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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ULISSES LOPEZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

GOOD-WEST RUBBER CORP., a California
corporation; GOODWEST RUBBER LININGS
INCORPORATED, a California corporation; and
DOES 1 through 100,

Defendants.

Case No. CIVDS2011219

CLASS ACTION

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: August 9, 2021
Time: 10:00 a.m.
Dept.: S-26

Action filed: June 23, 2020
Trial date: None set

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiff Ulisses Lopez (“Plaintiff”) and the proposed Settlement Class in the above-
4 captioned matter. I am a member in good standing of the bar of the State of California and am
5 admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration
6 and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 cum laude. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
15 website is the “largest U.S.-based law firm exclusively devoted to representing management in
16 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
17 on wage and hour class actions venued in both state and federal courts, and I also worked on a
18 number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification; drafting
27 motions for decertification following class certification; conducting exposure analyses to assess
28 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification

1 and potential damages resulting from such claims; drafting mediation briefs; serving as the
2 primary contact to in-house counsel; deposing named plaintiffs and putative class members;
3 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
4 short, I played an integral role in all aspects of litigation from the inception of a matter through
5 and beyond class certification. I also supervised the work of several junior attorneys who were
6 staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, I also worked on a number of “hybrid” actions
14 asserting nationwide wage and hour claims under the Fair Labor Standards Act (“FLSA”), as well
15 as California-specific claims under Rule 23 of the Rules of Civil Procedure.

16 6. In July 2012, I transitioned into litigating wage and hour class actions from the
17 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
18 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
19 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
20 and I am currently responsible for prosecuting over fifty (50) wage and hour class actions filed in
21 both State and Federal courts throughout California. I have been appointed as Class Counsel in
22 over one hundred (100) wage and hour class action settlements in state and federal courts within
23 California. A few examples of the matters in which I have been appointed as Class Counsel, all
24 of which have been granted final approval, include the following: *Sanchez v. Res-Care, Inc.*, Case
25 No. BC526175, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley,
26 Jr., presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
27 States District Court, Central District of California, Hon. John F. Walter presiding; *Tesla Motors*
28 *Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa Clara County, Hon.

Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Hon. Haywood S. Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California Superior Court, County of San Luis Obispo, Hon. Charles S. Crandall presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Hon. Elihu M. Berle presiding; *Leverage, et al v. Traeger Pellet Grills, LLC, et al*, Case No. 4:16-cv-00784-KAW, United States District Court, Northern District of California, Hon. Kandis A. Westmore presiding.

7. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action, in the following cases:

- *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of employees who were misclassified as independent contractors);
- *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O’Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an FLSA unpaid overtime wage class);
- *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class);

- 1 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
2 California Superior Court, County of Orange, Honorable Judge William Claster, presiding
3 (certifying unpaid overtime wage class and waiting time penalty class);
- 4 • *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC,
5 California Superior Court, County of Orange, Honorable Glenda Sanders, presiding
6 (certifying piece rate pay plan classes, expense reimbursement class, wage statement
7 class, and waiting time penalties class);
- 8 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
9 States District Court, Central District of California, Honorable Dolly M. Gee presiding
10 (certifying six classes of employees for rest period violations, wage statement violations,
11 meal period violations, and overtime and double-time violations);
- 12 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United
13 States District Court, Southern District of California, Honorable William Q. Hayes
14 presiding (certifying six classes of employees for unpaid wages, meal period violations,
15 wage statement violations, and waiting time penalties);
- 16 • *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA,
17 United States District Court, Northern District of California, Honorable William H. Alsup
18 presiding (certifying three classes of employees for unlawful wage deduction violations,
19 wage statement violations, and waiting time violations);
- 20 • *Staublein v. Wells Fargo Bank*, No. CIVDS1712267, San Bernardino County Superior
21 Court, Honorable David S. Cohn presiding (certifying wage statement class);
- 22 • *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California
23 Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying
24 class of employees for wage statement violations);
- 25 • *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los
26 Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four
27 classes for meal period violations, rest period violations, wage statement violations, and
28 waiting time penalties).

1 8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
2 Attorney in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an
3 honor awarded to no more than two-and-a-half percent of attorneys under the age of forty in
4 Southern California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me
5 as a “Super Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than
6 five percent of all attorneys in Southern California each year.

7 9. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately
8 involved in every aspect of this case from its inception through the present, and I believe that the
9 proposed Settlement is a favorable result for the Settlement Class.

10 10. The proposed Stipulation of Settlement (“Settlement”) is attached hereto as
11 **Exhibit 1**. The proposed Class Notice and Notice of Estimated Settlement Award are attached to
12 the Settlement as Exhibits A and B, respectively.

13 11. Defendant Good-West Rubber Corp. (“Good-West”) is headquartered in Rancho
14 Cucamonga, California and manufactures rubber products for the aerospace, military, sporting
15 goods, automotive, and other industries. Plaintiff and other Settlement Class members are non-
16 exempt employees who were hired directly by Good-West and worked for Good-West during the
17 “Class Period,” which runs from April 1, 2016 through June 11, 2021.

18 12. On April 2, 2020, Plaintiff, through my office, filed a class action in this Court
19 (Case No. CIVDS2010044), alleging claims against Good-West for failure to pay overtime and
20 minimum wages, meal period violations, rest period violations, wage statement penalties, and
21 unfair business practices. On June 9, 2020, after exhausting his administrative requirements,
22 Plaintiff, through my office, filed a PAGA action in this Court against Good-West (Case No.
23 CIVDS2011248), alleging a single cause of action under the PAGA based on these alleged Labor
24 Code violations. Plaintiff filed the PAGA action separately because he had not yet received a
25 conformed copy of his original class action complaint, due to delays related to the Court’s
26 COVID-19 closure.

27 13. On June 23, 2020, after the Court had re-opened and Plaintiff had still not received
28 a conformed copy of either complaint, Plaintiff, through my office, filed the instant action, which

alleged both his class claims and his PAGA claim. On November 24, 2020 and December 1, 2020, respectively, the Court granted the parties' requests to dismiss the original PAGA action and the original class action. As part of the Settlement, the parties have stipulated to Plaintiff's filing of a First Amended Complaint in this action, adding a cause of action for waiting time penalties. The proposed First Amended Complaint is attached hereto as **Exhibit 2**.

14. In preparation for mediation, the parties engaged in extensive informal discovery. Good-West produced timekeeping records for a sampling of approximately 50% of putative class members, including actual time punches and rounded time punches, which allowed our office to conduct a rounding analysis (among other relevant analyses). Good-West also produced its relevant wage and hour policies, as well as a class list with all putative class members' hire dates, termination dates, rates of pay, and other information. This allowed my office to calculate the putative class size, average rate of pay, total workweeks, and other data points. My office hired a labor economist with a Ph.D. in economics to analyze and extrapolate the data produced by Good-West and assist in creating damages models. This discovery allowed the parties to assess the merits and value of Plaintiff's claims, as well as the chances for class certification.

15. The parties attended a full-day mediation on April 12, 2021 with Steve Serratore, Esq, an experienced wage and hour class action mediator. The parties vigorously debated their legal positions, the likelihood of certification of Plaintiff's claims, and the legal bases for the claims and defenses. The parties did not reach resolution at mediation. However, Mr. Serratore subsequently made a mediator's proposal, which was eventually accepted by the parties in principle. Over the next few months, the parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement now before the Court.

16. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	\$800,000.00
• Minus Court-approved attorneys' fees (one-third):	\$266,666.67
• Minus Court-approved verified costs (up to):	\$35,000.00
• Minus Court-approved Representative Payment:	\$5,000.00
• Minus Amount Set Aside as PAGA penalties:	\$60,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$8,500.00</u>
Net Settlement Amount ("NSA"):	\$424,833.33
PLUS 25% "PAGA Amount" to Settlement Class:	\$15,000.00
Total Amount Paid to Settlement Class:	\$439,833.33

1 17. Good-West represents there are approximately 242 Settlement Class members.
2 Thus, the average Settlement Award is projected to be at least \$1,817.49.

3 18. Plaintiff alleges Good-West failed to pay employees for all hours worked because
4 of its unlawful rounding practice. Specifically, Plaintiff alleges that until late April 2020, Good-
5 West rounded employee timekeeping entries to quarter-hour increments in a manner that
6 consistently favored Good-West and that, as a result, employees' wages were underpaid. Based
7 on Plaintiff's expert's analysis of Good-West's timekeeping records (which included actual
8 punches as well as rounded time entries), Plaintiff estimates that Settlement Class members were
9 underpaid by approximately 12,260 hours during the Class Period as a result of the former
10 rounding practice. The average minimum wage in California during the Class Period was
11 approximately \$11.50. Thus, Plaintiff estimates Good-West's maximum exposure for this claim
12 as: 12,260 hours * \$11.50 min. wage * 2 (liquidated damages per Lab. Code § 1194.2) = \$281,980.
13 However, Good-West maintains its rounding practice was even-handed and resulted in employees
14 being paid for all hours worked. Good-West also argues that just because an employee is clocked
15 in does not mean they are working. For example, much of the alleged unpaid time was pre-shift
16 (i.e., employees clocked in before the scheduled start of the shift), and Good-West argues
17 employees work as a group and that they do not (and cannot) begin performing work before the
18 start of their shift, and instead engage in personal activities like reading or talking with co-workers
19 before their shift. Good-West further asserts that the amount of unpaid time per shift is *de minimis*
20 and thus non-compensable. Good-West also contends this claim would not be certified, since its
21 rounding policy is neutral and some employees or shifts have been *overpaid* as a result of
22 rounding, and therefore individualized inquiries would be necessary as to whether employees
23 were in fact underpaid or overpaid for each workday in question (including whether they were
24 actually working when they were clocked in), resulting in an unmanageable series of mini-trials.
25 In light of these defenses, Plaintiff discounted the maximum exposure by 25% to account for the
26 risk of non-certification, and an additional 30% for risk of losing on the merits, to arrive at an
27 estimated exposure of approximately \$148,040.

28 ///

1 19. Plaintiff alleges that until late April 2020, Good-West generally auto-deducted 30
2 minutes from employees' time for meal periods (unless the employee left the premises, in which
3 case they were required to clock out), regardless whether the employee actually took a full 30-
4 minute meal period. Plaintiff alleges this resulted in additional unpaid wages, on those occasions
5 employees took less than 30-minute meal periods but had a full 30 minutes auto-deducted. Good-
6 West did require employees to clock-out if they left the premises; thus, Plaintiff's expert was able
7 to examine those time records where employees clocked out for meal periods and extrapolated
8 those violation rates to the auto-deducted shifts. Based on Plaintiff's expert's analysis of those
9 time records, Plaintiff estimated approximately 32% of recorded meal periods were less than 30
10 minutes, and that those meal periods were short by an average of approximately 3 minutes.
11 Plaintiff's expert's analysis of the data further revealed approximately 95,361 total meal period-
12 eligible shifts prior to April 30, 2020. Thus, Plaintiff estimated Good-West's total maximum
13 exposure on this claim as follows: $95,361 * 32\% * 3/60 * 11.50 \text{ min. wage} * 2$ (liquidated
14 damages) = \$35,093. However, Good-West contends it has always provided employees with 30-
15 minute meal periods, and employees were not underpaid at all as a result of its prior auto-deduct
16 practice. Good-West further argues that the auto-deduct practice was instituted for employee
17 convenience, as it allowed employees to take their meal periods without having to worry about
18 clocking out and clocking back in. Good-West also argues it did not know, and reasonably could
19 not have known, employees were working during meal periods, since Good-West relieves
20 employees of all duty for 30 minutes. Finally, Good-West contends this claim would not be
21 amenable to class certification since it would require an employee-by-employee, shift-by-shift
22 analysis as to whether each employee in fact took a full 30-minute meal period on each shift, how
23 much time was worked off-the-clock, and whether Good-West knew or reasonably should have
24 known about the work. In light of these defenses, Plaintiff discounted the maximum exposure by
25 35% for risk of non-certification, and by an additional 50% for risk of losing on the merits, for a
26 realistic estimated exposure of \$11,405.

27 20. Plaintiff alleges that until late April 2020, he and other employees often received
28 late meal periods, and sometimes were unable to take a full 30-minute meal period. Plaintiff also

1 alleges he and other employees generally were not provided second meal periods on shifts over
2 10.0 hours. Based on Plaintiff's expert's review and extrapolation of employee timekeeping data,
3 Plaintiff estimated approximately 77,011 shifts reflected at least one potential meal period
4 violation (late, short, or missed meal period(s)). Further, the data produced by Good-West
5 reflected an average hourly rate of approximately \$13.38 for Settlement Class members during
6 the Class Period. Plaintiff therefore estimated a maximum total exposure for this claim as: 77,011
7 * \$13.38 = \$1,030,407. However, Good-West argues it has always maintained legally-compliant
8 meal period policies (including first and second meal periods on shifts over 10 hours) and
9 communicated those policies to its employees; that under *Brinker* it is only required to "provide"
10 the opportunity to take meal periods, not "ensure" meal periods are taken, and that it has always
11 done so. Because employees are provided timely 30-minute meal periods, any short, late, or
12 missed meal periods reflected in time records are the result of employee choice, rather than a
13 company policy or practice. Good-West further argues that the vast majority of shifts over 10
14 hours were less than 12 hours, and that employees voluntarily waive their second meal periods
15 on such shifts, as they are entitled to do under Labor Code § 512. Lastly, Good-West argues this
16 claim would not be suited for class certification because individualized inquiries would be needed
17 to determine whether individual employees did not take a compliant meal period on each
18 individual shift, why they did not take a compliant meal period, and (for second meals) whether
19 they waived the meal period. Based on these defenses, Plaintiff discounted the maximal amount
20 by 40% for risk of non-certification, and by an additional 50% for risk of losing on the merits or
21 failure to recover the full amount sought, to arrive at a realistic exposure of \$309,122.

22 21. Plaintiff alleges that Good-West failed to authorize and permit third rest periods
23 on shifts over 10 hours for him and other non-exempt employees. Based on Plaintiff's expert's
24 review and extrapolation of the timekeeping data, there were approximately 34,567 shifts of over
25 10 hours during the Class Period. Thus, Plaintiff calculated Good-West maximum exposure for
26 the third rest period claim as: 34,567 shifts * \$13.38 premium = \$462,506. Good-West, however,
27 asserts it has always maintained lawful rest period policies and has always authorized and
28 permitted all required rest periods, including third rest periods on shifts over 10 hours. As with

meal periods, Good-West argues, it need not *ensure* rest periods are taken but need only “authorize and permit” them, and it has always done so. Finally, Good-West argues this claim is not amenable to class treatment, as individualized inquiries would be required to determine whether each employee failed to a third rest periods on each 10+ hour shift, and why they did so. These issues are especially present for rest periods, Good-West argues, as rest periods need not be recorded. Based on these defenses, discounted the potential maximum by 50% for risk of non-certification, and an additional 50% for risk of losing on merits or failing to recover the full amount sought, to arrive at a realistic exposure of \$115,627.

22. Based on the above Labor Code violations, Plaintiff alleges Good-West failed to issue accurate itemized wage statements pursuant to Labor Code § 226. Based on information provided by Good-West, there were approximately 4,364 bi-weekly pay periods worked by Settlement Class members within the one-year liability window under Section 226. In calculating Good-West’s exposure, Plaintiff assumed he could recover the “initial” wage statement penalty under Section 226(e) of \$50 for each violation, for a total of \$218,200 (4,364 pay periods * \$50) in potential penalties. Good-West, however, argues that the wage statement claim will fail for the same reasons Plaintiff’s underlying claims fail. Good-West further contends any alleged wage statement violations could not be shown to be “knowing and intentional,” particularly given its good-faith defenses; that Plaintiff cannot show he or other employees “suffer[ed] injury” due to alleged wage statement violations, as required by Labor Code § 226(e); that Plaintiff would not be able to show a violation in each and every paid period; that meal and rest period claims cannot form the basis of a wage statement claim under the case law; and that wage statements always accurately reflected amounts *paid* to employees, thereby precluding penalties under the relevant case law. Given these arguments, as well as risks associated with Plaintiff’s underlying claims discussed above, Plaintiff discounted the maximum exposure by 35% for risk of non-certification, and by an additional 55% for risk of being unsuccessful on the merits, for an estimated realistic exposure of \$63,824.

23. Plaintiff further alleges that Good-West is liable for waiting time penalties based on its failure to pay wages to former employees. Based on the data provided by Good-West, there

were approximately 123 employees who separated their employment with Good-West since April 1, 2017. Plaintiff further estimated an average waiting time penalty of \$3,211 ($\$13.18 * 8 \text{ hours} * 30 \text{ days}$), for a maximum waiting time penalty exposure of \$394,953 ($123 * \$3,211$). However, Good-West asserts it has strong, good-faith defenses to Plaintiff's underlying claims, and that any failure to pay wages was thus not "willful" as a matter of law. Good-West further contends the meal and rest period claims cannot support a claim for waiting time penalties, as multiple courts have held. Moreover, because the waiting time claim is derivative of Plaintiff's underlying wage claims, Plaintiff would need to overcome Good-West's defenses, both as to class certification and on the merits, to his underlying claims. Based on these defenses, Plaintiff discounted Good-West's maximum exposure by 35% for risk of non-certification and by an additional 50% for risk of being unsuccessful on the merits, to arrive at an estimated total of \$128,360.

24. Finally, Plaintiff alleges Good-West is liable for PAGA civil penalties as a result of these alleged Labor Code violations. Plaintiff estimated a maximum PAGA exposure of \$436,400, based on the \$100 "initial" violation rate under Lab. Code § 2699(f) for each of the 4,364 pay periods worked during the applicable one-year statutory period. However, these penalties derive from Plaintiff's underlying claims, each of which Good-West vigorously disputes (as explained above). In addition, Good-West argues that even if Plaintiff were to prevail on some of his underlying claims, he could not show a violation in *every* pay period. Good-West further argues that the PAGA grants trial courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and that the Court would reduce penalties significantly given Good-West's good-faith defenses. Thus, Plaintiff discounted the maximum figure by 45% for risk of losing on the merits and/or not recovering a PAGA penalty for every pay period, and by an additional 50% for risk of the Court reducing penalties, to arrive at an estimated exposure of \$120,010.

25. Using these estimated figures, Plaintiff estimated the realistic total classwide recovery on his claims would be approximately \$896,388. The proposed settlement of \$800,000 therefore represents over 89% of Plaintiff's reasonably forecasted recovery.

26. At final approval, Plaintiff's counsel will request attorneys' fees of one-third of the Gross Settlement Amount (currently estimated at \$266,666.67), and up to \$35,000 in litigation

1 costs. My office has incurred substantial attorneys' fees in, among other things, conducting pre-
2 filing investigation; analyzing Plaintiff's claims; conducting legal research; analyzing
3 timekeeping and other data with our retained expert to create a comprehensive damages model;
4 preparing for and attending mediation; negotiating and preparing the Settlement Agreement;
5 preparing this Motion; and otherwise prosecuting this case. I anticipate that my office will incur
6 significant future attorneys' fees in overseeing the Notice process, fielding phone calls from
7 Settlement Class members, preparing the Final Approval Motion and supporting documents, and
8 appearing at the Final Approval Hearing.

9 27. Plaintiff will also request an incentive payment of \$5,000 at final approval. As
10 will be fully briefed at final approval, Plaintiff's requested incentive payment is in recognition of
11 the time and effort he expended on behalf of the Settlement Class, including providing factual
12 information and documents to my office, identifying potential witnesses, attending in-person and
13 telephonic meetings with my office to discuss the claims and theories at issue in the litigation,
14 and otherwise actively participating in the prosecution of this case.

15 28. Although the parties engaged in significant informal discovery, they had not
16 completed formal written and deposition discovery, which would have required expenditure of
17 substantial time and resources. Plaintiff also still had to file for class certification. Even if Plaintiff
18 obtained certification, the parties would incur considerable attorneys' fees and costs through a
19 possible decertification motion, motions for summary judgment, trial, and potential appeals.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on July 26, 2021, at El Segundo, California.

22 

23 _____
24 Paul K. Haines
25
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EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (or “Settlement”) is reached by and between Plaintiff Ulisses Lopez (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendant Good-West Rubber Corp. (“Good-West” or “Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh of Haines Law Group, APC (“Class Counsel”). Good-West is represented by Diana M. Estrada and Jennifer A. Brody of Wilson Elser Moskowitz Edelman & Dicker LLP (“Defense Counsel”).

Plaintiff filed a class action complaint against Good-West in San Bernardino County Superior Court, titled *Ulisses Lopez v. Good-West Rubber Corp., et al*, Case No. CIVDS2011219, on June 23, 2020 (the “Action”).¹ The original complaint in the Action alleged class and representative claims against Good-West for: (i) failure to pay all overtime wages; (ii) minimum wage violations; (iii) rest period violations; (iv) meal period violations; (v) wage statement violations; (vi) unfair competition; and (vii) civil penalties under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.* As part of this Settlement, the Parties have agreed to stipulate to the filing of a First Amended Complaint (“Complaint”) adding a claim for waiting time penalties.

Given the uncertainty of litigation, the Parties wish to settle Plaintiff’s claims on a classwide basis. Accordingly, Plaintiff and Good-West agree as follows:

1. **Settlement Class.** For purposes of this Settlement Agreement only, Plaintiff and Good-West stipulate to the certification of a Settlement Class, which shall be defined as:

All current and former non-exempt employees hired directly by Good-West (i.e., not through a staffing company) and who worked for Good-West in California at any time from April 1, 2016 through the earlier of: (i) the date of preliminary approval of the Settlement or (ii) June 11 2021 (the “Class Period”).

Good-West represents there are approximately 242 Settlement Class members.

The Parties agree that certification for purpose of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure in a non-settlement context. If for any reason this Settlement is not approved or is terminated, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement.

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¹ Plaintiff had previously filed a separate class action (Case No. CIVDS2010044) and PAGA action (Case No. CIVDS2011248), but those actions were dismissed in favor of the Class Action, with the statutes of limitations tolled based on the filing of the prior actions.

2. **Releases.**

- A. **Release by Settlement Class.** Once this Settlement Agreement receives final approval and the Court enters judgment, and upon the Settlement being fully funded, Plaintiff and every participating Settlement Class member will release and discharge Good-West, and its DBAs and affiliates, including but not limited to Goodyear Rubber, Good-West Linings and Coatings, and Bear Products, and its current and former officers, directors, and agents, and the successors and assigns of all such entities and individuals (“Released Parties”) from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, that are alleged in the Complaint, or that could have been alleged based on the facts alleged in the Complaint, and that arose from Settlement Class members’ employment with Good-West, including claims for: (i) unpaid overtime wages under Cal. Labor Code §§ 204, 510, 558, 1194, 1198; (ii) unpaid minimum wages under Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1198; (iii) failure to authorize and permit rest periods under Cal. Labor Code §§ 226.7, 516, 558; (iv) failure to provide meal periods under Cal. Labor Code §§ 226.7, 512, 558; (v) failure to issue accurate itemized wage statements under Cal. Labor Code § 226; (vi) failure to timely pay final wages under Cal. Labor Code §§ 201-203; and all claims for unfair competition (Cal. Bus. & Prof. Code § 17200 *et seq.*) based on the above violations (“Class Released Claims”). The release of the Class Released Claims shall run for the duration of the Class Period. In addition, all Settlement Class members (regardless whether they opt out) who worked for Good-West in California at any time from April 3, 2019 through the end of the Class Period (“PAGA Period”) shall release Good-West from any claims for civil penalties under the PAGA based on the above violations arising during the PAGA Period (“PAGA Released Claims”).
- B. **Release by Plaintiff.** In light of Plaintiff’s Class Representative Incentive Award (discussed below), Plaintiff has agreed to release, in addition to the Class Released Claims and PAGA Released Claims described above, all claims, whether known or unknown, under federal or state law, against the Released Parties, to the extent permitted by law, through the date this Settlement is signed by Plaintiff (“Plaintiff’s Released Claims”). Plaintiff understands that this release includes unknown claims and that he is, with respect to Plaintiff’s Released Claims, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims 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, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Specifically excluded from Plaintiff’s otherwise Released Claims are any and all claims that cannot be released as a matter of law, including, but not limited to, claim(s) under the Workers’ Compensation Laws of the State of California or California Unemployment benefits (EDD). No Workers’ Compensation claims/actions are being settled, resolved or released under this Settlement Agreement.

3. **Gross Settlement Amount.** As consideration, Good-West agrees to pay a “Gross Settlement Amount” or “GSA” of Eight Hundred Thousand Dollars (\$800,000.00) in full and complete settlement of this matter, as follows:
- A. The Parties have agreed to engage Phoenix Settlement Administrators (“Phoenix”) as the “Settlement Administrator” to administer this Settlement.
 - B. The Gross Settlement Amount shall be deposited with the Settlement Administrator within twenty-one (21) calendar days after Final Approval (which, for this purpose, shall be defined as the date on which the Court enters an Order granting Final Approval) or, solely in the event that there are any objections to the settlement (the filing of an objection being a prerequisite to the filing of an appeal), either (i) twenty-one (21) days after the last date on which any appeal might be filed, with no appeal having been filed; or (ii) if an appeal is filed, twenty-one (21) days after the successful resolution of any appeal(s).
 - C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than \$8,500.00;
 - (3) Up to \$5,000.00 for Plaintiff’s Class Representative Incentive Award, in recognition of his contributions to the Actions and his service to the Settlement Class;
 - (4) Class Counsel attorney fees of one-third of the GSA (currently estimated to be \$266,666.67), plus litigation costs and expenses incurred by Class Counsel in relation to the Action as supported by declaration, which are currently estimated to be no greater than \$35,000.00;
 - (5) The Parties have set aside \$60,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$45,000.00, will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or \$15,000.00, will be payable to certain Settlement Class members as the “PAGA Amount” as discussed below.
 - D. Good-West’s share of payroll taxes on any wage portion of the payments to the Settlement Class shall be paid by Good-West separately from, and in addition to, the Gross Settlement Amount.
 - E. **Escalator Clause.** Good-West represents that Settlement Class members worked approximately 23,144 workweeks for Good-West in California during the Class Period (“Workweeks”). The Parties agree that this is a material term of the Settlement. If the number of Workweeks is actually more than 5% above 23,144 (i.e., if there are 24,302 or more Workweeks), then the GSA shall increase proportionally with the increase in Workweeks. For example, if the number of Workweeks is 7% higher than 23,144, the GSA will increase by 7%.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment from the Settlement (“Settlement Award”).

Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiff’s Class Representative Incentive Award, the Settlement Administrator’s administration costs, and PAGA civil penalties. The remaining amount shall be known as the “Net Settlement Amount” or “NSA.” Settlement Awards will be the total of each Settlement Class member’s (i) payment from NSA and (ii) payment, if any, from the PAGA Amount, as described below.
- B. Payments from the Net Settlement Amount: The Settlement Administrator will calculate payments from the NSA based on each participating Settlement Class member’s proportionate Workweeks worked during the Class Period. Specifically, each participating Settlement Class member’s payment from the NSA will be calculated by multiplying the NSA by a fraction, the numerator of which is the participating Settlement Class member’s number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period.
- C. Payments from the PAGA Amount: In addition to the NSA, 25% of the amount set aside as PAGA civil penalties (i.e., \$15,000.00) has been set aside as the “PAGA Amount,” as mentioned above. The PAGA Amount shall be paid to all Settlement Class members (regardless whether they opt out) who worked for Good-West at any time during the PAGA Period, based on their proportional number of pay periods worked for Good-West in California during the PAGA Period (“Pay Periods”). Specifically, each Settlement Class member’s payment from the PAGA Amount will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member’s number of Pay Periods worked during the PAGA Period, and the denominator of which is the total Pay Periods worked by all Settlement Class members during the PAGA Period.
- D. Within seven (7) business days following Good-West’s deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Awards, as well as calculate the employer’s share of payroll taxes, and provide the same to Class Counsel and Defense Counsel for review and approval. Within five (5) business days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members, as well as the Plaintiff’s Incentive Award to Plaintiff, the LWDA’s PAGA payment to the LWDA, and Class Counsel’s attorneys’ fees and costs to Class Counsel. The Settlement Administrator shall simultaneously pay all applicable withholdings to the applicable authorities with the necessary reports, submitting copies to Defense Counsel. Good-West shall also remit the employer’s share of payroll taxes within this time frame to the Settlement Administrator, who shall promptly transmit such sum to the appropriate taxing authorities.

- E. For purposes of calculating applicable taxes and withholdings for payments to Settlement Class members, each Settlement Award shall be allocated as follows: for amounts paid from the PAGA Amount, 100% penalties; for amounts paid from the Net Settlement Amount, one-third as wages, one-third as penalties, and one-third as interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated as penalties and interest. As stated above, Good-West is responsible for its share of the payroll taxes on the wages portion of the Settlement Awards, and these taxes will not be deducted from the Gross Settlement Amount. Notwithstanding the treatment of the payments to each participating Settlement Class member above, none of the payments called for by this Settlement Agreement are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable bonus, benefit, or retirement plan, unless required by such plans.
- F. Each participating Settlement Class member who is mailed a Settlement Award must cash his/her Settlement Award check within 180 days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class members whose checks were not cashed within 180 days after mailing will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in the name of the Participating Class Member.
- G. Neither Plaintiff nor Good-West, nor their respective counsel, shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys’ Fees and Costs.** Class Counsel will request a total award of attorneys’ fees of one-third of the Gross Settlement Amount (currently estimated at \$266,666.67), plus actual costs and expenses as supported by declaration in an amount not to exceed \$35,000.00. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court’s approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. As noted above, the Settlement Administrator will mail Class Counsel the attorneys’ fees and cost award when it mails the Settlement Awards to Settlement Class members. The Settlement Administrator will issue Class Counsel IRS Forms 1099 when the Settlement Administrator pays the fee and cost award allowed by the Court.

6. **Class Representative Incentive Award.** Plaintiff will request a Class Representative Incentive Award of \$5,000.00 from the Gross Settlement Amount for Plaintiff’s release of claims, his time and risks in prosecuting the Action, and his service to the Settlement Class. This award will be in addition to Plaintiff’s Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 by the Settlement Administrator. The Settlement Administrator will mail Plaintiff the Class Representative Incentive Award and issue Plaintiff an IRS Form 1099 when it mails the Settlement Awards to participating Settlement Class members.

7. **Settlement Administrator.** The parties will request the appointment of Phoenix as Settlement Administrator. Good-West will not object to Plaintiff's seeking permission to pay up to \$8,500.00 from the Gross Settlement Amount for the Settlement Administrator's services. The Settlement Administrator shall be responsible for sending notices in English and Spanish, calculating Settlement Awards and preparing all checks and mailings, posting the Judgment to its website, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after Settlement Awards have been mailed to Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff as Class Representative for the Settlement Class;
- D. Approving Phoenix as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and the Notice of Estimated Settlement Award, attached hereto as Exhibits A and B, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) business days after entry of an order preliminarily approving this Agreement, Good-West will provide the Settlement Administrator with the name, last known address, last known phone number, social security number, and dates of employment as a non-exempt employee in California (including any leaves of absence or other periods of inactive status), for each Settlement Class member (the "Class Data"). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of the Class Data, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the addresses of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member, and provide Class Counsel and Defense Counsel with its calculations for their approval; (iv) provide Class Counsel and Defense Counsel with formatted versions of the Notice Packets to be sent to Settlement Class members; and (v) after receiving approval from all counsel, mail a Notice Packet (in English and Spanish)

to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the settlement must complete and mail an Exclusion Letter (defined below) to the Settlement Administrator on or before sixty (60) calendar days after the date of the initial mailing of the Notice Packets (the “Response Deadline”). The Exclusion Letter is a document prepared by the Settlement Class member that must: (1) contain the Settlement Class member’s name, address, telephone number, and last four digits of his/her Social Security number; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Exclusion Letter does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from this settlement, except an Exclusion Letter not containing a Settlement Class member’s last four digits of the Social Security number will be deemed valid. The date of the postmark on the Exclusion Letter shall be the exclusive means used to determine whether an Exclusion Letter has been timely submitted. Any Settlement Class member who excludes himself or herself from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any share from the PAGA Amount, if applicable), will not be bound by the terms of the Settlement Agreement (except for release of the PAGA Released Claims, if applicable), and will not have any right to object, appeal, or comment thereon. The Settlement Administrator will provide the Parties with weekly updates regarding the number of Exclusion Letters received. The Parties and their counsel agree not to take any action to encourage any Settlement Class member to opt out of the settlement.
- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement by submitting a written objection to the Settlement Administrator as explained in the Class Notice. The Settlement Administrator shall, within two (2) business days of receipt, serve any written objection(s) as received on Class Counsel and Defense Counsel, and Class Counsel shall then file all such objections with the Court. Defense Counsel and Class Counsel shall file and serve any responses to objections no later than five (5) calendar days prior to the Final Approval hearing. To be valid, any objection must: (1) be in writing; (2) contain the objecting Settlement Class member’s full name, current address, and telephone number, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (3) include all objections and the factual and legal bases for same; (4) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence supporting the objection; and (5) be postmarked no later than the Response Deadline. A Settlement Class member who wishes to submit an objection but who fails to comply with the procedures set forth herein and/or in the Class Notice shall be deemed not to have submitted an objection. Any attorney who intends to represent an objecting Settlement Class member at the Final Approval hearing must submit a Notice of Appearance to the Court and serve it on all Parties

on or before the Response Deadline. The Parties and their counsel agree not to take any action to encourage any Settlement Class member to object to the settlement.

- E. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to Settlement Class members shall contain a Notice of Estimated Settlement Award, in which shall be disclosed the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was gleaned from Good-West's records in order to calculate the Settlement Award, including their number of Workweeks worked during the Class Period and number of Pay Periods, if any, worked during the PAGA Period. Settlement Class members will have the opportunity, should they disagree with Good-West's records regarding the information stated in their Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with counsel for the Parties to determine whether an adjustment to the Settlement Class member's Settlement Award is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Award under the terms of this Settlement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member within two (2) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline, whichever is later, to submit an Exclusion Letter, Objection, or dispute, as applicable. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defense Counsel to provide notice of the proposed settlement.
- G. If ten percent (10%) or more of the total number of the Settlement Class Members submit timely and valid Opt-Out Requests, then Good-West shall have the option to void the Settlement in its sole discretion. To exercise this option, Good-West must send written notification to Class Counsel within fourteen (14) days of receiving a report from the Settlement Administrator following the Opt-Out Period Deadline of the total number of timely and valid Opt-Out Requests. If Good-West

chooses to exercise this option, the effect will be precisely the same as if Final Judgment did not occur, as discussed herein, and all Settlement Administration Costs incurred by the Settlement Administrator through that date will be paid by Defendant.

10. **Final Approval.** Following preliminary approval and the close of the period for submitting Exclusion Letters, Objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval of the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees, costs, Class Representative Incentive Award, PAGA civil penalties to the LWDA, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

If an appeal is filed and results in an order materially modifying, setting aside, or vacating any material portion of the Settlement, with the exception of any modification of the amount of attorneys' fees or costs to be paid to Class Counsel, or the amount of the Class Representative Incentive Award to be paid to the Class Representative, any Party adversely impacted by the order shall have the right, at its sole discretion, to treat such order as an event permanently preventing the occurrence of Final Judgment. To exercise this right, the Party must inform the other Party and the Settlement Administrator, in writing, of the exercise of this right, within fourteen (14) days of receiving notice of any order modifying, setting aside, or vacating any portion of the Settlement. Before either Party elects to exercise its right to treat such order as an event permanently preventing the occurrence of Final Judgment, that Party must meet and confer in good faith with the other Party to determine if an agreement can be reached modifying this Settlement to the mutual satisfaction of the Parties. If a Party chooses to exercise this right, all Settlement Administration Costs incurred by the Settlement Administrator through that date will be paid by such Party.

11. **Non-Admission of Liability.** Good-West denies liability as to the matters alleged in the Complaint. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. Good-West denies all claims as to liability, damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief as well as the class allegations asserted in the Action, as that term is defined herein. Good-West has agreed to resolve the Action via this Settlement, but to the extent this Settlement is deemed void or the Final Approval does not occur, Good-West does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural, merit, and factual grounds, including, without limitation, the ability to challenge class treatment on any grounds, as well as assert any and all other privileges and potential defenses. Plaintiff agrees not to argue or present any argument, and hereby waives any argument, that based on this Settlement, Good-West cannot contest class certification on any grounds whatsoever, or assert any and all other privileges or potential defenses if this Action were to proceed. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. If Final Approval does not

occur, the Parties agree that this Settlement Agreement is void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry into the Settlement shall remain subject to the provisions of California Evidence Code sections 1119 and 1152, and any other analogous rules of evidence that are applicable.

12. **Confidentiality.** Plaintiff and Class Counsel agree that, prior to filing a Motion for Preliminary Approval, they will not disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein, and except to Plaintiff's spouse or to his attorneys or tax preparers as necessary for those professionals to provide their professional services to Plaintiff.

13. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret and enforce this Settlement, to supervise all notices, the administration of the Settlement, and to hear and adjudicate any dispute arising from or related to the Settlement. The Parties agree that the Court has jurisdiction over the Settlement pursuant to California Code of Civil Procedure, Section 664.6.

14. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

15. **Enforcement Action.** In the event either Party brings an action to enforce the terms of this Settlement, the prevailing party in such action shall be entitled to recover his/its reasonable attorneys' fees and costs incurred.

16. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Good-West: Diana M. Estrada, Wilson, Elser, Moskowitz, Edelman & Dicker
LLP, 555 S. Flower Street, Suite 2900, Los Angeles, CA 90071;
diana.estrada@wilsonelser.com

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite
180, El Segundo, CA 90245; phaines@haineslawgroup.com

17. **Applicable Law.** All terms and conditions of this Settlement Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.

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

19. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

20. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

21. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

DATED: 7-26, 2021

Good-West Rubber Corp.

By: Christian Gooch

Its: President

DATED: _____, 2021

Ulisses Lopez

By: _____
Plaintiff and Class Representative

APPROVED AS TO FORM:

DATED: 7/26, 2021

WILSON ELSEER MOKOWITZ EDELMAN &
DICKER LLP

By: [Signature]
Diana M. Estrada
Attorneys for Defendant

DATED: _____, 2021

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff and the Settlement Class

19. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

20. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

21. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

DATED: _____, 2021

Good-West Rubber Corp.

By: _____

Its: _____

DATED: 07/23, 2021

Ulisses Lopez

By: 
Ulisses Lopez (Jul 23, 2021 15:52 PDT)
Plaintiff and Class Representative

APPROVED AS TO FORM:

DATED: _____, 2021

WILSON ELSEER MOKOWITZ EDELMAN &
DICKER LLP

By: _____
Diana M. Estrada
Attorneys for Defendant

DATED: July 23, 2021

HAINES LAW GROUP, APC

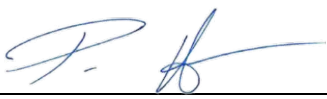
By: 
Paul K. Haines
Attorneys for Plaintiff and the Settlement Class

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ULISSES LOPEZ,

Plaintiff,

vs.

GOOD-WEST RUBBER CORP.

Defendants.

Case No. CIVDS2011219

**NOTICE OF PENDENCY OF CLASS ACTION
AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees hired directly by Good-West Rubber Corp. (“Good-West”) (i.e., not through a staffing company) and who worked for Good-West in California at any time from April 1, 2016 through June 11, 2021 (“Class Period”).

**PLEASE READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT.**

Why should you read this Notice?

The San Bernardino County Superior Court (“Court”) has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Ulisses Lopez v. Good-West Rubber Corp.*, San Bernardino County Superior Court Case No. CIVDS2011219 (the “Action”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from the Settlement. Good-West’s records show that you were employed directly by Good-West in California at some point between April 1, 2016 through June 11, 2021 and are therefore part of the proposed “Settlement Class.” The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Notice is to provide you with a brief description of the Action, to inform you of the terms of the proposed Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If final judgment is entered in this case, it will be posted to the Settlement Administrator’s website, www.phoenixclassaction.com.

What is this case about?

Plaintiff Ulisses Lopez (“Plaintiff”) has filed a lawsuit alleging that Good-West violated California law by: (i) failing to pay all overtime wages due; (ii) failing to pay at least the minimum wage for all hours worked; (iii) failing to provide meal periods; (iv) failing to authorize and permit rest periods; (v) failing to issue accurate itemized wage statements; (vi) failing to pay all wages owing upon separation of employment; and, as a result of the above, (vii) engaging in unlawful business practices. In addition, Plaintiff seeks recovery of derivative civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), interest, and attorneys’ fees and costs. Plaintiff is known as the “Class Representative.” Plaintiff’s attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

Good-West has denied and continues to deny that it has done anything wrong, and believes it has acted in compliance with all applicable laws and that Plaintiff’s claims have no merit. Good-West also denies that it owes any wages, restitution, penalties, or other damages. By agreeing to settle, Good-West is not admitting liability on any of the factual allegations or claims asserted in the Action or that the Action can or should proceed as a class action in a non-settlement context.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Good-West has concluded that it is in its best interests to settle the Action on the terms summarized in this Notice. After Good-West provided relevant

information to Class Counsel, the Settlement was reached after mediation and arm's-length negotiations between the parties.

The Class Representative and Class Counsel also support the Settlement. Among the reasons for support are the defenses to liability potentially available to Good-West, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Good-West, your decision about whether to participate in the Settlement will not affect your employment. California law and Good-West's company policies strictly prohibit unlawful retaliation. Good-West will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / the Settlement Class: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Tuvia Korobkin tkorobkin@haineslawgroup.com Alexandra R. McIntosh amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Good-West: WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP Diana M. Estrada diana.estrada@wilsonelser.com Jennifer A. Brody jennifer.brody@wilsonelser.com 555 S. Flower Street, Suite 2900 Los Angeles, California 90071 Tel.: (213) 443-5100 Fax: (213) 443-5101 www.wilsonelser.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court granted preliminary approval of the Settlement on behalf of a Settlement Class consisting of all current and former non-exempt employees hired directly by Good-West who worked for Good-West in California and at any time from April 1, 2016 through June 11, 2021. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release claims against Good-West as specifically described below.

Good-West has agreed to pay \$800,000.00 (the "Gross Settlement Amount") to fully resolve all claims in the Action, including claims by Settlement Class members, attorneys' fees, costs, settlement administration costs, PAGA civil penalties, and the Class Representative's enhancement award.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$8,500 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel will ask for fees of up to one-third of Gross Settlement Amount, currently estimated to be \$266,666.67, as reasonable compensation for the work Class Counsel performed, and will continue to perform, in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$35,000 for reimbursement of verified costs Class Counsel incurred in connection with the Action.

Class Representative Enhancement Award. Class Counsel will ask the Court to approve an enhancement award of \$5,000 to the Class Representative. This award is to compensate the Class Representative for his service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. The parties have agreed to allocate \$60,000 of the Gross Settlement Amount as alleged civil penalties for the settlement of Plaintiff's PAGA claim. Pursuant to the requirements of the PAGA, 75% of that amount, or \$45,000, will be paid to the California Labor & Workforce Development Agency ("LWDA"). The remaining \$15,000 has been designated as the "PAGA Amount" and will be paid to certain Settlement Class members as described below.

Calculation of Settlement Class Members' Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated to be approximately \$424,833.33. Together with the \$15,000 PAGA Amount, the total amount to be distributed to Settlement Class members is estimated to be \$439,833.33. Settlement Class members' payments will be calculated as follows:

- (i) Payment from NSA: The NSA will be distributed to all Settlement Class members, and will be allocated proportionally based on each Settlement Class member's total weeks worked for Good-West in California ("Workweeks") during the Class Period.
- (ii) Payment from PAGA Amount: In addition to the NSA, \$15,000 of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above, and will be allocated to all Settlement Class members who worked for Good-West in California at any time from April 3, 2019 to June 11, 2021 (the "PAGA Period"), in proportion to the number of pay periods that each Settlement Class member worked for Good-West in California during that time period.

Deposit of Gross Settlement Amount. Good-West will deposit the Gross Settlement Amount with the Settlement Administrator within 21 days of the Settlement becoming "Final" as that term is defined in the Settlement (i.e., within 21 days of final approval by the Court if no objections are filed, or, if objections are filed, when the Settlement can no longer be appealed).

Payments to Settlement Class Members: Settlement Class members payments, known as "Settlement Shares," will be mailed approximately 12 business days after Good-West deposits the Gross Settlement Amount with the Settlement Administrator.

Allocation and Taxes. For tax purposes, Settlement Awards shall be treated as follows: all amounts from the PAGA Amount will be treated as 100% penalties, and all amounts from the NSA will be treated as 1/3 wages, 1/3 penalties, and 1/3 interest. The Settlement Administrator will issue IRS forms W-2 for all amounts designated as "wages," and will issue IRS forms 1099 for all amounts designated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, Good-West and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement and the Settlement becomes final, and upon the Settlement being fully funded, the Class Representative and every member of the Settlement Class (except those who opt out) will release and discharge Good-West, and its DBAs and affiliates, including but not limited to Goodyear Rubber, Good-West Linings and Coatings, and Bear Products, and its current and former officers, directors, and agents, and the successors and assigns of all such entities and individuals ("Released Parties") from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, that are alleged in the Complaint, or that could have been alleged based on the facts alleged in the Complaint, and that arose from Settlement Class members' employment with Good-West, including claims for: (i) unpaid overtime wages under Cal. Labor Code §§ 204, 510, 558, 1194, 1198; (ii) unpaid minimum wages under Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1198; (iii) failure to authorize and permit rest periods under Cal. Labor Code §§ 226.7, 516, 558; (iv) failure to provide meal periods under Cal. Labor Code §§ 226.7, 512, 558; (v) failure to issue accurate itemized wage statements under Cal. Labor Code § 226; (vi) failure to timely pay final wages under Cal. Labor Code §§ 201-203; and all claims for unfair competition (Cal. Bus. & Prof. Code § 17200 et seq.) based on the above violations ("Class Released Claims"). The release of the Class Released Claims shall run for the duration of the Class Period. In addition, all Settlement Class members (regardless whether they opt out) who worked for Good-West in California at

any time during the PAGA Period shall release Good-West from any claims for civil penalties under the PAGA based on the above violations arising during the PAGA Period (“PAGA Released Claims”).

Conditions of Settlement. By granting preliminary approval of the Settlement, the Court has determined that the Settlement falls within the range of possible approval as fair, reasonable, and adequate. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement.

How can I claim money from the Settlement?

Do Nothing. You do not need to do anything if you want to receive payment from and participate in the Settlement. If you do nothing, you will be entitled to your Settlement Award based on the number of Workweeks you worked for Good-West in California during the Class Period, and the number of pay periods, if any, you worked for Good-West in California during the PAGA Period. Your estimated individual Settlement Award is included in the enclosed Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated herein.

Check Cashing Deadline and Uncashed Checks. You must cash or deposit your Settlement Award checks within 180 days from the date that the Settlement Administrator mails the check to you. If you do not cash or deposit your check within 180 days, your check will be voided and the funds from the check will be sent to *cy pres* recipient Bet Tzedek Employment Rights Project, a nonprofit that provides legal services to indigent clients.

What other options do I have?

Disputing Information in Notice of Estimated Settlement Award. Your estimated Settlement Award has been calculated and is included in the enclosed Notice of Estimated Settlement Award. As stated above, your estimated Settlement Award is based on the number of Workweeks you worked for Good-West in California during the Class Period, and the number of pay periods, if any, you worked for Good-West in California during the PAGA Period. The information gleaned from Good-West’s records regarding each of these factors is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.** The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the class Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion” letter or postcard, postmarked no later than **<<RESPONSE DEADLINE>>**, with your full name (as well as any former names you used while you were employed by Good-West), your current address, telephone number, last 4 digits of your social security number, and your signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE LOPEZ V. GOOD-WEST LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who submits a valid and timely Request for Exclusion shall, upon receipt, no longer be a Settlement Class member with respect to the class claims alleged, shall be barred from participating in the class portion of the Settlement, and shall receive no benefits from the class portion of the Settlement. Any person who submits a valid and timely Request for Exclusion will also lack standing to submit any objection to the Settlement. However, all Settlement Class members who worked for Good-West during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount.

Objecting to the Settlement. If you do not submit a Request for Exclusion, you have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written Objection to the Settlement Administrator. Your written Objection must include your full name (as well as any former names used while employed by Good-West), current address and phone number, last 4 digits of your social security number, the name and contact information of any attorney representing you, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection, including any supporting papers, briefs, written evidence, declarations, and/or other evidence. All objections or other correspondence must state the name and number of the case, which is *Ulisses Lopez v. Good-West Rubber Corp.*, San Bernardino County Superior Court Case No. CIVDS2011219. Any Objections must be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing. You have the right to appear either in person or through your own attorney at this hearing. If you wish to appear at the Final Approval Hearing and/or retain an attorney to represent you at the hearing, you must do so at your own expense. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Ulisses Lopez v. Good-West Rubber Corp.*, San Bernardino County Superior Court Case No. CIVDS2011219.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object. In other words, by submitting an Objection, you are not excluding yourself from the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department S-26 of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, California 92415. At the Final Approval Hearing, the Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of expenses, the incentive award to the Class Representative, and the Settlement administration costs. The Final Approval Hearing may be postponed without further notice to the Settlement Class. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing at their own expense.**

If you plan on attending the hearing or otherwise visiting the Court, please consult the Court's website, www.sb-court.org, for information regarding court operations during COVID-19 as well as face covering and social distancing requirements.

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 W. Third Street, San Bernardino, California 92415, during regular court hours. You may also contact the Settlement Administrator or Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT.

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

ULISSES LOPEZ v. GOOD-WEST RUBBER CORP.
SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVDS2011219

Please complete, sign, and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

Phone number (if you wish to be contacted by phone)

(III) Information Used to Calculate Your Estimated Settlement Award:

Based on information contained in Good-West Rubber Corp.'s ("Good-West") records:

- (a) you worked [REDACTED] Workweeks for Good-West in California between April 1, 2016 and June 11, 2021; and
- (b) you worked [REDACTED] pay periods for Good-West in California between April 3, 2019 and June 11, 2021.

Based on the above, your Settlement Award is estimated at \$ [REDACTED].

(IV) If you disagree with either of the items (a) - (b) in Section (III) above, please explain why in the space below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information gleaned from Good-West's records, Good-West's records will control unless you are able to provide documentation that establishes that Good-West's records are mistaken. If there is a dispute about whether Good-West's information or yours is accurate, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Class Action Settlement" that accompanies this Form. The Settlement Administrator's determination will be final.

Date: _____

Signature: _____

ANY DISPUTES (INCLUDING SUPPORTING DOCUMENTS) MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.

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Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ULISSES LOPEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

GOOD-WEST RUBBER CORP., a California
corporation; GOODWEST RUBBER
LININGS INCORPORATED, a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: CIVDS2011219

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1198);**
- (3) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (4) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (5) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) FALIURE TO TIMELY PAY ALL
WAGES AT TERMINATION OF
EMPLOYMENT (LABOR CODE §§
201-203)**
- (7) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200 *et seq.*); and**
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Ulisses Lopez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this Class Action Complaint (“Complaint”) against Good-West Rubber Corp., a
3 corporation; Goodwest Rubber Linings Incorporated, a California Corporation; and DOES 1 to
4 100, inclusive (collectively, “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under Business & Professions Code §
8 17200 *et. seq.*, Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
9 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”),
10 in addition to seeking declaratory relief and restitution. This Complaint is brought pursuant to
11 Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the
12 Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§
15 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in San
16 Bernardino County. Defendants own, maintain offices, transact business, have an agent or agents
17 within San Bernardino County, and/or otherwise are found within San Bernardino County, and
18 Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
22 applicable to each cause of action pled herein, Plaintiff was and is employed by Defendants as a
23 non-exempt employee. Plaintiff is a victim of Defendants’ policies and/or practices complained
24 of herein, lost money and/or property, and have been deprived of the rights guaranteed by Labor
25 Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et*
26 *seq.* (“PAGA”), and Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”),
27 and Wage Order 1, which sets employment standards for the manufacturing industry.

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1 4. Plaintiff is informed and believes, and based thereon alleges, that within the statute
2 of limitations for each cause of action pled herein and continuing to the present, Defendants did
3 (and continue to do) business by manufacturing various rubber products including but not limited
4 to, molding, extrusion, rubber sheeting, and roll covers and employs Plaintiff and other, similarly-
5 situated non-exempt employees within San Bernardino County and the state of California and,
6 therefore, were (and are) doing business in San Bernardino County and the State of California.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
11 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
12 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
14 unlawful employment practices, wrongs, injuries and damages complained of herein.

15 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

17 7. At all times herein mentioned, each of said Defendants participated in the doing
18 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants, and employees of each and every one of
20 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
21 were acting within the course and scope of said agency and employment. Defendants, and each
22 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
23 omissions complained of herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
28 members of the Classes.

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10. During Plaintiff's employment with Defendants, Defendants utilized a timekeeping system which resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, Plaintiff clocked in and out for his shifts by using a hand scanner and entering his employee ID number into a machine; however, although Defendants recorded employees' hours worked to the minute, Defendants only paid Plaintiff and other non-exempt employees in quarter-hour increments. Defendant's rounding and/or shaving of time entries was not even-handed over time, and has resulted in Plaintiff and other non-exempt employees being deprived of all earned wages, including minimum wages for all hours worked, and overtime wages on those occasions when they worked over eight hours in a workday and/or forty hours in a workweek.

11. Defendants' timekeeping policies/practices were also unlawful because Defendants failed to record Plaintiff's and other non-exempt employees' meal periods in their time records, in violation of Wage Order 1, Section 7(A)(3). Upon information and belief, Defendants instructed employees to clock out only if they left Defendants' premises, and when employees did not clock out for meal periods, Defendants made automatic deductions to Plaintiff's and other non-exempt employees' wages, including but not limited to automatic deductions of 30 minutes of pay for purported meal periods, regardless of whether Plaintiff and other non-exempt employees actually received a meal period of 30 minutes. As a result of these policies/practices, Plaintiff and other non-exempt employees were underpaid of all wages due, including overtime and minimum wages.

12. Defendants' meal period policies/practices fail to provide Plaintiff and other non-exempt employees with all legally compliant meal periods because they fail to provide Plaintiff and other non-exempt employees with a timely, 30-minute meal period commencing before the

1 end of the fifth hour of work, and/or a second 30-minute meal period for shifts of over 10.0 hours.
2 Specifically, Plaintiff's and other non-exempt employees' meal periods are regularly "late" (i.e.,
3 starting after the completion of the fifth hour of work). For example, Plaintiff and other non-
4 exempt employees often begin work at approximately 5:00 a.m., but are not provided a meal
5 period until well after 10:00 a.m. In addition, Plaintiff was often unable to take a full 30-minute
6 meal period, as evidenced by his timekeeping records. Further, Defendants' meal period
7 policies/practices failed to provide Plaintiff and other non-exempt employees with a second 30-
8 minute meal period on occasions where they worked over 10.0 hours in a workday. Defendants
9 have failed to compensate Plaintiff with the required meal period premium for each workday in
10 which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon
11 information and belief, during at least a portion of the putative class period, Defendants
12 maintained no payroll code for paying meal period premiums under Labor Code § 226.7.

13 13. Defendants' rest period policies/practices were also unlawful because Defendants'
14 policies/practices failed to authorize and permit Plaintiff and other non-exempt employees to take
15 a third rest period for all shifts worked over 10.0 hours. On those occasions where Plaintiff was
16 not provided with all legally compliant rest periods to which he was entitled, Defendants failed
17 to compensate Plaintiff with the required rest period premium for each workday in which he
18 experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and
19 belief, during at least a portion of the relevant time period, Defendants maintained no payroll code
20 or other mechanism for the payment of rest period premium wages under Labor Code § 226.7 in
21 the event that a legally compliant rest period was not provided to their non-exempt employees.

22 14. Defendants have also issued inaccurate wage statements to Plaintiff and other non-
23 exempt employees because, among other things, the wage statements issued do not include all
24 overtime and minimum wages earned, all hours worked, and fail to reflect meal and rest period
25 premium wages earned for all meal and rest period violations. In addition, the wage statements
26 issued to Plaintiff and other employees did not contain the name and/or address of the legal entity
27 that is the employer, in violation of Labor Code § 226(a)(8).
28

1 15. As a result of Defendants' failure to pay all overtime wages, minimum wages, and
2 meal and rest period premium wages owed, Defendants failed to timely pay Plaintiff and other
3 former employees all of their final wages at termination of their employment.

4 16. On April 1, 2020, Plaintiff filed a class action lawsuit in this Court alleging the
5 First through Sixth Causes of Action alleged herein. However, Plaintiff has not received a
6 conformed copy of that original complaint. Plaintiff is therefore filing the instant Complaint and
7 has defined the classes below to incorporate the limitations period established by his original
8 lawsuit (i.e., April 1, 2016 through the present). Plaintiff also filed a lawsuit under the Labor
9 Code Private Attorneys General Act on June 9, 2020, but has also not received a conformed copy
10 of that lawsuit. Accordingly, Plaintiff has incorporated the allegations and cause of action from
11 that lawsuit in this Complaint as well.

12 **CLASS ACTION ALLEGATIONS**

13 17. **Class Definitions:** Plaintiff bring this action on behalf of himself and the
14 following Classes pursuant to § 382 of the Code of Civil Procedure:

15 a. The Overtime Class consists of all of Defendants' current and former non-exempt
16 employees in California who worked more than 8 hours in a workday and/or more
17 than 40 hours in a workweek and: (i) had their timekeeping entries rounded and/or
18 (ii) had 30 minutes of time automatically deducted from their time records for a
19 purported meal period, at any time from April 1, 2016 through the present.

20 b. The Minimum Wage Class consists of all of Defendants' current and former non-
21 exempt employees in California who: (i) had their timekeeping entries rounded;
22 and/or (ii) had 30 minutes of time automatically deducted from their timekeeping
23 records for a purported meal period, at any time from April 1, 2016 through the
24 present.

25 c. The Rest Period Class consists of all Defendants' current and former non-exempt
26 employees in California who at least one shift in excess of 10.0 hours, at any time
27 from April 1, 2016 through the present.

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d. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours and/or (ii) worked at least one shift in excess of 10.0 hours, at any time from April 1, 2016 through the present.

e. The Wage Statement Class consists of (i) all members of the Overtime Class, Minimum Wage Class, Meal Period Class and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this action through the present; and/or (ii) all employees of Defendants who received a wage statement that did not contain the name and/or address of the legal entity that is the employer, at any time from April 1, 2019 through the present.

f. The Waiting Time Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class and/or Rest Period Class whose employment with Defendants ended at any time from April 1, 2017 through the present.

18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members, including, without limitation:

i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime Class and Minimum Wage Class for all hours worked;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

///

- 1 iii. Whether Defendants authorized and permitted all legally compliant rest periods to
2 members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
3 iv. Whether Defendants provided meal and/or rest period premium payments for non-
4 compliant meal and/or rest periods;
5 v. Whether Defendants furnished legally compliant wage statements to members of
6 the Wage Statement Class pursuant to Labor Code § 226; and
7 vi. Whether Defendants timely paid all final wages to members of the Waiting Time
8 Class pursuant to Labor Code §§ 201-202.

9 20. **Predominance of Common Questions:** Common questions of law and fact
10 predominate over questions that affect only individual members of the Classes. The common
11 questions of law set forth above are numerous and substantial and stem from Defendants' policies
12 and/or practices applicable to each individual class member, such as Defendants' payment of
13 overtime and minimum wages, rest period policies/practices, and meal period policies/practices.
14 As such, common questions predominate over individual questions concerning each individual
15 class member's showing as to their eligibility for recovery or as to the amount of their damages.

16 21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
17 Plaintiff was and is employed by Defendants as non-exempt employee in California during the
18 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
19 herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime and
20 minimum wages, was not authorized and permitted to take all legally-compliant rest periods, was
21 not provided all required meal periods, and was not provided with accurate wage statements.

22 22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
23 to represent fairly and adequately the interests of the members of the Classes. Moreover,
24 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
25 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
26 and-hour class actions in state and federal courts in the past and are committed to vigorously
27 prosecuting this action on behalf of the members of the Classes.

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23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous employment terms and conditions. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each Class member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 17 are maintainable under Cal. Code Civ. Proc. § 382.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 25. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
2 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
3 overtime hours worked, and provide a private right of action for the failure to pay all overtime
4 wages for overtime work performed.

5 26. At all times relevant herein, Defendants were required to properly compensate
6 non-exempt employees, including Plaintiff and Overtime Class members, for all overtime hours
7 worked per Labor Code §§ 510 and 1194 and Wage Order 1. Wage Order 1, § 3 requires an
8 employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay”
9 for work in excess of eight hours per workday and/or in excess of forty hours of work in the
10 workweek, and to pay double the employee’s regular rate of pay for work in excess of twelve
11 hours each workday and/or for work in excess of eight hours on the seventh consecutive workday
12 in a workweek. Defendants caused Plaintiff to work overtime hours, but did not pay Plaintiff or
13 Overtime Class members at the proper overtime or double-time rate of pay for such hours.

14 27. Defendants’ policy/practice of requiring overtime work and not paying at the
15 proper overtime rates for said work violates California Labor Code §§ 204, 210, 216, 510, 558,
16 1194, and 1198; and Wage Order 1.

17 28. The foregoing policies/practices alleged herein are unlawful and create entitlement
18 to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
19 amount of overtime wages, including interest thereon, statutory penalties, civil penalties,
20 attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558,
21 1194, and 1198; and Code of Civil Procedure § 1021.5.

22 **SECOND CAUSE OF ACTION**

23 **MINIMUM WAGE VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

25 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 30. Wage Order 1, § 4 and Labor Code §§ 1197 and 1182.12 establish employees’
27 right to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code
28 §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum

wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times, Defendants failed to conform its pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the Labor Code and Wage Order 1.

31. Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

32. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to Wage Order 1 § 20(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 *et seq.*; and damages and/or penalties pursuant to California Labor Code § 558(a).

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. Wage Order 1, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

35. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required and legally-compliant rest periods and failed to pay rest period premium wages when rest periods were not authorized and permitted.

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1 36. The foregoing violations create an entitlement to recovery by Plaintiff and Rest
2 Period Class members in a civil action for the unpaid rest period premiums owing, including
3 interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor
4 Code §§ 226.7, 516, 558, and Wage Order 1, and Civil Code §§ 3287(b) and 3289.

5 **FOURTH CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 failed in their affirmative obligation to provide their California non-exempt employees, including
11 Plaintiff and Meal Period Class members, with legally-compliant meal periods in accordance with
12 the mandates of the Labor Code and Wage Order 1, § 11. Despite Defendants' violations,
13 Defendants did not pay an additional hour of pay to Plaintiff and Meal Period Class members at
14 their regular rates of compensation, in accordance with Labor Code §§ 204, 210, 226.7, and 512.

15 39. As a result, Defendants are responsible for paying premium compensation for meal
16 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
17 pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 1, and Civil Code §§
18 3287(b) and 3289.

19 **FIFTH CAUSE OF ACTION**

20 **WAGE STATEMENT VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
25 and members of the Wage Statement Class with complete and accurate wage statements with
26 respect to their actual regular hours worked, total gross wages earned, all rates of pay, total net
27 wages earned, and the name and/or address of the legal entity that is the employer, in violation of
28 Labor Code § 226 *et seq.*

42. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all their overtime and minimum wages, meal period premium wages, rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data, as well as the failure to identify the address of the entity that is the employer.

43. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY FINAL WAGES

(AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

45. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

46. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and Waiting Time Class members all final wages due to them at their termination of employment, including, among other things, all earned overtime wages, minimum wages, and meal and rest period premiums owed.

47. Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and Waiting Time Class members all earned wages in a timely manner pursuant to Labor Code §§ 201-202. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

1 48. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
2 Time Class their earned wages upon separation from employment results in a continued payment
3 of wages up to thirty days from the time the wages were due. Therefore, Plaintiff and members
4 of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus
5 reasonable attorneys' fees and costs of suit.

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(AGAINST ALL DEFENDANTS)**

9 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 50. Defendants have engaged and continue to engage in unfair and/or unlawful
11 business practices in California in violation of California Business and Professions Code § 17200
12 *et seq.*, by failing to properly pay all minimum and overtime wages, failing to provide all required
13 meal periods and authorize and permit all required rest periods, failure to pay premium payments
14 for missed or non-compliant meal and rest periods, failure to issue accurate itemized wage
15 statements, and failure to pay all final wages due at the termination of employment.

16 51. Defendants' utilization of these unfair and/or unlawful business practices deprived
17 Plaintiff and continues to deprive members of the Classes of compensation to which they are
18 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
19 over Defendants' competitors who have been and/or are currently employing workers and
20 attempting to do so in honest compliance with applicable wage and hour laws.

21 52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
22 herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of
23 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
24 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

25 53. The acts complained of herein occurred within the last four years immediately
26 preceding the filing of Plaintiff's original lawsuit.

27 54. Plaintiff was compelled to retain the services of counsel to file this court action to
28 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf

1 of Defendants’ current non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys’ fees and costs,
3 which he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **EIGHTH CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 56. Defendants have committed Labor Code violations against Plaintiff and other
9 aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of the PAGA,
10 and acting on behalf of himself, other aggrieved employees, and the State of California, brings
11 this representative action against Defendants to recover civil penalties due to him, other aggrieved
12 employees against whom one or more of the violations has been committed, and the State of
13 California according to proof, pursuant to Labor Code § 2699, including, but not limited to: (1)
14 \$100 for each initial violation for each failure to pay each employee and \$200 for each subsequent
15 violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay
16 each employee, plus 25% of the amount unlawfully withheld; (2) \$50 for each initial violation
17 and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay
18 period; (3) \$100 for each initial violation and \$250 for each subsequent violation pursuant to
19 Labor Code § 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000
20 for each subsequent violation of Labor Code § 226, pursuant to Labor Code § 226.3 per employee
21 per pay period; and/or (5) \$100 for each initial violation and \$200 for each subsequent violation
22 per employee per pay period for those violations of the Labor Code for which no civil penalty is
23 specifically provided, based on the following Labor Code violations:

24 a. Failing to compensate Plaintiff and other aggrieved employees all overtime wages
25 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

26 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
27 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
28 1197, and 1198;

- c. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to pay all final wages to aggrieved former employees, in violation of Labor Code §§ 201-203;
- g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

57. On or about April 3, 2020, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under the PAGA with respect to violations of the California Labor Code identified in Paragraph 51 (a)-(h) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the PAGA with respect to these violations.

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
8. Upon the Fifth Cause of Action, for statutory penalties per Labor Code § 226;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties per Labor Code § 203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Class of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Bus. & Prof. Code § 17200 *et seq.*;
11. On the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) \$100 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100 for each initial violation and \$250 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000 for each subsequent violation of Labor Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100 for each initial

violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided;

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194 *et seq.*, 2699(g), and Code of Civil Procedure § 1021.5; and

14. For such other and further relief the Court may deem just and proper.

Dated: July 26, 2021
Respectfully submitted,
HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: July 26, 2021
Respectfully submitted,
HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff