

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is reached by and between Plaintiff Cheyenne Robles (“Robles” or “Plaintiff”), individually and on behalf of all Settlement Class Members, defined below, and Western Stone & Metal Corp., d/b/a Shane Co. (“Shane Co.” or “Defendant”) (Plaintiff and Defendant together, the “Parties”). Plaintiff and the Settlement Class are represented by Paul Haines, Fletcher Schmidt, and Alexandra McIntosh of Haines Law Group, APC (collectively “Class Counsel”).

Given the uncertainty of litigation, Plaintiff and Shane Co. wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Shane Co. agree as follows:

1. On February 26, 2020, Plaintiff filed a complaint (“Complaint”) against Shane Co. in the Superior Court of the State of California for the County of Contra Costa County, in a matter captioned *Robles, as an individual and on behalf of all others similarly situated, v. Western Stone & Metal Corp., a Colorado corporation; and DOES 1 through 100*, Case No. MSC20-00392 (“Lawsuit”). On May 28, 2020, Plaintiff amended her complaint by filing a First Amended Complaint (“FAC”). On September 14, 2020, Plaintiff filed a Second Amended Complaint (“SAC”) to add a Private Attorney General Act (“PAGA”) claim (the Complaint, the FAC, and the SAC together, the “Complaints”). Shane Co. has answered Plaintiff’s SAC, denying liability, denying that Plaintiff’s claims are amenable to certification as a class or collective action, and affirmatively stating that Shane Co. complied, at all times, with all applicable laws and regulations.

2. For the purposes of this Agreement only, Plaintiff and Shane Co. stipulate to provisional certification of a “Settlement Class” under California Rule of Court 3.769(d) as follows (each person in the Settlement Class, a “Settlement Class Member”):

All current and former non-exempt employees who worked for Defendant in California from February 26, 2016 until the date of preliminary approval (the “Class Period”).

The Parties agree that this provisional certification for purposes of settlement is not an admission that class certification is proper under California Rule of Court 3.764 or any state or federal law equivalent. If for any reason this Agreement is not approved or is terminated, this provisional 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.

3. Plaintiff and every Settlement Class Member (except those who opt out) will fully release and discharge Shane Co. and all of its past and present parent companies, controlling persons, subsidiaries, affiliates, directors, officers, agents, attorneys, employees, and benefit plans sponsored by any such entities (collectively “Released Parties”) of any and all claims and/or causes of action that were pled or could have been pled in the Lawsuit, including without limitation under federal, state, or common law, based on the factual allegations asserted in the Lawsuit (including without limitation those set forth in any of the Complaints filed in this Lawsuit or at the October 8, 2020 mediation of this Lawsuit), arising any time during the Class Period, including without limitation claims for (1) meal period violations (Labor Code §§ 226.7, 512, 558); (2) rest period violations (Labor Code §§ 226, et seq.); (3) waiting time penalties (Labor Code §§ 201-203); (4)

wage statement penalties (Labor Code §§ 226, *et seq.*); (5) unfair competition (Business & Professions Code § 17200, *et seq.*); (6) civil penalties under the Private Attorneys' General Act (Labor Code §§2698, *et seq.*), and including all claims which were or could have been brought in the Lawsuit based on the factual allegations asserted in the Lawsuit, and any and all other claims that could arise from the allegations asserted in the Lawsuit, including without limitation deriving from Plaintiff's allegations regarding unpaid and/or underpaid meal and rest break premiums, failure to provide all legally compliant meal and rest breaks, improper calculation of the regular rate of compensation for the purposes of meal and rest break premiums, timely payment of all wages including upon termination and/or separation from employment, and improper or deficient wage statements ("Released Claims"). With respect to the Released Claims, the Settlement Class Members shall release such claims to the fullest permissible scope.

4. Plaintiff further understands that Plaintiff shall be bound by a complete and general release of claims (except as may be prohibited by law, such as claims for workers' compensation benefits), and that Plaintiff's release includes known and unknown claims and Plaintiff is, as a result, 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.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete general release and discharge of all of Plaintiff's claims, Plaintiff expressly acknowledges that this settlement is intended to include in its effect, without limitation, all claims which Plaintiff does not know or suspect to exist in her favor at the time of execution hereof, and that the settlement contemplates the extinguishment of all such claims.

5. As consideration, Shane Co. agrees to pay a maximum amount of Six Hundred Thirty Thousand Dollars (\$630,000.00) (the "Gross Settlement Payment") as follows:

- A. The Gross Settlement Payment shall be deposited with the neutral third-party settlement administrator ("Settlement Administrator") within 30 days after Final Approval (which, for this purpose shall be defined as the later of: (1) the date on which any appeal might be filed or (2) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review). In the event that there are no objections to the Settlement (the filing of an objection being a prerequisite to the filing of an appeal), the Settlement shall be considered final as of the date the Court signs an Order granting final approval.
- B. The Gross Settlement Payment includes:
 - i. all payments (including interest) to the Settlement Class, inclusive of all employee payroll contributions, deductions, and withholdings required by applicable law;

- ii. a class representative enhancement payment to Plaintiff;
 - iii. all costs of the Settlement Administrator and settlement administration;
 - iv. Forty Thousand Dollars (\$40,000.00), which shall be allocated to settle any potential claims under PAGA, of which Thirty Thousand Dollars (\$30,000.00) shall be paid to the State of California Labor and Workforce Development Agency (“LWDA”) (the “LWDA Payment”), and Ten Thousand Dollars (\$10,000.00) shall be divided per capita and added to payments made to Settlement Class Members; and
 - v. all attorneys’ fees, costs and expenses related to the Lawsuit, including without limitation all such fees and costs incurred in documenting the settlement, securing the Court’s approval of the settlement, and obtaining a dismissal of the action with prejudice (as described below).
6. Payments to the Settlement Class Members will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Gross Settlement Payment the amounts approved by the Court for (i) the LWDA Payment, (ii) Class Counsel’s court-approved attorney’s fees and litigation costs, (iii) Plaintiff’s enhancement payment, and (iv) the Settlement Administrator’s fees and expenses. The remaining amount shall be known as the “Net Settlement Amount.”
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class Member’s individual settlement payment based on the following formula (each Settlement Class Member’s payment, an “Individual Settlement Payment”):
 - i. Wage Statement/PAGA Amount: Seven and a half percent (7.5%) of the Net Settlement Amount plus the Ten Thousand Dollars (\$10,000.00) payable to the Settlement Class Members as PAGA civil penalties shall be designated as the “Wage Statement/PAGA Amount.” Each participating Settlement Class Member who was employed by Defendant at any time between February 26, 2019 to the close of the Class Period, shall receive a portion of the Wage Statement/PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
 - ii. Waiting Time Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class Member who separated their employment from Defendant at any time between February 26, 2017 and the close of the Class Period.

- iii. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period. "Workweeks" shall mean the calculation of each Settlement Class Member's work start date or dates to work end date or dates during which the Settlement Class Member worked as a non-exempt employee, based on Defendant's records. Any weeks that a Settlement Class Member was not performing services for Defendant shall not be counted as Workweeks for purposes of calculating a Settlement Class Member's proportionate share of the settlement.
- C. Within 30 calendar days following Final Approval, the Settlement Administrator will prepare and mail each Individual Settlement Payment, less applicable taxes and withholdings, to eligible claimants. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports submitting copies to Shane Co.'s counsel.
- D. For purposes of calculating applicable taxes and withholdings, one-third of each Individual Settlement Payment is wages subject to W2 reporting and normal withholdings; the other two-thirds of each Individual Settlement Payment is designated as penalties and interest and will be reported on IRS Form 1099 with no withholdings. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each Settlement Class Member who receives an Individual Settlement Payment must negotiate (or cash) that check within 180 days from the date the Settlement Administrator mails it. The Parties agree that any funds payable to Settlement Class Members who cannot be located by the Class Administrator or whose checks were not cashed within 180 days after mailing will be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class Member to whom the check was issued, until such time that they claim their property.
- F. Defendant shall fully discharge its obligation to those Settlement Class Members to whom they will provide an Individual Settlement Payment through the mailing of the Individual Settlement Payment check, regardless of whether such checks are actually received and/or negotiated by Settlement Class Members.
- G. Neither Plaintiff nor Shane Co. 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.

7. Defendant will not object to a request for a total award of attorneys' fees of up to one-third of the Gross Settlement Payment, plus actual costs and expenses, which are not to exceed Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00). This award will cover any and all work performed and any and all costs incurred in connection with this Lawsuit, including without limitation: all work performed and all costs incurred to date; all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award allowed by the Court.

8. Defendant will not object to a request for a service award of Seven Thousand Five Hundred Dollars (\$7,500.00) to the named Plaintiff and class representative Cheyenne Robles for her time and risks in prosecuting this case. This award shall be reported on an IRS Form 1099 by the Settlement Administrator and shall be in addition to Plaintiff's share of the settlement as a Settlement Class Member.

9. Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator nor to Class Counsel seeking permission to pay Ten Thousand Dollars (\$10,000.00) in fees for its services from the Gross Settlement Payment. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Payment by Class Counsel only after checks have been mailed to the Settlement Class Members.

10. Upon execution of this Agreement, Plaintiff and Shane Co. shall apply to the Court for the entry of an Order:

- A. Provisionally certifying the Settlement Class for purposes of this Agreement only;
- B. Appointing Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Cheyenne Robles as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Form, and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

11. Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within seven (7) calendar days after entry of an order preliminarily approving this Agreement, Shane Co. will provide the Settlement Administrator with the names, last known addresses, and social security numbers (in electronic format) of the Settlement Class Members, including the dates during which each was employed in a job covered by the Settlement Class during the Class Period.
- i. Defendant represents that there were an estimated 20,833 aggregate workweeks as of August 6, 2020. For purposes of mediating this matter and assessing it for settlement, Plaintiff's expert extrapolated all analysis through November 30, 2020 and utilized a total estimated aggregate workweeks of 22,321 through November 30, 2020. If the number of workweeks worked during the Class Period is more than Ten Percent (10%) greater than the November 30, 2020 estimated aggregate workweek figure (i.e. more than 24,553 aggregate workweeks), then the Parties will meet and confer to discuss whether an increase in the Gross Settlement Payment is warranted and necessary and Plaintiff has the discretionary option to terminate this Agreement by communicating that decision to both the Settlement Administrator and Defendant, but Defendant can preempt Plaintiff's right to terminate the Agreement by electing, at Defendant's sole discretion, either (a) to increase the Gross Settlement Payment on a proportional basis (e.g., if there was a Twelve Percent (12%) increase in the number of workweeks, Defendant shall increase the Gross Settlement Payment by Twelve Percent (12%)), or (b) to end the Class Period as of the last date prior to the number of workweeks exceeding 24,553.
- B. Within seven (7) calendar days from receipt of this information, the Settlement Administrator will (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 address of any Settlement Class Member for whom an updated address was found through the NCOA search; (iii) calculate the Individual Settlement Payments for each Settlement Class Member; and (iv) mail (or send to any forwarding address provided) the Notice of Settlement Award ("Notice") (**Exhibit A**) to the Settlement Class Members and retain proof of mailing.
- C. Any Notice 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 five (5) business days of receiving the returned Notice. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice to the Settlement Class Member immediately, and in any event within five (5) 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 is re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days

after the Response Deadline to opt-out, object, or dispute their Individual Settlement Payment. Notices that are re-mailed shall inform the recipient of this adjusted deadline.

D. Settlement Class Members who wish to opt out must complete and deliver a proper request for exclusion to the Settlement Administrator within sixty (60) calendar days of mailing (the “Response Deadline”).

i. If more than Five Percent (5%) of all Settlement Class Members exclude themselves, Shane Co. has the discretionary option to terminate this Agreement by communicating that decision to both the Settlement Administrator and Class Counsel. Termination under this paragraph will nullify this Agreement and the Parties will occupy the same legal posture that they occupied prior to the agreement to settle. Should Shane Co. exercise this right, Shane Co. shall be solely responsible for all costs incurred by the Settlement Administrator through the date that Shane Co. communicates its decision to terminate the Agreement to the Settlement Administrator and Class Counsel.

E. Settlement Class Members who do not opt out may object to this Agreement as explained in the Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Shane Co.’s counsel as well as filing those objections collectively with the Court). To be valid, any objection must be postmarked no later than the Response Deadline.

F. Notice of Individual Settlement Payment / Disputes. Each Notice mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member’s estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class Members will have the opportunity, should they disagree with Shane Co.’s records regarding the information stated in the Notice, 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 the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.

12. Following preliminary approval and the close of the period for filing requests for exclusions or objections under this Agreement, Plaintiff shall apply to the Court for entry of an Order:

A. Granting final approval to the Agreement and adjudging its terms to be fair, reasonable, and adequate;

- B. Approving Class Counsel's application for attorneys' fees and costs, Plaintiff's enhancement payment, settlement administration costs, and payment to the LWDA for its share of PAGA penalties; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

13. Nothing in this Agreement shall operate or be construed as an admission of any liability or that class certification is otherwise appropriate. Each of the Parties has entered into this Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code section 1152, this Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Agreement. If Final Approval does not occur, the Parties agree that this Agreement is void, but remains protected by California Evidence Code section 1152.

14. The Parties and all of their respective counsel agree that they will not issue any press release, initiate any contact with the press, respond to any press inquiry, or have any communication with the press or general public about this case or the fact, amount, or terms of this Agreement. Prior to the Notice mailing to Settlement Class Members, the Parties and their counsel will respond to any inquiries from putative Settlement Class Members with only a statement that a settlement has been reached and that the details will be communicated in a forthcoming court-approved notice. After the mailing of the Notice, any such inquiries will be handled only by referring the Settlement Class Member to the Settlement Administrator.

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

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

if to Shane Co.: Michelle Strowhiro, McDermott Will & Emery LLP, 2049 Century Park East, Suite 3200, Los Angeles, CA 90067, mstrowhiro@mwe.com;

if to Plaintiff: Fletcher Schmidt, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245, fschmidt@haineslawgroup.com.

17. This 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.

18. This 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.

[SIGNATURE PAGE FOLLOWS]

DATED:

Western Stone & Metal Corp, d/b/a Shane Co.

By: _____
Its: _____
Defendant

DATED:

MCDERMOTT WILL & EMERY LLP

By: _____
Michelle S. Strowhiro, Esq.
Counsel for Defendant

DATED: *NOV. 30, 2020*

HAINES LAW GROUP, APC

By:  _____
Fletcher Schmidt, Esq.
Counsel for Plaintiff

DATED: *11/30/2020*

Cheyenne Robles

By:  _____
Plaintiff and Settlement Class Representative

DATED: November 25, 2020

Western Stone & Metal Corp, d/b/a Shane Co.

DocuSigned by:



By: Martha LaCroix

Its: EVP, Chief Human Resources Officer
Defendant

DATED: November 25, 2020

MCDERMOTT WILL & EMERY LLP

By: 

Michelle S. Strowhiro, Esq.
Counsel for Defendant

DATED:

HAINES LAW GROUP, APC

By: _____
Fletcher Schmidt, Esq.
Counsel for Plaintiff

DATED:

Cheyenne Robles

By: _____
Plaintiff and Settlement Class Representative