICE / PROCESS RETURNED UNDELIVERABLE MAIL / OPT-OUT AND DISPUTE PROCESSING / IVR AND FAX SUPPORT / DEDICATED CASE EMAIL ADDRESS / CALCULATIONS / MICR CHECK / WEEKLY AND FINAL REPORTING / DECLARATION / ESCHEAT TO THE SCO

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. All Pertinent Documents will be Posted on a Case Specific Website. The Notice Packet will be Translated into Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	10	\$950.00
Programming: Data Base Setup	\$150.00	10	\$1,500.00
Static Website	\$500.00	1	\$500.00
Spanish Translation	\$1,200.00	1	\$1,200.00
TOTAL			\$4,150.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA. CPT will Mail a Full-Length Notice & 1 Page Exclusion Form in English and Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$1,000.00	1	\$1,000.00
Print & Mail Notice Packets	\$0.85	30,000	\$25,500.00
First-Class Postage (up to 2 oz.)*	\$0.5064	30,000	\$15,192.00
TOTAL			\$41,882.00

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 6% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 91% of the Notice Packets are Remailed.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	14	\$840.00
Update Undeliverable Mail Database	\$0.50	1800	\$900.00
Skip Trace for Best Address	\$0.50	1,548	\$774.00
Print & Remail Notice Packets	\$0.85	1,409	\$1,197.65
First-Class Postage (up to 2 oz.)	\$0.5064	1,409	\$713.52
TOTAL			\$4,425.17

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by

Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	6	\$900.00
Project Manager: Validate Opt-Out Requests	\$95.00	2	\$190.00
Clerical Staff	\$60.00	4	\$240.00
Opt-Out & Change of Address Processing	\$1.50	450	\$675.00
Print & Mail Deficiency/Dispute Notices	\$1.50	23	\$34.50
First-Class Postage (up to 1 oz.)	\$0.60	23	\$13.80
Review & Process Deficiency Responses	\$10.00	12	\$120.00
		TOTAL	\$2,173.30

CLASS MEMBER SUPPORT SERVICES

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business

Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Class Member Support Representatives	\$2.00	3,000	\$6,000.00
		TOTAL	\$6,300.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.05	29,550	\$1,477.50
		TOTAL	\$1,912.50

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cash and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	27	\$4,050.00
Project Manager: Correspondence w/Parties	\$95.00	14	\$1,330.00
Programming: Setup & Printing of Checks	\$150.00	25	\$3,750.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$1.00	29,550	\$29,550.00
First-Class Postage (up to 1 oz.)*	\$0.5064	29,550	\$14,964.12
		TOTAL	\$54,544.12

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	10	\$1,500.00
Update Undeliverable Checks Database	\$0.50	2,364	\$1,182.00
Skip Trace for Best Address	\$0.50	2,364	\$1,182.00
Remail Undeliverable Checks	\$2.50	2,151	\$5,377.50
First-Class Postage (up to 1 oz.)	\$0.52	2,151	\$1,118.52
Re-Issue Checks as Required	\$5.00	1,478	\$7,390.00
First-Class Postage (up to 1 oz.)	\$0.60	1,478	\$886.80
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$21,676.82

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	6,206	\$930.90
Project Manager: SCO Fall Reporting	\$95.00	5	\$475.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	621	\$3,105.00
First-Class Postage (up to 1 oz.)	\$0.60	621	\$372.60
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	5	\$475.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$7,075.56

GRAND TOTAL \$144,139.47

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. **Mutual Obligations.**
- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

15. **Miscellaneous Provisions.**

- a) **Governing Law; Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.

10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.

11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.

12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

13. **Liability.**

- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software and nothing herein shall be

and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b) **Force Majeure.** Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) **Counterparts.** This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) **Entire Agreement.** This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) **Modifications.** Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) **Assignment.** Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) **No Third-Party Beneficiaries.** The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) **Statistical Data.** Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this

the operation of the software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) **Export Controls.** Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) **Severability.** If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) **Notices.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) **Independent Contractors.** Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) **Subcontractors.** CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) **Headings.** The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) **Waiver.** No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) **Survival.** Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 12

Arash N. Alizadeh, SBN 302290
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Facsimile: 415.442.4870

Attorneys for Defendant
Crown Building Maintenance Co.

**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~~William Claster, Dept.
CX~~101~~104]

~~SEPTEMBER 28, 2018~~MARCH 2023
**REVISED JOINT STIPULATION OF
~~REPRESENTATIVE ACTION AND~~ CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Action Filed: 2016-03-09
Trial Date: None Set

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

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1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Josue Uribe
4 (“Plaintiff” or “Class Representative”), as an individual and on behalf of all others similarly
5 situated, and Defendant Crown Building Maintenance Co. dba Able Building Maintenance
6 (“Defendant” or “Able”) (collectively with Plaintiff, the “Parties”). ~~Subject to the approval of the~~
7 ~~Court, the Action is hereby being fully and finally compromised and, as explained below, is being~~
8 ~~settled as a Class and Representative action, all pursuant to the terms and conditions set forth in~~
9 ~~this Settlement Agreement. This Settlement shall be binding on Plaintiff and the class he~~
10 ~~represents, and Defendant, subject to the terms and conditions hereof and the approval of the~~
11 ~~Court.~~

12 **THE PARTIES STIPULATE AND AGREE AS FOLLOWS:**

13 **DEFINITIONS**

14 The following terms, as used throughout this Agreement, are defined as follows:

15 1. “Action” means the ~~Second Amended Complaint~~ civil action filed by Plaintiff
16 entitled Josue Uribe v. Crown Building Maintenance Co., filed currently with the Joint Motion for
17 Preliminary Approval, previously pending in the Superior Court of the State of California, County
18 of Orange, Case No. 30-2016-00839857-CU-OE-CXC ~~(Orange County Superior Court May 23,~~
19 ~~2016).~~

20
21 2. ~~“Claim Form” means the document, substantially in the form attached as Exhibit B,~~
22 ~~that Class Members must complete and postmark or fax by the Response Deadline (as defined~~
23 ~~below) to receive a proportional share of the Net Settlement Amount.~~

24 3. ~~“Claims Administrator” means a third-party class action settlement claims~~
25 ~~administrator agreed to by the Parties and approved by the Court for the purposes of administering~~
26 ~~this settlement. The Parties each represent that they do not have any financial interest in the~~
27 ~~Claims Administrator or otherwise have a relationship with the Claims Administrator that could~~

1 create a conflict of interest.

2 4. ~~“Claims Administration Costs” means the costs payable from the Class Settlement~~
3 ~~Amount to the Claims Administrator for administering this Settlement, including, but not limited~~
4 ~~to, printing, distributing, and tracking documents for this Settlement, calculating estimated~~
5 ~~amounts per Class Member, tax reporting, distributing the Class Settlement Amount, and providing~~
6 ~~necessary reports and declarations, and other duties and responsibilities set forth herein to process~~
7 ~~this Settlement, and as requested by the Parties. The Claims Administration Costs will be paid~~
8 ~~from the Class Settlement Amount, including, if necessary, any such costs in excess of the amount~~
9 ~~represented by the Claims Administrator as being the maximum costs necessary to administer the~~
10 ~~settlement. The Claims Administration Costs are currently estimated to be Fifty Six Thousand,~~
11 ~~Eight Hundred Twelve Dollars and zero cents (\$56,812.00). To the extent actual Claims~~
12 ~~Administrations Costs are greater such excess amount will be deducted from the Class Settlement~~
13 ~~Amount.~~

14 5. “Class Counsel” means ~~the Law Office of Arash N. Alizadeh~~ Employees Law, Prof.
15 Corp.

16 63. “Class Counsel Award” means the amounts that the Court authorizes to be paid to
17 Class Counsel as attorneys’ fees ~~and costs~~ for Class Counsel’s litigation and resolution of this
18 Action and his expenses and costs incurred in connection with the Action, paid from the Settlement
19 Amount in amount not to exceed ~~\$80,000.00~~ \$15,000.00.

20 74. “Class List Information” means ~~a complete list of all~~ information regarding Class
21 Members that Defendant will diligently and in good faith compile from its records and provide to
22 the Claims Settlement Administrator ~~and to Class Counsel~~ within twenty-one (21) calendar days
23 after Preliminary Approval of this Settlement. The Class List Information will be formatted in a
24 readable Microsoft Office Excel spreadsheet and will include each Class Member’s full name;
25 ~~most recent~~ last known mailing address and telephone number; employee ID number, Social
26 Security number; dates of employment; and additional information sufficient for the Settlement
27 Administrator to determine the respective number of Eligible Workweeks ~~that~~ for each Class
28

Member ~~worked during the Class Period~~ and each PAGA Member; and any other relevant information needed to calculate settlement payments.

~~85.~~ “Class Member(s)” or “Settlement Class” means all 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 at any time during the period from June 10, 2011 to the ~~date on which the Court grants preliminary approval of the Settlement~~ Preliminary Approval Date or June 15, 2023, whichever occurs sooner.

~~9. — “Class Period” means the period from June 10, 2011 through the date on which the Court grants preliminary approval of the Settlement.~~

~~10~~

~~6.~~ “Class Representative Enhancement Payment” means the ~~amounts~~ amount to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment and Individual PAGA Payment, in recognition of ~~his~~ Plaintiff’s effort and work in prosecuting the Action on behalf of Class Members and PAGA Members, and for his general release of claims. Subject to the Court granting final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request Court approval of Class Representative Enhancement Payment in an amount not to exceed ~~Ten~~ Seven Thousand Five Hundred Dollars (~~\$10,000.00~~ 7,500.00).

~~11. — “Settlement Amount” means the maximum settlement amount of Three Hundred Seventy Dollars and zero cents \$370,000.00 to be paid by Defendant in full satisfaction of all claims arising from the Action and Plaintiff’s Second Amended Complaint defined below, which includes all Individual Settlement Payments to Participating Class Members, the Class Representative Enhancement Payment to Plaintiff, PAGA payments, Claims Administration Costs to the Claims Administrator, the Labor and Workforce Development Agency Payment, and the Attorneys’ Fees and Costs, and employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall be paid out of any unclaimed funds from the Class Settlement Amount.~~

~~12~~

~~7.~~ “Class Settlement Period” means the period from June 10, 2011 through the

Preliminary Approval Date or June 15, 2023, whichever occurs sooner.

8. “Complaint” means the operative Complaint in the Action, including the Second Amended Complaint that the Parties anticipate Plaintiff will file in connection with the Settlement and that will be deemed filed on the Preliminary Approval Date, if granted.

9. “Court” means the Superior Court of the State of California for the County of Orange or any other court taking jurisdiction of the Action.

~~1310. “Defendant” means Defendant Crown Building Maintenance Company dba Able Building Maintenance and any of its former and present parents (including Able Services), subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, as well as all past and present officers, directors, employees, partners, shareholders and agents, attorneys, insurers, and any other successors, assigns, or legal representatives, if any.~~

~~1411. “Effective Date” means the later of: (a) if any timely objections are filed and not subsequently withdrawn, the 60th~~sixty-first (61st) calendar ~~day after the Court enters an order granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release; (b) if any timely appeals are filed, the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement; or (c) if no timely objections are filed, or if all objections are withdrawn, the date upon which the Court enters an order granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release.~~

~~15. “Individual Settlement Payment” means each Class Member’s share of the Net Settlement Amount, to be distributed to the Class Members who timely submit valid and timely Claim Forms.~~

~~16. “Labor and Workforce Development Agency Payment” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et seq., “PAGA”). The Parties have agreed that Ten Thousand Dollars (\$10,000) of the Class Settlement Amount will be allocated to the resolution of any Class Members’ claims arising under PAGA. Pursuant to PAGA, Seventy Five Percent (75%), or seven thousand five hundred dollars~~

~~and zero cents (\$7,500.00) will be paid to the representative group and Twenty Five Percent (25%) of the PAGA Settlement Amount or two thousand five hundred dollars and zero cents (\$2,500.00) will be paid to the California Labor and Workforce Development Agency.~~

12. “Eligible Pay Period” means any pay period in which a PAGA Member performed any work for Defendant during the PAGA Settlement Period according to Defendant’s records.

13. “Eligible Workweek” means any workweek in which a Class Member performed any work for Defendant during the Class Settlement Period, according to Defendant’s records. [Defendant will determine the number of Eligible Workweeks by calculating the number of weeks each Class Member was employed by Defendant as a janitor during the period from June 10, 2011 to the Preliminary Approval Date or June 15, 2023, whichever occurs sooner, and rounding up to the nearest whole number.]

14. “Final Approval Hearing” means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

15. “Individual PAGA Payment” means the amounts paid from the PAGA Payment to PAGA Members that shall in the aggregate comprise 25% of the PAGA Payment, namely \$25,000.00 as consideration for settlement of claims for civil penalties under PAGA.

16. “Individual Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member. Any Class Member who timely submits a Request for Exclusion pursuant to the procedures set forth herein is not a Participating Class Member and is not eligible to receive an Individual Settlement Payment.

~~17. “Net Settlement AmountLWDA” means the portion of the Class Settlement Amount remaining after deduction of the approved Class Representative Enhancement Payment, Claims Administration Costs, California Labor and Workforce Development Agency Payment, and the Attorneys’ Fees and Costs.~~

~~18. “Notice of Objection” means a Class Member’s valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the~~

1 ~~objector's full name, signature, address, and telephone number, (b) a written statement of all~~
2 ~~grounds for the objection accompanied by any legal support for such objection; and (c) copies of~~
3 ~~any papers, briefs, or other documents upon which the objection is based.~~

4 ~~19. "Notice Packet" means the~~ 19. "LWDA PAGA Payment" means to payment to be made
5 to the LWDA as its 75% share of the PAGA Payment, namely \$75,000.00, as consideration for
6 settlement of claims for civil penalties under PAGA.

7 19. "Net Settlement Amount" means the Total Settlement Amount less Court-approved
8 Class Counsel Award, Class Representative Enhancement Award, PAGA Payment and Settlement
9 Administration Costs. The Net Settlement Amount is the total amount that will be paid to
10 Participating Class Members, in the form of Individual Settlement Payments.

11 20. "Notice of Class Action Settlement ~~and Claim Form~~ " means the notice approved by
12 the Parties and subject to Court approval, substantially in the ~~forms attached as Exhibits A and B,~~
13 ~~respectively~~ form of Exhibit A hereto, explaining the terms of this Settlement Agreement and the
14 settlement process, which the Settlement Administrator will mail to each Class Member.

15 ~~20~~

16 21. "PAGA" refers to the Labor Code Private Attorneys General Act of 2004, Labor
17 Code § 2699 et seq.

18 22. "PAGA Members" means all individual who are or were previously employed by
19 Defendant Crown Building Maintenance Co. in California as a janitorial employee at any time
20 during the PAGA Settlement Period.

21 23. "PAGA Notice Letters" refers to (a) the February 3, 2016 PAGA Notice Letter filed
22 by Plaintiff with the LWDA; and (b) the June 24, 2022 supplemental and amended PAGA Notice
23 Letter filed by Plaintiff with the LWDA.

24 24. "PAGA Payment" means a gross payment in the aggregate of \$100,000.00 that is
25 comprised of the LWDA PAGA Payment and all of the Individual PAGA Payments to PAGA
26 Members in settlement of all claims for PAGA civil penalties as defined in this Settlement
27 Agreement.

1 25. “PAGA Settlement Period” means the period from April 22, 2014 through the
2 Preliminary Approval Date or June 15, 2023, whichever occurs sooner.

3 26. “Parties” means Plaintiff and Defendant collectively.

4 ~~21~~27. “Participating Class Members” means allthose Class Members who ~~submit valid~~
5 ~~and timely Claim Forms and who~~ do not submit a valid and timely ~~Requests~~Request for Exclusion.

6 ~~22~~28. “Plaintiff” means Plaintiff Josue Uribe.

7 ~~23~~29. “Preliminary Approval Date” means the date on which the Court issues an order
8 granting preliminary approval of the proposed Settlement ~~Agreement~~.

9 ~~24. “Released Claims” means all causes of action for expense reimbursement and the~~
10 ~~claims alleged in the Second Amended Complaint filed on September 10, 2018 to the extent these~~
11 ~~claims are based on a failure to reimburse expenses. The res judicata effect of the Judgment will~~
12 ~~be the same as that of the Release. The definition of Released Claims shall not be limited in any~~
13 ~~way by the possibility that Plaintiff or Settlement Class Members may discover new facts, legal~~
14 ~~theories, or legal arguments not alleged in the Second Amended Complaint, but which might serve~~
15 ~~as an alternative basis for pursuing the same claims, causes of action, or legal theories based on a~~
16 ~~failure to reimburse expenses. To be clear, the scope of the release does not include individual,~~
17 ~~class or PAGA non-expense reimbursement claims. Nothing in this release shall prevent an~~
18 ~~individual Class Member from pursuing an individual claim unrelated to expense reimbursement~~
19 ~~such as an individual claim for unpaid overtime, unpaid minimum wages or meal and rest period~~
20 ~~violations.~~

21 ~~25~~

22 30. “Released Class Claims” shall mean any and all claims based on the factual or legal
23 theories alleged in the Complaint, including claims for (i) failure to reimburse and the following
24 “derivative” claims based on that reimbursement claim for (ii) failure to timely pay wage; (iii)
25 failure to pay minimum wage; (iv) failure to pay overtime; (v) failure to timely pay wages upon
26 termination; (vi) inaccurate wage statements; (vii) conversion; (viii) unfair competition; and (ix)
27 and all damages, penalties, interest and other amounts recoverable under all claims under California
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1 and federal law, to the extent permissible, including but not limited to the California Labor Code
2 and IWC Wage Order No. 5, based on the facts and theories alleged in the Action on which the
3 reimbursement claim is predicated (collectively, the “Released Claims”). To be clear, the Released
4 Class Claims do not extend to claims for minimum wage, inaccurate wage statements, etc. based
5 on any theory other than expense reimbursement. The period of the Release shall extend to the
6 limits of the Class Settlement Period.

7 31. “Released PAGA Claims” shall mean all claims and causes of action for civil
8 penalties under PAGA against the Released Parties that were alleged or that could have been
9 alleged based on the facts asserted in the Complaint as well as in the PAGA Notice Letters,
10 including for failure to reimburse (Labor Code section 2802) and the following “derivative” claims
11 based on that reimbursement claim under Labor Code sections 201-204, 210, 226(a), 226.3, 510,
12 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 6401, 6401.7, and 6403 and IWC Wage Order
13 No. 5 based on the facts and theories alleged in the Action on which that reimbursement claim is
14 predicated. To be clear, the Released PAGA Claims do not extend to civil penalties based on any
15 theory other than expense reimbursement. The period of the Released PAGA Claims will be the
16 PAGA Settlement Period.

17 32. “Released Parties” means Defendant and any of its former and present parents
18 (including Able Services), subsidiaries, affiliates, divisions, corporations in common control,
19 predecessors, successors, and assigns, as well as all past and present officers, directors, members,
20 employees, partners, shareholders and agents, attorneys, insurers, and any other successors,
21 assigns, or legal representatives, if any, and all persons acting under, by, through, or in concert with
22 any of them, and each of them.

23 ~~2633.~~ “Request for Exclusion” means a timely letter submitted by a Class Member
24 indicating a request to be excluded from the class settlement. ~~The Request for Exclusion must: (a)~~
25 ~~be signed by the Class Member; (b) contain the name, address, telephone number and the last four~~
26 ~~digits of the Social Security Number of the Class Member requesting exclusion; (c) clearly state~~
27 ~~that the Class Member does not wish to be included in the settlement; (d) be returned by fax or~~

1 mail to the Claims Administrator at the specified address and/or facsimile number; and (e) be faxed
2 or postmarked on or before the Response Deadline. The date of the fax or postmark on the return
3 mailing envelope will be the exclusive means to determine whether Specific details of how to
4 submit a “Request for Exclusion ~~has been timely submitted. A Class Member who does not~~
5 ~~request exclusion from the settlement will be deemed a Class Member and will be bound~~” will be
6 provided by ~~all terms of~~ the Notice of Class Action Settlement ~~Agreement if the settlement is~~
7 ~~granted final approval by the Court.~~

8 2734. “Response Deadline” means the deadline by which Class Members must postmark
9 or fax to the ClaimsSettlement Administrator valid ~~Claim Forms~~, Requests for Exclusion, or
10 postmark Notices of Objection to the Settlement. The Response Deadline will be sixty (60)
11 calendar days from the initial mailing of the Notice Packet by the ClaimsSettlement Administrator,
12 unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will
13 be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for
14 ~~Claim Forms or~~ Requests for Exclusion will be extended fifteen (15) calendar days for any Class
15 Member who is re-mailed a Notice Packet by the Claims Administrator, unless the 15th day falls
16 on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next
17 day on which the U.S. Postal Service is open. The Response Deadline may also be extended by
18 express agreement between Class Counsel and Defendant. Under no circumstances, however, will
19 the ClaimsSettlement Administrator have the authority to unilaterally extend the deadline for Class
20 Members to submit a ~~Claim Form~~, Request for Exclusion, or objection to the settlement.

21 ~~28. “Workweeks” means the number of weeks each Class Member was employed by~~
22 ~~Defendant as non-exempt a non-exempt hourly employee at any time during the period from June~~
23 ~~10, 2011 to the date on which the Court grants preliminary approval of the Settlement. Defendant~~
24 ~~will determine the number of Workweeks by calculating the number of days each Class Member~~
25 ~~was employed by Defendant a janitor during the period from June 10, 2011 to the date on which~~
26 ~~the Court grants preliminary approval of the Settlement, dividing by seven (7), and rounding up to~~
27 ~~the nearest whole number.~~

35. “Settlement” or “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement and Release.

36. “Settlement Administrator” means a third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

37. “Settlement Administration Costs” means the costs payable from the Total Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts per Class Member, tax reporting, distributing the Total Settlement Amount, and providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. The Settlement Administration Costs will be paid from the Total Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the settlement. The Settlement Administration Costs are currently estimated to be One Hundred Ten Thousand Dollars and zero cents (\$110,000.00). To the extent actual Settlement Administration Costs are greater such excess amount will be deducted from the Total Settlement Amount.

38. “Total Settlement Amount” means the total maximum amount payable under the terms of this Settlement Agreement, which is the gross sum of One Million Fifty Thousand Dollars and zero cents (\$1,050,000.00) to be paid by Defendant in full satisfaction of all claims arising from the Action and Plaintiff’s Second Amended Complaint defined below, which includes all Individual Settlement Payments to Participating Class Members, any Class Representative Enhancement Payment to Plaintiff as approved by the Court, the PAGA Payment, Settlement Administration Costs as approved by the Court, and a payment to Class Counsel of attorneys’ fees

1 and reasonable litigation costs. The Settlement Administrator will make all required tax deductions
2 and payments using a Qualified Settlement Fund. As set forth herein, the Settlement Administrator
3 will issue all of the above-referenced payments from the Qualified Settlement Fund in accordance
4 with the applicable provisions of this Settlement Agreement.

5 39. “Workweek Value” means the value of each ~~compensable~~ Eligible Workweek, as
6 determined by the formula set forth in herein.

7 **RECITALS**

8 3040. Class Certification. The Parties stipulate and agree to the certification of this Action
9 for purposes of this Settlement only. Should the Settlement not become final and effective as
10 herein provided, class certification will be set aside (subject to further proceedings on motion of
11 any party to certify or deny certification thereafter). The Parties’ willingness to stipulate to class
12 certification as part of the Settlement will have no bearing on, and will not be admissible in or
13 considered in connection with, the issue of whether a class should be certified in a non-settlement
14 context in this Action and will have no bearing on, and will not be admissible or considered in
15 connection with, the issue of whether a class should be certified in any other lawsuit.

16 3141. Procedural History. On March 9, 2016, Plaintiff filed an initial complaint on behalf
17 of himself and other current and former hourly employees including janitors and day porters
18 throughout California. Plaintiff’s original complaint included a claim for unreimbursed expenses
19 under Labor Code Section 2802 for his uniform and clothing, and slip-resistant shoes.

20 3242. In March 2016, Defense counsel informed Plaintiff that Defendant intended to file a
21 notice of related cases because a separate action *Gama v. Crown Building Maintenance Co*, Case
22 No. RG15773582 was pending in the Alameda County Superior Court that alleged unreimbursed
23 expenses for required cell phone use on behalf of hourly employees performing janitorial work.
24 Defendant was concerned of the duplication of discovery and court time on the same subject of
25 Defendant’s expense reimbursement practices.

26 3343. On April 4, 2016, Plaintiff filed a Notice of Related cases. ~~[Dkt. 10]~~.

27 3444. On May 23, 2016, Plaintiff filed his First Amended Complaint (“FAC”). Plaintiff
28

alleges in the FAC and further amended Complaint that his former employer, Defendant, failed to provide reimbursement for expenses and losses for required use of cell phones, uniform and other clothing, and slip-resistant shoes in violation of California Labor Code Section 2802. ~~(FAC ¶¶ 4, 5, and 29).~~ Plaintiff further alleges that because the unreimbursed expenses for his cell phone, uniform and clothing, and slip-resistant shoes are considered “wages” or “compensation”, he is entitled to damages based on the following additional causes of action: (1) failure to pay all earned wages; (2) failure to pay minimum wages; (3) failure to pay overtime compensation; (4) failure to timely pay wages upon termination; (5) failure to provide accurate wage statements; ~~(56)~~ conversion; and ~~(67)~~ violation of Labor Code section 2698 et seq., the Private Attorneys General Act of 2004 (“PAGA”). ~~(FAC ¶¶ 4, 5, 13-26 and 31-45).~~

~~3545.~~ In response to Plaintiff’s allegations in the FAC, Defendant filed a demurrer.

~~3646.~~ Defendant argued Plaintiff’s generic “slip-resistant shoe” claim is preempted by federal OSHA and California OSHA. Moreover, Plaintiff failed to allege facts that his generic “slip-resistant shoes” require compensation under either federal OSHA or Cal OSHA because they are not specialty shoes. Defendant also argued Plaintiff was not entitled to compensation for his uniform because there are minimal facts regarding why his wearable items could not be washed with his regular clothes or could not be exchanged for a new uniform from his employer. Defendant further argued that an expense reimbursement claim is not a wage and therefore Plaintiff’s claims for unpaid minimum wages and overtime fail. Finally, Plaintiff’s remaining wage claims are derivative and therefore fail.

~~3747.~~ The Court subsequently denied Defendant’s Demurrer.

~~3848.~~ The parties subsequently engaged in written discovery which included exchanging records regarding Defendant’s expense reimbursement practices, safety and orientation practices, practices regarding safety and personnel protective equipment and documentation of Defendant’s payroll practices.

~~3949.~~ On September 15, 2016, Defendant took Plaintiff’s deposition which confirmed Defendant’s position in its Demurrer. Plaintiff also testified that he could perform his job without

1 the use of a personal cell phone but on minimal and infrequent occasions he was contacted by a
2 manager on his personal cell phone for work related purposes.

3 ~~40~~50. Subsequently, the parties began settlement discussions.

4 ~~41~~51. The parties also engaged in written discovery regarding Plaintiff's potential claim of
5 expense reimbursement based on required cell phone use.

6 ~~42~~52. The Parties have conducted significant discovery and investigation of the facts and
7 law regarding Plaintiff amending his complaint to include a cell phone reimbursement claim. Such
8 discovery and investigation have included the exchange of hundreds of pages of cell phone records
9 including the cell phone records of Plaintiff and his supervisors; analyses by both Parties of a
10 representative sample of company issued cell phone records to identify the number of phone calls
11 made to putative class members within a three month period; the informal exchange of
12 information; discussions and meetings between representatives of the Parties; interviews of
13 potential witnesses and Class Members; analysis of relevant records and engaging an expert to
14 review cell phone records. In addition, the Parties have investigated the applicable law regarding
15 the claims and defenses to such claims, as well as the damages alleged by Plaintiff.

16 ~~43~~53. The conclusion of the investigation into Plaintiff's claims supported Defendant's
17 demurrer on Plaintiff's safety shoe and uniform reimbursement claims and there was no evidence a
18 cell phone is "required" to perform the duties of a janitor. Indeed, the evidence revealed that
19 Defendant does not have a phone number for more than half of the putative class members and
20 some putative class members share a cell phone.

21 ~~44~~54. Following Defendant's decision to file a motion for summary judgment on
22 Plaintiff's claims, the parties agreed to attend mediation.

23 ~~45~~55. On July 12, 2017, with the assistance of experienced mediator Alan Berkowitz, Esq.
24 of Judicate West, the Parties reached a Settlement Agreement.

25 ~~46~~56. Defendant also agreed to audit its supervisor use of company issued cell phones to
26 implement changes when needed. Based on Plaintiff's litigation efforts, the employer has begun
27 providing some janitors in the Los Angeles Area and in Orange County a monthly phone
28

allowance.

47

57. On February 2, 2018, the Court granted Isabel Garibay's Motion to Intervene.

58. On October 19, 2018, the Court granted Plaintiff's Motion for Preliminary Approval of Settlement, based on the September 28, 2018 Revised Joint Stipulation of Representative Action and Class Action Settlement and Release.

59. On September 17, 2019, the Court granted Plaintiff's Motion for Final Approval of Settlement and entered Judgment.

60. On September 19, 2019, Intervenor Isabel Garibay filed a copy of the Judgment with Court of Appeal and thereby commenced her appeal as to the Judgment.

61. On October 26, 2021, the Court of Appeal issued its opinion in *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal. App.5th 986 (modified and certified for publication on November 25, 2021; remittitur issued December 28, 2021). The Court of Appeal reversed this Court's approval of the settlement, determining that Plaintiff's PAGA notice was technically deficient because it did not expressly reference cell phones as a basis for Plaintiff's reimbursement claim. 70 Cal. App. 5th at 1006. The Court of Appeal remanded the case for Plaintiff to correct the deficiency. *Id.*

62. On June 24, 2022, Plaintiff filed a supplemental and amended PAGA Notice Letter with the LWDA.

63. Thereafter, the Parties resumed discussions as to a renewed settlement process. In furtherance of those discussions, Defendant provided Plaintiff with additional company cell phone records covering the period from 2016 through 2022, as well as other policy and other documents. The Parties also agreed that Defendant would nearly triple the original amount of the settlement from \$370,000 to the \$1,050,000 now sought through this Settlement.

64. On January 27, 2023, the Court held a status conference and the Parties informed the Court that Plaintiff intended to file a renewed motion for preliminary approval of settlement. The Court set March 17, 2023 as the deadline for Plaintiff to file a motion for preliminary

approval.

65. Benefits of Settlement to Settlement Class Members. Plaintiff has taken into account the uncertainty and risk of the outcome of further litigation, and has also taken into account the ability of Plaintiff and Class Members to collect on any judgment. Specifically, Plaintiff has taken into account that his case has minimal settlement value and Defendant would likely be successful in filing a motion for summary judgment and/or opposing class certification. Plaintiff has taken into consideration that the policies and practices regarding uniform compensation and cell phone use vary throughout California and is governed by policies and practices narrowly tailored for each property and property owner, various collective bargaining agreements and agreements with each individual property. Finally, Plaintiff has taken into consideration, some of Plaintiffs' claims on behalf of the same class have already been denied certification by Judge Gail Andler in Orange County Superior Court, Complex Division for lack of commonality and as unmanageable [Cervantes v. Crown Building Maintenance Co., Case No. 30-2013-00684702]. All of the aforementioned are barriers to commonality and manageability. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a settlement that confers substantial relief upon Settlement Class Members. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Settlement Agreement is a fair, adequate and reasonable settlement, and is in the best interests of Class Members.

4866. Defendants' Reasons for Settlement. Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties because Plaintiff's claims lack merit and are not subject to certification. Substantial amounts of time, energy, and resources of Defendant have been consumed and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff and Class Members. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by

Plaintiff in the Action, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set forth in the Action. Defendant contends that is has complied with all applicable state, federal and local laws.

~~49~~67. Defendant's Defenses and Denial of Wrongdoing. Defendant has claimed and continues to claim that Plaintiff's claims have no merit and do not give rise to liability.

~~50~~68. This Settlement Agreement is a compromise of disputed claims. Defendant has claimed and continues to claim that the Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability. Settlement Class Members and PAGA Members have claimed and continue to claim that the Released Class Claims and the Released PAGA Claims have merit and give rise to liability on the part of Defendant. Nothing contained in this Settlement Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendants as to the merits or lack thereof of the claims asserted in this Action.

~~51~~69. Maximum Amount Payable by Defendant. Under the terms of this Settlement, the maximum amount payable by Defendant will not exceed the ~~Class~~Total Settlement Amount of ~~Three Hundred Seventy~~One Million Fifty Thousand ~~Dollar~~Dollars and zero cents (~~\$370,000.00~~1,050,000.00). The employer's share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to the FICA and FUTA contributions, if applicable, shall be paid separately from, and in addition to, the Total Settlement Amount.

TERMS OF AGREEMENT

~~52~~70. The Plaintiff, on behalf of himself and the Settlement Class, and Defendant, agree as follows:

~~53~~71. Release As To All Participating Class Members. As of the Effective Date, in exchange for the consideration set forth in this Settlement Agreement, Plaintiff and the ~~Settlement~~Participating Class ~~will be deemed to have, and by operation of the Final Approval Order and Judgment, will have, expressly waived and released the Released Parties of the Released~~

1 ~~Claims (as defined in paragraph 24) to the fullest extent permitted by the law. Additionally,~~
2 ~~Settlement Class Members who do not opt out of the Settlement will be bound by a release of all~~
3 ~~claims and causes of action falling within the definition of "Released Claims" (above), whether~~
4 ~~known or unknown. However, to be clear, the scope of the release is limited to the Released~~
5 ~~Claims. Plaintiff and the Settlement Class Members may hereafter discover facts or legal~~
6 ~~arguments in addition to or different from those they now know or currently believe to be true with~~
7 ~~respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the~~
8 ~~discovery of new facts or legal arguments shall in no way limit the scope or definition of the~~
9 ~~Released Claims, and by virtue of this Agreement, Plaintiff and the Settlement Class~~
10 ~~Members~~ Members, as well as well as their spouses, heirs, executors, administrators, trustees and/or
11 permitted assigns, hereby do and shall be deemed to have, ~~and by operation of the final judgment~~
12 ~~approved by the Court, shall have,~~ fully, finally, and forever released, settled ~~and released,~~
13 compromised, relinquished and discharged any and all of the Released Parties of and from any and
14 all Released Class Claims. These releases will take effect whether or not a Participating Class
15 Member receives his or her Individual Settlement Payment or cashes and deposits any check for the
16 Individual Settlement Payment.

17 54

18 72. Release as To All PAGA Members. Upon the Effective Date, as representatives of
19 the State of California and on behalf of the LWDA, the PAGA Employees fully and finally release
20 the Released Parties from the PAGA Released Claims for the PAGA Settlement Period. These
21 releases will take effect whether or not a PAGA Member receives his or her Individual PAGA
22 Payment or cashes and deposits any check for the Individual PAGA Payment.

23 73. Second Amended Complaint. As a condition of settlement, Plaintiff will file a
24 Second Amended Complaint ("SAC") seeking class action relief and including a claim of failure to
25 provide expense reimbursement for allegedly required personal cell phone use in violation of Labor
26 Code Section 2802, a Business and Professions Code claim, a class period from June 10, 2011 to
27 the present, a PAGA period from April 22, 2014 to the present, and conform the pleadings with the
28

scope of the Settlement and Released Claims, in the form attached hereto as **Exhibit ~~ED~~**.

Defendant will not be required to file an answer or other responsive pleading to the SAC. If, for any reason, the Court does not grant final approval of the Settlement, or if the Settlement does not become final and effective for any reason, then the SAC will be deemed withdrawn and the FAC will again become the operative complaint without prejudice to Plaintiff's right to seek leave to file another amended complaint. Defendant does not impliedly or expressly waive any arguments or defenses to the SAC.

5574. Funding of the ~~Class~~Total Settlement Amount. Within ~~twenty-one~~seventeen (21~~7~~) calendar days after the Effective Date ~~of the Settlement~~, the Settlement Administrator shall send Defendant ~~will make a one-time deposit of all Court approved and claimed amounts from~~'s Counsel electronic wiring instructions for paying the ~~Class~~Total Settlement Amount (\$1,050,000.00) into a Qualified Settlement Fund ("QSF") to be established by the ~~Claims~~Settlement Administrator. The Settlement Administrator will also inform Defendant of the amount to be sent to the QSF to pay for the employer's share of payroll taxes. No later than twenty-one (21) calendar days after the Effective Date, Defendant shall fund the QSF. To the extent that Defendant previously funded some portion of the Settlement based on the original settlement, it shall receive a credit against that amount and only need to wire the additional amount to make up the difference to the Total Settlement Amount. The ~~Claims~~Settlement Administrator shall then disburse the funds as approved per this Agreement.

5675. Attorneys' Fees and Costs. Class Counsel will apply to the Court for an award of not more than ~~eighty thousand dollars~~Three Hundred Fifteen Thousand Dollars and zero cents (~~\$80,000.00~~) ~~or twenty-one and half (21.5) percent~~315,000.00 of the Net Settlement Amount as his Fees and Cost award. Defendant agrees not to oppose any such applications which are consistent with this paragraph. The amount of attorneys' fees and costs shall include payment for time expended by Class Counsel up to and including the final approval of the Settlement, but not any time expended on an appeal.

5776. Class Representative Enhancement Payment. In exchange for a general release, and

1 in recognition of his effort and work in prosecuting the Action on behalf of Class Members,
2 Defendant agrees not to oppose or impede any application or motion for a Class Representative
3 Enhancement Payment up to ~~Ten~~Five Thousand Five Hundred Dollars and zero cents
4 (\$~~10,000.00~~7,500.00). The Class Representative Enhancement Payment will be paid from the
5 Class Total Settlement Amount and will be in addition to Plaintiff's Individual Settlement Payment
6 paid pursuant to the Settlement. ~~Plaintiff will not be required to submit a Claim Form to receive~~
7 ~~his Individual Settlement Payment.~~ Plaintiff will be solely and legally responsible to pay any and
8 all applicable taxes on the payments made pursuant to this paragraph and will indemnify and hold
9 Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of
10 the payments.

11 5877. Claims Settlement Administration Costs. The Claims Settlement Administrator will
12 be paid for the reasonable costs of administration of the Settlement and distribution of payments
13 from the Class Total Settlement Amount, which is currently estimated to be ~~Fifty Six Thousand,~~
14 ~~Eight One~~ Hundred ~~Twelve~~Ten Thousand Dollars and zero cents (\$~~56,812.00~~110,000.00). These
15 costs, which will be paid from the Class Total Settlement Amount, will include, *inter alia*, the
16 required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS
17 Forms, distributing the Notice Packet, calculating and distributing the Class Total Settlement
18 Amount, and providing necessary reports and declarations.

19 5978. Labor and Workforce Development Agency Payment/PAGA Payments. Subject to
20 Court approval, the Parties agree that the amount of ~~Ten~~One Hundred Thousand Dollars
21 (\$~~10,000.00~~100,000.00) of the Class Total Settlement Amount will be allocated to the resolution of
22 any Class PAGA Members' claims for civil penalties arising under PAGA. Pursuant to PAGA,
23 Seventy Five Percent (75%), or Seven-~~Five~~Thousand, Five Hundred Dollars and zero cents
24 (\$~~7,500.00~~75,000.00), of the PAGA Settlement Amount will be paid to the California Labor and
25 Workforce Development Agency. Twenty Five Percent (25%), or ~~Two~~Twenty-Five Thousand ~~Five~~
26 ~~Hundred~~ Dollars and zero cents (\$~~2,500.00~~25,000.00), of the PAGA ~~Settlement Amount~~Payment
27 will be ~~included in~~paid to PAGA Members. Any portion of the PAGA Payment not approved by
28

1 the Court will be added to the Net Settlement Amount; and any additional amount ordered by the
2 Court shall be paid from the Total Settlement Amount; in no event shall Defendant be required to
3 pay in excess of the Total Settlement Amount. The LWDA PAGA Payment will be paid to the
4 LWDA within fifteen (15) days after Defendant fully funds the settlement. The remaining 25% of
5 the PAGA Payment to be distributed to the PAGA Members as Individual PAGA Payments and
6 shall be distributed based on a pro rata share based on the number of Eligible Pay Periods during
7 the PAGA Settlement Period. To establish the pay period value, the Settlement Administrator will
8 first determine the total number of Eligible Pay Periods during the PAGA Settlement Period. The
9 pay period value will be equal to 25% of the PAGA Payment divided by the total number of
10 Eligible Pay Periods worked by PAGA Members during the PAGA Settlement Period. The pay
11 period value will be rounded to the nearest cent. The amount of the Individual PAGA Payment to
12 be paid to each PAGA Member will be determined by multiplying the pay period value by the total
13 number of Eligible Pay Periods. Individual PAGA Payments shall be mailed, together with
14 Individual Settlement Payments, within fifteen (15) days after Defendant fully funds the settlement.

15 ~~60. Net Settlement Amount. The Net Settlement Amount will be used to satisfy~~
16 ~~Individual Settlement Payments to Participating Class Members from the Settlement Class in~~
17 ~~accordance with the terms of this Settlement. Plaintiff and Defendant agree that if there are any~~
18 ~~unclaimed Individual Settlement Payments, the Claims Administrator will proportionately increase~~
19 ~~the Individual Settlement Payment for each Participating Class Member so that the amount actually~~
20 ~~distributed to Participating Class Members equals One Hundred Percent (100%) of the Net~~
21 ~~Settlement Amount. No Settlement Amount will revert to Defendant.~~

22 ~~61~~

23 79. Net Settlement Amount.

24 The Net Settlement Amount will be determined by the Settlement Administrator by
25 subtracting the Class Counsel Award, Class Representative Enhancement Award, PAGA Payment,
26 and Settlement Administrator Costs from the Total Settlement Amount. The anticipated Net
27 Settlement Amount is \$517,500.00. The Parties estimate the amount of the Net Settlement
28

Amount to be calculated as follows:

<u>Total Settlement Amount:</u>	<u>\$1,050,000.00</u>
<u>Requested Class Rep. Award:</u>	<u>\$7,500.00</u>
<u>Requested Class Counsel Fees:</u>	<u>\$315,000.00</u>
<u>PAGA Payment to LWDA:</u>	<u>\$75,000.00</u>
<u>PAGA Payment to PAGA Members</u>	<u>\$25,000.00</u>
<u>Settlement Administrator Costs:</u>	<u>\$110,000.00</u>
<u>Net Settlement Amount</u>	<u>\$517,500.00</u>

This is a non-reversionary Settlement in which Defendant will pay the entire Total Settlement Amount. No portion of the Total Settlement Amount will revert to Defendant. The employer's share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to the FICA and FUTA contributions, if applicable, shall be paid separately from, and in addition to, the Total Settlement Amount. Any award of less than the amounts requested for class representative enhancement, administrative costs, litigation costs, or attorneys' fees will be returned to the Net Settlement Amount and distributed to the Participating Settlement Class Members.

80. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Participating Class Member worked during the Class Settlement Period. Specific calculations of Individual Settlement Payments will be made as follows:

- a. Defendant will calculate the total number of Workweeks worked by each Participating Class Member ("Individual Workweeks") and the total number of Workweeks worked by all Participating Class Members ("Class Workweeks") during the Class Period.
- b. To determine each Participating Class Member's Individual Settlement Payment, the ~~Claims~~Settlement Administrator will use the following formula: Individual Settlement Payment = (Individual Workweeks ÷ Class Workweeks) × Net Settlement Amount.
- c. If there are any unclaimed Individual Settlement Payments, the ~~Claims~~Settlement 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.

- 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.

6281. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

6382. ClaimsSettlement 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.

6483. Delivery of the Class ListInformation. Within twenty -one (21) calendar days of Preliminary Approval, Defendant will provide the Class ListInformation to the ClaimsSettlement Administrator and to Class Counsel.

6584. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class ListInformation from Defendant, the ClaimsSettlement 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 ListInformation.

6685. Response Deadline. "Response Deadline" means the deadline by which Class Members must postmark or fax to the ClaimsSettlement Administrator valid ClaimDispute Forms, Requests for Exclusion, or postmark Notices of Objection to the Settlement. The Response Deadline will be sixty (60) calendar days from the initial mailing of the Notice Packet by the ClaimsSettlement Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which

1 case the Response Deadline will be extended to the next day on which the U.S. Postal Service is
2 open. The Response Deadline for ~~Claim~~Dispute Forms ~~or~~, Requests for Exclusion, or Notice of
3 Objection will be extended fifteen (15) calendar days for any Class Member who is re-mailed a
4 Notice Packet by the ~~Claims~~Settlement Administrator, unless the 15th day falls on a Sunday or
5 Federal holiday, in which case the Response Deadline will be extended to the next day on which
6 the U.S. Postal Service is open. The Response Deadline may also be extended by express
7 agreement between Class Counsel and Defendant. Under no circumstances, however, will the
8 ~~Claims~~Settlement Administrator have the authority to unilaterally extend the deadline for Class
9 Members to submit a ~~Claim~~Dispute Form, Request for Exclusion, or objection to the settlement.

10 ~~67. — Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice~~
11 ~~Packet will provide: (a) information regarding the nature of the Action; (b) a summary of the~~
12 ~~Settlement's principal terms; (c) the Settlement Class definition; (d) the total number of~~
13 ~~Workweeks each respective Class Member worked for Defendant during the Class Period; (e) each~~
14 ~~Class Member's estimated Individual Settlement Payment and the formula for calculating~~
15 ~~Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) instructions on~~
16 ~~how to submit valid Claim Forms, Requests for Exclusion, or Notices of Objection; (h) the~~
17 ~~deadlines by which the Class Member must postmark or fax Claim Forms or Requests for~~
18 ~~Exclusions, or postmark Notices of Objection to the Settlement; (i) the claims to be released, as set~~
19 ~~forth herein; and (j) the date for the final approval hearing.~~

20 68

21 86. Disputed Information on Notice Packets. Class Members and PAGA Members who
22 disagree with the number of Eligible Workweeks or Eligible Pay Periods will have an opportunity
23 to dispute the information provided in their Notice Packets. A Dispute Form will be included in
24 the Notice Packets and an example is attached hereto as Exhibit B. To the extent Class Members
25 dispute the number of Workweeks to which they have been credited or the amount of their
26 Individual Settlement Payment, Class Members may produce evidence to the ~~Claims~~Settlement
27 Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's
28

1 records, Defendant's records will be presumed determinative. However, if a Class Member
2 produces evidence to the contrary, the ~~Claims~~Settlement Administrator will evaluate the evidence
3 submitted by the Class Member and will make the final decision as to the number of eligible
4 Workweeks that should be applied and/or the Individual Settlement Payment to which the Class
5 Member may be entitled. All such disputes are to be resolved not later than fourteen (14) calendar
6 days after the Response Deadline.

7 ~~69. — Claim Form Procedures (Plaintiff's Exception). To receive Individual Settlement~~
8 ~~Payments, all Class Members will be required to submit a timely Claim Form by the Response~~
9 ~~Deadline. However, Plaintiff is not required to submit Claim Forms to receive his Individual~~
10 ~~Settlement Payment. All Claim Forms must be signed and returned to the Claims Administrator~~
11 ~~via fax or first class mail postmarked by the Response Deadline. The date of the postmark or fax~~
12 ~~on the return mailing envelope will be the exclusive means to determine whether a Claim Form has~~
13 ~~been timely submitted. However, it is not the intention of the Parties to exclude Class Members~~
14 ~~from participating in the Settlement for technical reasons that do not interfere with the orderly~~
15 ~~administration of the Settlement. Therefore, the Claims Administrator will compile a list of claims~~
16 ~~rejected for (1) failure to cure an unsigned Claim Form or (2) late submission of the Claim Form.~~
17 ~~As to the Class Members on that rejected claims list, any Class Member who requests, in a signed~~
18 ~~letter, the ability to participate in the Settlement will be included as a Participating Class Member~~
19 ~~so long as that written request is received by the Effective Date.~~

20 ~~70. — Cure for Defective Claim Forms. If a Class Member's Claim Form is not signed or~~
21 ~~lacks required information, the Class Member will be given an opportunity to cure the defect. Any~~
22 ~~such Claim Form will be returned to the Class Member no later than three (3) business days after~~
23 ~~receipt of the defective Claim Form with a cure letter stating that the Class Member has fifteen (15)~~
24 ~~calendar days from the date of the cure letter or from the Response Deadline, whichever date is~~
25 ~~later, to submit, by mail or facsimile transmission, a revised Claim Form. If the revised Claim~~
26 ~~Form is not postmarked or fax stamped within that period, it shall be deemed untimely and that~~
27 ~~Class Member will receive an Individual Settlement Payment only if the Parties so agree. If a~~
28

~~Class Member submits both a Claim Form and Request for Exclusion, the Class Member will be given an opportunity to clarify his or her response. The Claims Administrator will send a cure letter no later than three (3) business days after receiving the conflicting response stating that the Class Member has fifteen (15) calendar days from the date of the cure letter or from the Response Deadline, whichever date is later, to clarify his or her response. If no clarification is provided, the Request for Exclusion shall be invalidated, the Class Member will be bound by the Settlement, and the Class Member will receive an Individual Settlement Payment. Class Members who receive Notice Packets but do not submit a valid and timely Claim Form may not receive an Individual Settlement Payment; however, such persons shall nonetheless be deemed Class Members and will be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement receives final approval by the Court.~~

~~71~~

87. 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~~Settlement Administrator within the Response Deadline. A Request for Exclusion will be included in the Notice Packets and an example is attached hereto as Exhibit C. 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~~Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted.

~~72~~88. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement. Even if a Class Member timely seeks to opt out of the Settlement Agreement, he or she will still be bound by the Released PAGA Claims and receive the Individual PAGA Payment.

1 ~~73~~89. Objection Procedures. To object to the Settlement Agreement, a Class Member
2 must postmark a valid Notice of Objection to the ~~Claims~~Settlement Administrator on or before the
3 Response Deadline. The Notice of Objection must be signed by the Class Member and contain all
4 information required by this Settlement Agreement. The postmark date will be deemed the
5 exclusive means for determining that the Notice of Objection is timely. Class Members who fail to
6 object in the specific and technical manner specified above will be deemed to have waived all
7 objections to the Settlement and will be foreclosed from making any objections and seeking any
8 adjudication or review, whether by appeal or otherwise, to the Settlement Agreement. Class
9 Members who postmark timely Notices of Objection will have a right to appear at the Final
10 Approval Hearing in order to have their objections heard by the Court. At no time will any of the
11 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
12 objections to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel
13 will not represent any Class Members with respect to any such objections to this Settlement.

14 ~~74. — Reminders. Not earlier than twenty (20) calendar days or later than thirty (30)~~
15 ~~calendar days after the initial mailing, the Claims Administrator will send a Reminder Postcard to~~
16 ~~all Class Members who have not returned a Claim Form or a Request for Exclusion. All Reminder~~
17 ~~Postcards will include the Response Deadline, and the contact information for the Claims~~
18 ~~Administrator.~~

19 ~~75~~

20 90. Certification Reports Regarding Individual Settlement Payment Calculations. The
21 ~~Claims~~Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly
22 report which certifies: (a) the number of ~~Participating Class Members from the Settlement Class~~
23 ~~who have submitted valid Claim Forms; (b) the number of~~ Class Members who have submitted
24 valid Requests for Exclusion; (~~e~~b) the Net Settlement Amount claimed by Participating Class
25 Members; and (~~d~~c) whether any Class Member has submitted a challenge to any information
26 contained in their ~~Claim Form or Notice Packet~~. Additionally, the ~~Claims~~Settlement Administrator
27 will provide to counsel for both Parties any updated reports regarding the administration of the
28

Settlement Agreement as needed or requested.

7691. Uncashed Settlement Checks. Any checks issued by the Claims Settlement Administrator to Participating Class Members will be negotiable for at least one hundred twenty (120) calendar days. Those funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than one hundred twenty (120) calendar days after issuance will be ~~tendered to back to the Claims Administrator. The Claims Administrator will proportionately increase the Individual Settlement Payment for each Participating Class Member who cashed their initial settlement check so that the amount actually distributed to Participating Class Members equals One Hundred Percent (100%) of~~ treated as void and the amount sent by the Net Settlement Amount. The Claims Administrator will issue a second round of settlement checks to Participating Class Members for this purpose. The second settlement check will be negotiable for at least one hundred twenty (120) calendar days. Those funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than one hundred twenty (120) calendar days after issuance will be distributed to the Justice Fund of to the State Bar of California and as otherwise provided for by the Code of Civil Procedure §384's Unclaimed Property Fund.

7792. Certification of Completion. Upon completion of administration of the Settlement, the Claims Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

7893. Tax Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: one-third (1/3) of each Individual Settlement Payment will be allocated as wages, one-thirds (1/3) will be allocated as penalties and one-third (1/3) will be allocated as interest. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties and interest will be reported on an IRS Form-1099 by the Claims Settlement Administrator. All Individual PAGA Payments shall be allocated as 100% penalties.

7994. Administration of Taxes by the Claims Settlement Administrator. The Claims Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class

Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The ~~Claims~~Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

~~80~~95. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on any statement, representation, or calculation by Defendant or by the ~~Claims~~Settlement Administrator in this regard. Plaintiff and Participating Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein.

~~81~~96. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER

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

~~82~~97. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

~~83~~98. Release of Additional Claims & Rights by Plaintiff. Upon the Effective Date, and as a condition of receiving any portion of his Class Representative Enhancement Payment, Plaintiff will agree to the additional following General Release: In consideration of Defendant's promises and agreements as set forth herein, Plaintiff hereby fully releases the Released Parties from any and all Released Claims and also generally releases and discharge the Released Parties from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against the Released Parties arising out of or relating to Plaintiff's employment by Defendant or termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of employment. This release specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement Agreement) relating to or in any way connected with the matters referred to herein, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically, Plaintiff waives all rights and benefits afforded by California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS ~~WHICH~~THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN

HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT,
~~WHICH~~ IF KNOWN BY HIM OR HER ~~MUST~~, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

~~84. Settlement Class Size. The Class Settlement Amount was calculated based on the understanding that there are approximately Nineteen Thousand and thirty eight (19,038) Class Members including approximately Nine Thousand Two Hundred and Four Class Members (9,240) who have provided Defendant a phone number.~~

~~85~~

99. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right to void and withdraw from the Settlement if, at any time prior to Final Approval, two percent (2%) or more of Class Members submit valid Requests for Exclusion. If the option to rescind is exercised, then Defendant will be solely responsible for all ~~Claims~~ Settlement Administration Costs incurred to the date of rescission.

~~86~~100. Nullification of Settlement Agreement in Whole or Part. In the event that: (a) the Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and all amounts deposited into the QSF will be returned to Defendant. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning. The Parties also contemplate that the Settlement may be nullified in part, as follows, if the Settlement is fully approved by the trial Court but thereafter appealed to the Court of Appeal. In the event that the Court of Appeal does not overturn the portion of the Settlement related to the Released Class Claims but instead finds for whatever reason that it cannot affirm only the portion of the Settlement that applies to the Released PAGA Claims, Defendant Crown has the option, within ten (10) days of the appellate stay being lifted by the trial Court, to finalize the Settlement as to only the Released Class Claims. If so, Defendant Crown will continue to fund every portion of the

Settlement other than the PAGA Payment. The Parties can thereafter separately address the remaining PAGA claims not covered by the Settlement.

87101. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice Packet; *i.e.*, the proposed Notice of Class Action Settlement ~~and Claim Form~~, Workweeks/Pay Periods Dispute Form, and Request For Exclusion, attached as Exhibits A ~~and B~~ through C. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval.

88102. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to postmark ~~Claim~~Dispute Forms, Requests for Exclusion, or objections to the Settlement Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments; (b) the Labor and Workforce Development Agency Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative Enhancement Payment; and (e) all ~~Claims~~Settlement Administration Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the final approval hearing.

89103. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to the Court for its approval. After entry of the Judgment, the Court will have continuing

jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

~~90~~104. Destruction of Company Records. Plaintiff and Class Counsel agree to immediately destroy any and all records provided to them by Defendant in this Action, including photocopies, electronic copies, and all reproductions. This includes, but is not limited to copies of Defendant's policies and procedures, electronic data, pay records, and time records.

~~94~~105. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

~~92~~106. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

~~93~~107. Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

~~94~~108. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

~~95~~109. Binding on Successors and Assigns. This Settlement Agreement will be binding

upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

~~96~~110. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

~~97~~111. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

~~98~~112. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

~~99~~113. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

~~100~~114. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may appeal any reduction in the Attorneys' Fees and Costs below the amount they requests from the Court, and either party may appeal any court order that materially alters the Settlement Agreement's terms.

1 ~~101~~115. Class Action Certification for Settlement Purposes Only. The Parties agree
2 to stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
3 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
4 that certification for purposes of the Settlement is not an admission that class action certification is
5 proper under the standards applied to contested certification motions and that this Settlement
6 Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a
7 class action should be certified or (b) Defendant are liable to Plaintiff or any Class Member, other
8 than according to the Settlement's terms.

9 ~~102~~116. Captions. The captions and section numbers in this Settlement Agreement
10 are inserted for the reader's convenience, and in no way define, limit, construe or describe the
11 scope or intent of the provisions of this Settlement Agreement.

12 ~~103~~117. Waiver. No waiver of any condition or covenant contained in this
13 Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
14 considered to imply or constitute a further waiver by such party of the same or any other condition,
15 covenant, right or remedy.

16 ~~104~~118. Enforcement Action. In the event that one or more of the Parties institutes
17 any legal action or other proceeding against any other Party or Parties to enforce the provisions of
18 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
19 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees
20 and costs, including expert witness fees incurred in connection with any enforcement actions.

21 ~~105~~119. Mutual Preparation. The Parties have had a full opportunity to negotiate the
22 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will
23 not be construed more strictly against one party than another merely by virtue of the fact that it may
24 have been prepared by counsel for one of the Parties, it being recognized that, because of the
25 arms-length negotiations between the Parties, all Parties have contributed to the preparation of this
26 Settlement Agreement.

27 ~~106~~120. Representation By Counsel. The Parties acknowledge that they have been
28

represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

~~107~~121. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

~~108~~122. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

~~109~~123. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

~~110~~124. Confidentiality: The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount or terms of the Settlement. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement of this case prior to preliminary approval, including but not limited to any postings on any websites maintained by Class Counsel. Any communication about the Settlement to Class Members prior to the court approved mailing will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice.

~~111~~125. Plaintiff and Class Counsel represent that they are not currently aware of any unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement. Plaintiff and Class Counsel further represent that they have no current intention of asserting any claims against Defendant in any

judicial or administrative forum. Plaintiff and Class Counsel further represent that they do not currently know of or represent any persons who have expressed any interest in litigation against Defendant, or that Class Counsel believes to have potential claims against Defendant, excepting only the Settlement Class. The Parties further acknowledge understand and agree that this representation is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation.

///

///

APPROVED AND ACCEPTED

Dated: March 17, Josue Uribe
~~2017~~2023

By _____

APPROVED AS TO FORM AND ATTORNEY OBLIGATIONS ONLY

Dated: March 17,
~~2017~~2023

~~LAW OFFICE OF ARASH N. ALIZADEH~~
EMPLOYEES LAW, PROF. CORP.

By _____
Arash N. Alizadeh
Attorney for Plaintiff

APPROVED AND ACCEPTED

Dated: March 17,
~~2017~~2023

Defendant Crown Building Maintenance Co. dba
Able Building Maintenance Co.

By _____
Title _____

APPROVED AS TO FORM AND

1 **ATTORNEY OBLIGATIONS ONLY**

2 Dated: March 17,
3 ~~2017~~2023

OGLETREE DEAKINS NASH SMOAK &
STEWART, P.C.

4
5 By _____
6 Douglas J. Farmer
7 ~~Michael D. Thomas~~
8 Carolyn B. Hall
9 Attorneys for Defendant
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Document comparison by Workshare Compare on Friday, March 17, 2023
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Input:	
Document 1 ID	file:///USERSTORE\05\Chem3414\Desktop\Uribe - Settlement Agreement as of 2018.09.13 (same as filed on 9_28_18).docx
Description	Uribe - Settlement Agreement as of 2018.09.13 (same as filed on 9_28_18)
Document 2 ID	iManage:///work.ogletree.com/OGLETREE/55489106/2
Description	#55489106v2<work.ogletree.com> - Uribe - REVISED Settlement Agreement (Based On 9.28.18 Model)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
~~Deletion~~	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	376
Deletions	296
Moved from	23
Moved to	23
Style change	0
Format changed	0

Total changes	718
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EXHIBIT 13



866 Folsom Street, San Francisco, CA 94107 / T 415 481-8070

New Hire Information Sheet

ID Number

2016005

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 Valenzuela Edgar E.
As printed on Social Security Card (Last) (First) (MI)
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 Karina Vork Phone 760-936-5096 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 ☐ Weekly
☐ Salary ☐ Bi-Weekly
☐ Semi-Monthly

Benefit

☐ Benefit
☒ No Benefit

Hire Date 6/11/15 (month/day/year) Department/Job # 81001
Employee Title ROVER JANITOR
Site name and Building Location ROVER JANITOR
Supervisor Name and Contact Number Ashley Gomez

Hourly Rate \$ 10.50 Salary Yearly Rate (if applicable) \$ _____

New Hire Signature [Signature] Date 6/16/15
Supervisor Signature [Signature] Date 6/16/15



868 Folsom Street, San Francisco, CA 94107 / T 415-981-8070

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 Herenia

As printed on Social Security Card (Last)

(First)

(MI)

Address 820 Sycamore Ave Apt. # 254 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 Olazagaste 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 / ROVER

Site name and Building Location Janitor / Rover

Supervisor Name and Contact Number Ashley Gomez 1858/210-0541

Hourly Rate \$ 9.50 Salary Yearly Rate (if applicable) \$ _____

New Hire Signature Herenia Arzola Date 10.9.15

Supervisor Signature [Signature] Date 10.9.15

CROWN-ABLE 000312



868 Folsom Street, San Francisco, CA 94107 / T 415-48070

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 Velasquez 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 # XXXXXXXXXX

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 ☐ Weekly
☐ Salary ☐ 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 Nolasco

Hourly Rate \$ 11.95 Salary Yearly Rate (if applicable) \$ _____

New Hire Signature Zulma Velazquez Date 11/15

Supervisor Signature Manuel Nolasco Date 11/16/15

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

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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 entrance/ 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;
- p. 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 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

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Janitorial Contract Services

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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;
 - a. Meet with Building Management representatives at regular, pre-determined intervals to conduct inspections and evaluate services, review inventories, budgets, cost effectiveness, billings, labor costs and quality controls;
 - e. Refill 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 indicating the dates that periodic services are to be scheduled and subsequent reporting upon completion;
 - f. 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 communicate any accident, damage, or emergency situation to Security Personnel and Manager;
- e. 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 damages and repairs items on a timely 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.

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. 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 conducive in preventing theft of tenant property, and will be approved by Management.

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. *Note: 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 Management accordingly.

10. TENANT PROPERTY

Service personnel will not use or disturb tenant property, including 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.

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 Manager. In order to ensure the professional appearance of the cleaning staff, Contractor will supply each night cleaner with a minimum of three (3) contractor shirts or smocks each.

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 uniformed, with proper identification, satisfactory to Manager.
- " Hats or caps are not permitted. Exceptions must first be approved by Manager.
- " Uniforms will be clean and free of wrinkles. Pants/shirts shall be in good condition, free of holes or 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, platforms, 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, perfume and colognes shall be kept to 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

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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. Oversees 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 indicating 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 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:
 - * 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 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.

BISHOP RANCH

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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 Contractor, at Owner's expense. Owners, 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 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 the janitor closets and stockroom. 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 tampon/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 account 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, 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.

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 shirts 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 cleaner (2 uniform sets each). Contractor, at its expense, will provide weekly laundry service 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 cause improvement to Contractor's

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 "Banana". 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 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 propped 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 padded to protect the interior of cab 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 thefts 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 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 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.

2600 CAMINO RAMON @ BISHOP RANCH

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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 "Hazardous". 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 cordoned 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 propped 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 padded to protect the interior of unit 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 thefts 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 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 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 Cranbrook Realty Investment Fund, L.P., a California limited partnership, dba Airport Corporate Centre ("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 Centre, 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 Clause 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 wax and/or sealer is not permitted on tile 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 sandals are to be worn by janitorial personnel. Pictured 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. "Gang" 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 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 time.
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 refrigerator will not be taken. All trash will be removed and break areas thoroughly cleaned.
28. No out-going or in-coming phone calls of 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

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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/napkin 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		Galan 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		FIRST VERBAL WARNING		FIRST WRITTEN WARNING	
YES	NO				x
		SUSPENSION OR FINAL WRITTEN WARNING		TERMINATION	

VIOLATION DATE(S)

Violation _____ a.m.
Time _____ p.m.

PLACE WHERE VIOLATION OCCURRED

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 Galan
EMPLOYEE'S SIGNATURE

2/28/2011
DATE

COPY DISTRIBUTION

EMPLOYEE	
UNION REP.	
PERSONNEL DEPT.	
EMPLOYEE'S FILE	

[Signature]
SUPERVISOR'S SIGNATURE

2-28-2011
DATE

Able Building Maintenance

EMPLOYEE WARNING REPORT

EMPLOYEE'S NAME Alvarado Alicia
LAST FIRST MIDDLE NAME

DATE OF WARNING 10/8/2010

TYPE OF VIOLATION ATTENDANCE SAFETY OTHER

CARELESSNESS TARDINESS

DISOBEDIENCE WORK QUALITY

Cite Violation of Company Policy:

DISCIPLINE ACTION

PREVIOUS WARNING

YES NO
X

FIRST VERBAL WARNING

SUSPENSION OR FINAL WRITTEN WARNING

FIRST WRITTEN WARNING

TERMINATION

X

VIOLATION DATE(S)
8/4/2009

Violation Time 8:10 am
pm

PLACE WHERE VIOLATION OCCURRED
Bishop Ranch
San Ramon

Name of Shop Steward Present:

Summary of Investigation:

On 10/06/10 Alicia Alvarado was found talking on her bluetooth while vacuuming at approx 8:10pm in suite Q-450. She was reminded by Eliseo Gualdo 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 behavior 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					
EMPLOYEE'S NAME Gutierrez Gilberto LAST FIRST MIDDLE NAME		DATE OF WARNING 7/28/2014			
TYPE OF VIOLATION ATTENDANCE CARELESSNESS DISOBEDIENCE SAFETY TARDINESS WORK QUALITY OTHER		X			
DISCIPLINE ACTION					
PREVIOUS WARNING YES X		FIRST VERBAL WARNING FIRST WRITTEN WARNING		FIRST WRITTEN WARNING TERMINATION	
VIOLATION DATE(S) 7/28/2014		Violation Time 7:48		PLACE WHERE VIOLATION OCCURRED a.m. p.m.	
COMPANY STATEMENT			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 employee are aware to not use the phone while performing service.					

APPROVED BY

Ludwing Vasquez

Project Supervisor:

7/28/2014

SWEE'S SIGNATURE

DATE _____

SUPERVISOR'S SIGNATURE

DATE:

COPY DISTRIBUTION

X	EMPLOYEE
X	UNION REP. <i>Adrian Medina</i>
	PERSONNEL DEPT.
X	EMPLOYEE'S FILE

CROWN-ABLE 000097

Abbe Building Maintenance

EMPLOYEE WARNING REPORT								
EMPLOYEE'S NAME		MONTANO JORGE		DATE OF WARNING	7/25/2012			
		LAST	FIRST	MIDDLE				
TYPE OF VIOLATION	☐	ATTENDANCE	☐	CARELESSNESS	☒			
	☐	SAFETY	☐	TARDINESS	☐			
	☐	OTHER	☐	DISOBEDIENCE	☐			
DISCIPLINE ACTION								
PREVIOUS WARNING		☒ FIRST VERBAL WARNING		☐ FIRST WRITTEN WARNING				
		☐ FINAL WRITTEN WARNING		☐ TERMINATION				
VIOLATION DATE(S)		Violation A.M. P.M.		PLACE WHERE VIOLATION OCCURRED				
7/25/2012		X		BISHOP RANCH SAN RAMON				
COMPANY STATEMENT			EMPLOYEE STATEMENT					
JORGE MONTANO WAS FOUND IN THE DARK IN PRIVATE OFFICE Y-3896 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. I 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		7/25/2012			
NAME			TITLE		DATE			
EMPLOYEE'S SIGNATURE			DATE		COPY DISTRIBUTION ☐ EMPLOYEE ☐ UNION REP. ☐ PERSONNEL DEPT. ☐ EMPLOYEE'S FILE			
SUPERVISOR'S SIGNATURE			7/25/2012					
			DATE					
SHOP STEWARD'S SIGNATURE			DATE					

CROWN-ABLE 000098

EXHIBIT 16



868 Folsom Street, San Francisco, CA 94107 | T: 415.981.8070 | F: 415.546.5190

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: 12-15-15

www.ableserve.com

EMPLOYER COPY
Please Sign and Return

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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.

Exhibit

17

Law Office of Arash N. Alizadeh
7545 Irvine Center Drive, Suite 200
Irvine, California 92618
Telephone: (949) 606-2845
Facsimile: (949) 264-9345
www.lawyerforemployees.com

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Crown Building Maintenance Co. d/b/a Able Building Maintenance Company
868 Folsom Street
San Francisco, CA 94017

Re: Amended and Supplemental **Notice of Labor Code Violations, Cal. Labor Code § 2699.3(a)**
Josue Uribe et al. v. Crown Building Maintenance Co.
LWDA-CM-296711-7

To the Labor and Workforce Development Agency and Agent for Service of Process:

Please be advised that my office is retained by Jose Uribe (“Plaintiff”) to pursue a representative action for penalties pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) (“PAGA”) against his former employer, Crown Building Maintenance Co. d/b/a Able Building Maintenance Company (“Defendant” or “the Company”). This correspondence shall constitute Plaintiff’s supplemental and amended written notice under Labor Code § 2699.3 of claims against the Company. Plaintiff has pursued and continues to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as a non-exempt maintenance worker, including janitorial/day porter employees and forepersons, at any time since April 22, 2014 (hereinafter the “Aggrieved Employees”).

In addition to the claims set forth in his February 3, 2016 PAGA notice,¹ Plaintiff further alleges that the Aggrieved Employees have suffered the Labor Code violations described below.

¹ Mr. Uribe’s February 3, 2016 PAGA Notice is attached hereto as Exhibit A and incorporated by reference herein; portions of the February 3, 2016 PAGA notice are also directly incorporated into the body of this amended and supplemental notice.

Factual Background Regarding Plaintiff's Employment with the Company:

At all times, the Company operated in an industry, business, and establishment within the State of California. As such, the Company is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked as a non-exempt employee that included performance of day porter and various janitorial duties at a Company worksite in Costa Mesa, California since approximately May 2013. Plaintiff's duties included cleaning, maintenance, sweeping, mopping, vacuuming, and other similar cleaning and maintenance tasks. Throughout Plaintiff's employment, the Company committed numerous violations of the California Labor Code. As discussed below, Plaintiff's experience working for the Company was typical and illustrative of the Aggrieved Employees. On information and belief, the Aggrieved Employees continue to experience the same labor code violations that Plaintiff experienced.

Failure to Reimburse for All Necessary Expenditures – Violation of Cal. Labor Code § 2802

Plaintiff alleges that the Company failed and continues to fail to reimburse him and the Aggrieved Employees for work-related expenses in violation of Cal. Labor Code § 2802, which provides that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Throughout the statutory period, the Company maintained a policy and practice of failing to reimburse Plaintiff and the Aggrieved Employees for necessary business expenses. Plaintiff and the Aggrieved Employees used different chemicals, detergents, and cleaning supplies in performing tasks and always used a cart that held said cleaning material and equipment that were pushed around in the Company's job sites. Plaintiff and the Aggrieved Employees' job duties were essentially similar to those of a janitor, and other positions involving cleaning and maintenance. Plaintiff and the Aggrieved Employees were 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 the uniforms, Plaintiff and the Aggrieved Employees had to wash the uniforms in separate wash loads to avoid damaging their personal clothes. The Company also required Plaintiff and the Aggrieved Employees to purchase their own slip-resistant shoes to safely perform essential job functions for the Company. Despite requiring Plaintiff and the Aggrieved Employees to incur expenses to maintain uniforms and purchase slip resistant shoes in direct consequence of their jobs, the Company did not reimburse Plaintiff or the Aggrieved Employees for such necessary expenses. As a result, the Company is liable to Plaintiff and the Aggrieved Employees for all penalties provided for in Cal. Labor Code §§ 2802 and 2698 *et seq.* for the Company's failure to reimburse Plaintiff and the Aggrieved Employees for all necessary business expenses pertaining to uniform maintenance and the purchase of slip-resistant shoes.

The Company also violated Cal. Labor Code § 2802 by failing to reimburse Plaintiff and the Aggrieved Employees for personal cell phone expenses. During the specified period, the Company required Plaintiff and the Aggrieved Employees to use their personal cell phones in direct consequence of the discharge of their duties or in obedience to the Company's direction. The Company regularly contacted Plaintiff and the Aggrieved Employees for work-related purposes on their personal cell phones, including but not limited to providing them instructions and assignments via calls, texts and other communications to their personal cell phones. The Company required Plaintiff and the Aggrieved Employees to respond to and/or initiate these work-related communications placed to their personal cell phones. Plaintiff is informed and believes that the Company's practice to require the Aggrieved Employees to use their personal cell phones for work-related communications has continued to the present.

The Company expected Plaintiff and the Aggrieved Employees to personally pay expenses incurred by using their personal cell phone and data plans in the discharge of their duties. The Company did not reimburse Plaintiff or the Aggrieved Employees for work-related use of their personal cell phones, including but not limited to costs for cell phones, monthly cell phone charges, phone chargers, screen protectors, phone cases and/or related phone peripheral expenses. Plaintiff is informed and believes that the Company continues its practice to not reimburse the Aggrieved Employees for this required use of personal cell phones and related costs. As a result, the Company is liable to Plaintiff and the Aggrieved Employees for all penalties provided for in Cal. Labor Code §§ 2802 and 2698 *et seq.* for the Company's failure to reimburse Plaintiff and the Aggrieved Employees for all necessary business expenses pertaining to personal cell phone use.

Violation of Cal. Labor Code §§ 6401, 6401.7, and 6403

Based on its failure to reimburse Plaintiff and the Aggrieved Employees for all necessary business expenses as discussed above, the Company also violated Cal. Labor Code §§ 6401, 6401.7, and 6403.

Labor Code § 6401 requires employers to furnish safety devices and safeguards. Labor Code § 6403 likewise prohibits employers from failing or neglecting to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and to do every other thing reasonably necessary to protect the life, safety, and health of employees. By failing to provide Plaintiff and the Aggrieved Employees slip resistant shoes and maintained uniforms that were free of chemicals, as described above, the Company failed to furnish all necessary devices and safeguards to render the Company's place of employment safe and healthful. The Company therefore violated §§ 6401 and 6403.

At all relevant times, the Company failed to provide an occupational safety and training program, conduct periodic safety inspections, implement a system for correcting unsafe and unhealthy conditions, and provide a disciplinary system. The Company's failures therefore violated Labor Code § 6401.7.

As a result, the Company is liable to Plaintiff and the Aggrieved Employees for all penalties provided for in Cal. Labor Code §§ 6401, 6401.7, 6403 and 2698 *et seq.*

Failure to Pay for All Hours Worked, Including Overtime – Violation of Cal. Labor Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, 1198

The Company's policy and practice to require Plaintiff and the Aggrieved Employees to incur unreimbursed business expenses, as elaborated above, caused Plaintiff's and the Aggrieved Employees' wages to fall below minimum wages and overtime wages owed.

As a result of the above conduct, including employee time spent maintaining uniforms and using personal cell phones, the Company is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 510, 558, 1194, 1194.2, 1197.1, 1198, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Pay All Wages Due Semimonthly - Violation of Cal. Labor Code §§ 204, 210

Based on its failure to reimburse Plaintiff and the Aggrieved Employees for all necessary business expenses and failure to pay all minimum and overtime wages due, as discussed above, the Company also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month, within timeframes and as otherwise specified by statute. Throughout the statutory period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all minimum and overtime wages, and necessary business expense reimbursements. However, during all such times, the Company systematically failed and refused to pay the Aggrieved Employees all minimum and overtime wages and expense reimbursements due twice a month within the timeframes and as otherwise specified by statute.

As a result, the Company is liable to Plaintiff and the Aggrieved Employees for civil penalties provided for in Labor Code §§ 204, 210, and 2698 *et seq.* for failing to pay all wages and reimbursements owed twice per month within the timeframes and as otherwise specified by statute.

Failure to Furnish Accurate Itemized Wage Statements - - Violation of Cal. Labor Code §§ 226(a), 226.3

Based on its failure to reimburse Plaintiff and the Aggrieved Employees for all necessary business expenses and failure to pay all minimum and overtime wages due, as discussed above, the Company also violated Labor Code § 226.

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

hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

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

The Company intentionally and willfully failed to provide Plaintiff and the Aggrieved Employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify gross wages earned, and the failure to list the true net wages earned. As a result of Defendant violating Labor Code § 226, Plaintiff and Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee. Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for penalties provided for in Labor Code §§ 226.3 and 2698 *et seq.* for failing to furnish accurate itemized wage statements.

Failure to Timely Pay All Wages at Termination – Violation of Cal. Labor Code §§ 201-203

Based on its failure to reimburse Plaintiff and the Aggrieved Employees for all necessary business expenses and failure to pay all minimum and overtime wages due, as discussed above, the Company also violated Labor Code §§ 201-203.

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

At all relevant times, the employment of Plaintiff and many other Aggrieved Employees ended, *i.e.* was terminated by quitting or discharge,. However, during the relevant time period, the Company failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code §§ 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant’s employ. These unpaid wages include minimum and overtime wages, as described above.

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

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

Violation of Cal. Labor Code §§ 1198 and 1199 and IWC Wage Order No. 5 ¶¶ 9, 20

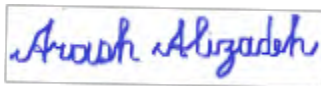
Based on its failure to reimburse Plaintiff and the Aggrieved Employees for all necessary business expenses, as discussed above, the Company also violated Labor Code §§ 1198 and 1199. These statutes prohibit an employer from requiring or causing an employee to work under conditions of labor prohibited by any order of the commission. In turn, Wage Order No. 5 ¶ 9 provides as follows:

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. . . .

Wage Order No. 5 ¶ 20 provides penalties in addition to any other civil penalties provided by law for violation of the Wage Order, including Wage Order No. 5 ¶ 9 enumerated directly above. As more fully described above, the Company required Plaintiff and the Aggrieved Employees to incur necessary business expenses in direct consequence of the discharge of their duties without reimbursement, including but not limited to costs associated with maintenance of uniforms, the purchase of slip-resistant shoes, and costs associated with personal cell phone use. The Company therefore violated Cal. Labor Code §§ 1198 and 1199 and is liable for civil and statutory penalties.

Please contact me at the above address/phone number if you have any questions regarding this matter.

Sincerely,

A handwritten signature in blue ink, reading "Anwar Alizadeh", enclosed in a thin black rectangular border.

Exhibit

18

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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 ($= 828 \text{ minutes} * \$0.05 \text{ incremental cost per minute}$) per week. From this, the estimated total cost for the selected members of the class use of cell phone minutes is \$12,719.67 ($= \$0.05 \text{ incremental cost per minute} * (11,601 \text{ total minutes in sample}/14 \text{ calendar weeks in sample}) * 307 \text{ total calendar weeks from } 6/10/2011 \text{ through } 4/30/2017$). From this, the estimated total cost to the class is \$181,467.29 ($= \$12,719.67 \text{ group cost} * (7,490 \text{ average class employees} / 525 \text{ group employees})$).

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 ($=11,601 \text{ group minutes} * (7,490 \text{ average class employees} / 525 \text{ group employees})$). During the 14 calendar weeks in the sample, there were approximately 104,860 workweeks ($= 7,490 \text{ average employees working} * 14 \text{ weeks}$). 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 ($=\$0.05 \text{ per minute} * 1.58 \text{ minutes per workweek}$). Multiplying this by the total number of workweeks results in an estimated class cost of approximately \$184,118 ($= .08 \text{ cents per week} * 2,301,475 \text{ workweeks in period}$).

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 ($= [201.7164 \text{ average number of Tracfones purchased per month} * \$7.50 \text{ average charge} * 307 \text{ weeks}/4 \text{ weeks per month}] + [\$12,732 \text{ if all minutes were incremental} * 37.16\% \text{ portion of class with cell phones}]$). To estimate the corresponding class figures, this would be increased by $(7,490/525)$, resulting in \$1,724,038.64 ($= \$120,843.83 * 7490/525$).

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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 Tracfone charges + \$8,147.83 incremental minutes charges). As above, this is converted to a class estimate by multiplying by 14.267 (=7490 average employees/525 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% average for adults/95% current for all adults]*[92% 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 group cost x 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 per minute x 2.3208 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 ($=10,404 \text{ calls} / 250 \text{ weeks}$) were made during the period. An average employee who was called would be receiving about 1.5 calls a month ($250 \text{ weeks} / 52 \text{ weeks per year} \times 12 \text{ months per year} = 57 \text{ months in period}$; $10,404 \text{ calls} / 57 \text{ months} = \text{about } 183 \text{ calls per month}$; $183 \text{ calls} / 191 \text{ class members receiving calls} = 0.96 \text{ calls per month}$). 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).

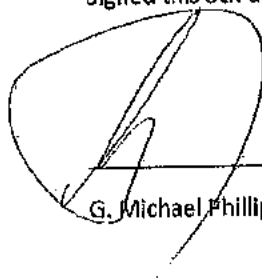
We believe that these are statistically credible numbers that are "soaking wet numbers", assuming that all the covered calls were reimbursable business calls.

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 $\$461,768.47 \times (1 - 25\%) = \$346,326.35$. 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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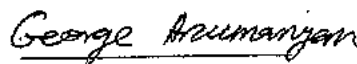
Signed this 5th day of September, 2017 in Pasadena, California.



G. Michael Phillips, Ph.D.



Dennis Halcoussis, Ph.D.



George Arzumanyan, CFA

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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 <i>David Nazarian College of Business and Economics</i> California State University, Northridge
1990-2014:	Professor of Finance, Real Estate, and Insurance College of Business and Economics California State University, Northridge
1988-1991:	Research Coordinator College of Business and Economics California State University, Northridge
1987-1990:	Associate Professor of Finance, Real Estate, and Insurance College of Business and Economics California State University, Northridge
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. Launie & 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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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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1. "Statistical Analysis of a Class: Monte Carlo and Multiple Imputation Spreadsheet Methods for Estimation and Extrapolation" (with Fish and Halcoussis), *American Journal of Business Education*, Vol. 10, No. 2.
2. "ESG Investing: A Simple Approach" (with Chong), *Journal of Wealth Management*, Vol 19, No. 2.
3. "An Introduction to Cost-Of-Living Adjustments in Public Retirement Plans: Details Matter" (with P.R. Jennings, W.P. Jennings), *American Journal of Business Education*, Vol. 9, No. 3.

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6. "Sector Rotation with Macroeconomic Factors" (with Chong), *Journal of Wealth Management*, Vol. 18, No. 1. Awarded *The William F. Sharpe Indexing Achievement Awards, ETF/Indexing Paper of the Year across all Institutional Investor Journals (2015)*.
7. "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.
8. "Minority Household Size and the Life Insurance Purchase Decision" (with Guillemette, Her-Hussein, Martin), *Financial Services Review, Financial Services Review*, Vol. 24, No. 1.
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10. "Tactical Asset Allocation with Macroeconomic Factors" (with Chong), *Journal of Wealth Management*, Vol. 17, Issue 1.
11. "The Entrepreneur's Cost of Capital: Incorporating Downside Risk" (with Chong and Jin), *Business Valuation Review*, Vol. 33, No. 3.
12. "Monitoring the Five Risks: Analytical Risk Measurement for Retail Investors and Wealth Managers" (with Chong and W.P. Jennings), *Investments & Wealth Monitor*, March/April 2014.
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)*.
16. "Portfolio size revisited", (with Chong) *Journal of Wealth Management*, Vol. 15, Issue 4.
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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19. "Misleading Betas: An Educational Example", (with Chong and Halcoussis), *American Journal of Business Education*, Vol. 5, No. 5.
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.
23. "Can Typical Households Earn Hedge Fund Returns? An Analysis of the Eta® Replication Approach" (with Chong), in *Journal of Derivatives and Hedge Funds*, Vol. 18, Issue 1.
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24. "The Impact of Neighborhood Ethnic Composition On Availability Of Financial Planning Services" (with Chong, and A.L. Phillips), *Journal of Financial Service Professionals*, Vol. 65, No. 6.
25. "Does Market Volatility Impact Presidential Approval?" (with Chong and Halcoussis), *Journal of Public Affairs*, Vol. 11, Issue 4.
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26. "Beta Measures Market Risk Except When It Doesn't: Regime-switching alpha and errors in beta" (with Chong), *The Journal of Wealth Management*, Vol. 14, No. 3 (2011).
27. "Can Dual Beta Filtering Improve Investor Performance?" (with Chong and S. Pfeiffer), *Journal of Personal Finance*, Vol. 10, No. 1 (2011).
28. "S&P 500 ETFs and Index Funds: Are fees all there is to it?" (with Chong and M. M. Hussein), *The Journal of Wealth Management*, Vol. 14, No. 2 (Fall 2011).
29. "When 'Dartboard Investing', It Helps to Pick the Right Dartboard: A Comparison of Randomly Selected Stock and Fund Portfolios" (with Chong), *The Journal of Wealth Management*, Vol. 13, No. 4 (Spring 2011).

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30. "Neighbourhood Effects and Asset Allocation" (with Chong and Dow), *Journal of Interdisciplinary Economics*, Vol. 23, No. 1 (2011).
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).
32. "Interpreting Bivariate Regression Coefficients: Going Beyond the Average" (with Halcoussis), *American Journal of Business Education*, Vol. 3, No. 4 (2010).
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34. "EVA: The Bubble Years, Meltdown, and Beyond" (with Chong and Her), *Journal of Asset Management*, Vol. 10, No. 3 (2009).
35. "Using Economic Value Added as a Portfolio Separation Criterion" (with Fountaine and Jordan), *Quarterly Journal of Finance and Accounting*, Vol. 47 (January 2008).
36. "To Sin or Not to Sin? Now That's the Question" (with Chong and Her), *Journal of Asset Management*, Vol. 6 No. 6 (March 2006).
37. "An Empirical Study of the Effectiveness of Publicly-Funded Structured on-Site Training: Implications for Policy and Practice," (with Blake, Gorman, and Moore), *Journal of Vocational Education & Training*, Vol. 56, No. 3 (2004).
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44. "The Impact of Earnings Losses on Future Social Security Benefits: Much Ado About Nothing?" (with Fractor and McConaughy), *Litigation Economics Digest*, Summer 1997.
45. "Introduction to Cross-Tabulation Statistics for Disparate Impact Cases" *Litigation Economics Digest*, Fall 1995.
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47. "The Case for Labor Market Risk in Computing Present Value" (with Fractor), *Defense Counsel Journal*, April 1992.
48. "The Economic Impact of a Well-Designed Landfill on Surrounding Neighborhood Values" (with Bleich & M.C. Findlay), *The Appraisal Journal*, April 1991. Excerpted and reprinted as "Does A Landfill Bring Down Property Values?", *Waste Age*, August 1991.
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50. "Notes on the Estimation of Extrapolated Benefits in Wrongful Death Litigation," (with Fractor), *Journal of Forensic Economics*, Summer 1990.
51. "Selecting a Discount Rate in Personal Injury, Wrongful Death, and Wrongful Termination Damage Computations: A Comment on the Role of Risk", *Journal of Forensic Economics*, April 1989.
52. "Risk as a Discount Rate Determinant in Wrongful Death and Injury Cases" (with W. P. Jennings), *The Journal of Risk and Insurance*, March 1989.
53. "Social Security Payments, Money Supply Announcements, and Interest Rates" (with Joines and Clark), *Journal of Monetary Economics*, 22 (1988).
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55. "Rent Seeking and Insurance Education: An Empirical Test" (with Johnson and Launle), *Journal of Insurance Issues and Practices*, January 1987.

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58. "Response Surfaces: summarizing complex simulation results in a manner suitable for inexpensive use by architects and builders" (with Sebald) *Proceedings Annual Meeting Am. Sect. Int. Sol. Sol. Energy Soc.*, May 1981.
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- G. Michael Phillips, William P. Jennings, Stephen A. Klein. Analysis and Prediction of Data Using Clusterization. US Patent 8935198. January 13, 2015.
- G. Michael Phillips, M. Chapman Findlay, III, William P. Jennings, Stephen A. Klein, Mark E. Rice. Community-selected content. US Patent 8521663. August 27, 2013.
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1. "Sustainable Investing with Student Portfolios" presented at AOA Annual Meeting, CSU Auxiliary Organization Association, San Diego, January 2017.
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 f1360 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 fi360 Conference, Scottsdale, AZ, April 2013.
27. "Opportunities and Risks of Low Volatility Portfolios" (with Chong) presented at fi360 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.
38. "Five Types of Risk and A Fistful of Dollars: Practical risk analysis for investors" (with Chong and W.P. Jennings) presented at Financial Planning Association of Orange County, also presented at Financial Planning Association of San Diego, November 2011.
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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46. "S&P 500 ETFs and Index Funds: Are fees all there is to it?" (with M. Hussein and Chong) presented at Annual International Conference on Accounting and Finance, AF 2011 in Singapore, May 2011.
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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72. Impact of Capitation on Investment Risk in Health Insurance Companies (with Born) presented at American Risk and Insurance Association, 2003.
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 Launie) 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 Launie 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

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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
Use and Interpretation of Economics Data
MBA Survey of Economics

Price Theory
Principles of Microeconomics

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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. "Linguanomics: 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.

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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.