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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

CHEYENNE ROBLES, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

WESTERN STONE & METAL CORP., a
Colorado corporation; and DOES 1 through
100,

Defendants.

Case No.: MSC20-00392

*[Case assigned for all purposes to the Hon.
Edward G. Weil, Dept. 39]*

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: TBD

Time:

Dept.: 39

Action Filed: February 26, 2020

Trial Date: None Set

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I, Fletcher W. Schmidt, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiff proposed Class Representative Cheyenne Robles (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice law in that Court. I have personal knowledge of the facts stated in this declaration and could testify truthfully to them if called upon to do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum* and was awarded membership in the Order of the Coif. Since graduating from law school, I worked as a law clerk for the law firm of Tredway, Lumsdaine & Doyle, where I was part of the legal team for two class actions, including one wage and hour class action in Los Angeles Superior Court. From August 2013 to March 2016, I worked as an associate attorney at Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in Pennsylvania state and federal court. I am currently responsible for managing a caseload of over 30) active wage and hour class actions in which I am integrally involved in all aspects of litigation.

4. The following is a non-exhaustive list of class action settlements in which I have served as Class Counsel, and which have been granted final approval:

- *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);

- *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
- *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
- *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *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 (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016);
- *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016);
- *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016);
- *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375

for work performed in 2013, 2014, 2015, and 2016);

- *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016);
- *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- *Khosravi v. Enterprise Rent-A-Car Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- *Nieves v. Ta Chen International, Inc.*, Case No. BC609005, Superior Court of California, County of Los Angeles, Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Cluster presiding (approved at an hourly rate of \$425 for work performed in 2017 and 2018);
- *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior Court of California, County of Orange, Honorable William D. Cluster presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018);
- *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Randall J. Sherman presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018);
- *Sandra Zinnerman v. Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California, County of Los Angeles, Honorable Maren

1 E. Nelson presiding (approving an hourly rate of \$425 for work performed in 2016,
2 2017, and 2018);

- 3 • *Tina Arellano v. Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles
4 County Superior Court, Honorable Daniel J. Buckley, presiding;
- 5 • *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County
6 Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of
7 \$475 for work performed in 2017, 2018 and 2019);
- 8 • *Maria C. Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case No.
9 BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle, presiding
10 (approving an hourly rate of \$475 for work performed in 2018 and 2019);
- 11 • *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles
12 County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
13 rate of \$595 for work performed in 2018, 2019 and 2020); and
- 14 • *Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San Diego
15 County Superior Court, Honorable Timothy Taylor, presiding (approving an hourly
16 rate of \$595 for work performed in 2017-2020).

17 5. I have also moved to certify and have received an order certifying a class action
18 and/or conditionally certifying a collective action as Class Counsel in the following cases:

- 19 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-
20 OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A.
21 Andler presiding (certifying a class of employees who were misclassified as
22 independent contractors);
- 23 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx),
24 United States District Court, Central District of California, Honorable Judge Beverly
25 Reid O'Connell presiding (conditionally certifying an unpaid FLSA overtime wage
26 class);
- 27 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
28 States District Court, Central District of California, Honorable Judge John F. Walter

presiding (certifying a rest period violation class and conditionally certifying a 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 Judge Jennifer L. Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster presiding (certifying unpaid overtime wage class and waiting time penalty class);
- *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Glenda Sanders presiding (certifying five separate classes for claims for unpaid wages, unreimbursed expenses, failure to authorize and permit rest periods, and derivative claims);
- *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); and
- *Staublein v. Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn presiding (certifying a wage statement class).

6. In 2018, 2019, and 2020, Thomson Reuters and Los Angeles Magazine recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern California each year.

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1 7. As counsel for Plaintiff, I have been intimately involved in all aspects of this
2 litigation from its inception and believe that the proposed Settlement is an excellent result for the
3 Class Members.

4 8. Shane Co. is one of the largest privately owned jewelers in the United States with
5 20 retail stores across the Country, including four stores within California. Plaintiff, like all other
6 Settlement Class Members, worked for Shane Co. as a non-exempt employee in California, and
7 worked for Shane Co. from approximately May 2016 to approximately November 19, 2019.

8 9. Plaintiff alleges that Shane Co. failed to provide employees with full,
9 uninterrupted 30-minute meal periods before the end of the fifth hour of work and failed to
10 provide second meal periods when employees worked in excess of 10.0 hours. Plaintiff further
11 alleges that Shane Co. maintained an unlawful policy of only paying employees a meal period
12 premium when the employee's meal period commenced after the end of the sixth hour of work,
13 rather than in all instances in which the employee's meal period commenced after the end of the
14 fifth hour of work in violation of California law. Additionally, in those instances where Shane
15 Co. did actually pay its employees a meal period premium, Plaintiff alleges that Shane Co.
16 incorrectly paid the meal period premium at the employees' base hourly rate of pay rather than
17 the employees' "regular rates of compensation", which were higher due to their receipt of non-
18 discretionary bonuses (hereinafter "incentive pay"). Based on the records provided by Shane Co.
19 and Plaintiff's expert's analysis, Plaintiff estimated Shane Co.'s potential exposure for meal
20 periods at \$233,550 (calculated as follows: (13,214 non-compliant meal periods – 3,693 meal
21 period premiums paid) x \$24.53 average premium). Plaintiff discounted Shane Co.'s maximum
22 exposure by 50% for the risk of non-certification and 35% for the risk of being unsuccessful on
23 the merits or obtaining reduced damages, to arrive at an estimated exposure of \$75,904.

24 10. In response, Shane Co. contends that it has always provided employees with
25 legally-compliant first and second meal periods and that any meal periods that did not meet that
26 standard were solely the result of employee choice (not Shane Co.'s policy/practice). Shane Co.
27 argues that employees, despite being relieved for their meal periods, often requested to take their
28 meal periods at a later time to complete sales, and that under *Brinker* it is only required to

1 “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, which Shane
2 Co. contends it has always done. Shane Co. maintains that employees voluntarily waived their
3 second meal period when they worked shifts in excess of 10.0 hours (but less than 12.0 hours).
4 Shane Co. further contends that it pays meal period premium wages to employees who are not
5 provided full, uninterrupted meal periods, per Labor Code section 226.7 and that it is not required
6 to include incentive pay in its calculation of the “regular rate of compensation” for the purposes
7 of meal and rest period premiums. Shane Co. argues that although this is an open issue that is
8 currently being reviewed by the California Supreme Court in *Ferra v. Loews Hollywood Hotels*,
9 the prevailing Court of Appeals’ decision found that employers are not required to include non-
10 discretionary bonuses in its calculation of the “regular rate of compensation” for the purposes of
11 meal and rest period premiums. Finally, Shane Co. contends that Plaintiff’s meal period claim is
12 not suited for class certification as individual inquiries would be required to assess which
13 employees received non-compliant meal periods or missed second meal periods, how many meal
14 periods were non-compliant or missed, and the reasons why a particular individual recorded a
15 non-compliant meal period or missed a meal period on a particular shift.

16 11. Plaintiff alleges that Shane Co. maintained an unlawful written rest period policy
17 which allows managers and supervisors to require employees to remain on premises during rest
18 periods in violation of California law. Plaintiff further alleges that, in practice, Shane Co. enforced
19 this policy by requiring employees to remain on-premises throughout the entirety of their shift
20 when the stores would conduct inventory. Additionally, even on days when employees were able
21 to leave the premises, Plaintiff alleges that Shane Co. failed to authorize and permit Plaintiff and
22 other non-exempt employees to take all duty-free 10-minute rest periods for every four hours
23 worked, including third rest-periods on shifts in excess of 10.0 hours, and failed to pay employees
24 rest period premiums at the employees applicable “regular rate of compensation.” Based on
25 Plaintiff’s testimony that she was not provided with at least one legally compliant rest period at
26 least twice per workweek (or 40% of her shifts), Plaintiff calculated Shane Co.’s potential liability
27 for rest period violations as \$982,402 (calculated as follows: ((101,625 shifts in excess of 3.5+
28 hours x 40% violation rate) – 601 rest period premiums paid) x \$24.53 average premium).

1 Plaintiff discounted Shane Co.'s maximum exposure by 60% for risk of non-certification and
2 40% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$235,776.

3 12. Additionally, based on the records provided by Shane Co., Plaintiff's expert
4 determined that Shane Co. underpaid employees approximately \$6,563.36 due to its failure to
5 include the value of its non-discretionary bonuses in the regular rate of pay. Plaintiff discounted
6 the potential liability by 10% for a risk of non-certification and by 50% for the risk of losing on
7 the merits, to arrive at an estimated exposure of \$2,954.

8 13. Shane Co. contends that it authorized and permitted all legally required rest
9 periods to employees, and in practice, employees may leave the premises during rest periods.
10 Shane Co. also maintains that its written rest period policy specifically authorizes third rest
11 periods on shifts in excess of 10.0 hours. Additionally, Shane Co.'s written rest period policy
12 merely indicated that managers and supervisors "*may*" ask that employees remain on premises
13 during rest periods, but that it did not do so across the board as a matter of policy, meaning that
14 individualized inquiries would be required to determine whether an employee was in fact asked
15 to remain on the premises, thus undermining class certification. Shane Co. also contends that it
16 pays rest period premium wages to employees who are not permitted to take all rest periods,
17 pursuant to the applicable wage order. Shane Co. also contends that it properly paid rest period
18 premiums at the employees' base rate of compensation and is not required to include non-
19 discretionary bonuses in its calculation of the regular rate of compensation for the purposes of
20 rest period premiums as stated previously. As to certification, Shane Co. argues that Plaintiff's
21 rest period claim would not be amenable to class treatment, since individual inquiries would be
22 required to determine which employees failed to take rest periods, how many of these rest periods
23 each individual failed to take, and the reasons why each individual did not take a rest period on a
24 particular shift.

25 14. As a result of these alleged substantive violations, Plaintiff contends that Shane
26 Co. faces waiting time liability for its failure to pay employees all final wages upon their
27 separation of employment as well as derivative wage statement liability for its failure to issue
28 accurate wage statements and civil penalties under PAGA based on the Labor Code violations

described above. Additionally, Plaintiff alleges that Shane Co. issued facially deficient wage statements which fail to list the hourly rates and the corresponding number of hours worked for payments denoted as “Bonus OT”.

15. According to the data produced by Shane Co., approximately 166 putative class members separated their employment with Shane Co. during the 3-year time period associated with waiting time penalties. Plaintiff therefore calculated Shane Co.’s maximum waiting time penalty exposure at \$977,242 (166 former employees x \$24.53 average hourly rate x 8 hours per day x 30 days). Plaintiff discounted the value of this claim by 60% for the risk of non-certification of the underlying claims, and 80% for a risk of being unsuccessful on the merits (including a failure to establish wilfulness), for an estimated recovery on this claim of \$78,179.

16. According to the data produced by Shane Co., 136 putative class members received 3,954 wage statements during the 1-year relevant time period associated with wage statement penalties. Of those 3,954, only 2,189 wage statements failed to include the applicable hourly rate for “Bonus OT” as well as the corresponding number of “Bonus OT” hours worked in violation Labor Code § 226(a). Plaintiff calculated Shane Co.’s maximum wage statement exposure at \$388,600 (calculated as follows: ((136 “initial” violations x \$50) + (3,818 “subsequent” violations x \$100)). Plaintiff discounted the value of this claim by 10% for the risk of non-certification of the underlying claims and discounted 40% for a risk of being unsuccessful on the merits, for an estimated exposure of \$209,844.

17. The success of Plaintiff’s PAGA claim is wholly dependent upon the success of her underlying claims occurring within the one-year statute of limitations applicable to the PAGA. Assuming that Plaintiff could prove at least one underlying Labor Code violation in each pay period within the PAGA period, Plaintiff estimates Shane Co.’s maximum PAGA exposure at \$395,400 (calculated from 3,954 pay periods at \$100 per violation). Plaintiff recognizes that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. Plaintiff discounted the maximum figure by 50% for the risk of being unable to proceed on a representative basis and an additional 75% to account for the likelihood of this Court reducing penalties, to arrive at an estimated exposure of \$49,425.

1 18. Shane Co. argues that the alleged wage statement violations were not “knowing
2 and intentional,” and that Plaintiff could not show she “suffer[ed] injury,” as required by Labor
3 Code section 226(e) for imposition of penalties. Shane Co. contends that it possesses strong, good
4 faith defense to Plaintiff’s underlying claims, thus precluding recovery of waiting time penalties
5 (which are only available for the “willful” failure to pay wages). Shane Co. also contends that
6 Plaintiff’s meal and rest period claims cannot support a claim for waiting time penalties. Shane
7 Co. also maintains that, given its good-faith defenses, this Court would exercise its discretion to
8 substantially reduce any PAGA penalties if it were to find Johns Manville liable for any of
9 Plaintiff’s underlying claims.

10 19. Using these estimated figures for each of the claims described above, Plaintiff
11 predicts that a possible recovery for the Settlement Class would be approximately \$652,082. The
12 proposed recovery to the Settlement Class of \$630,000 is approximately 97% of Plaintiff’s
13 projected potential recovery, while avoiding the further expense and serious risk of continuing
14 towards trial.

15 20. In connection with mediation but before commencing formal discovery, Shane Co.
16 provided Plaintiff with timekeeping and payroll data for 20% of the putative class. Shane Co. also
17 produced relevant meal and rest period policies in effect during the Class Period as well as other
18 relevant datapoints necessary to extrapolate sampled documents to cover the entire putative class.
19 Plaintiff, with the help of her retained expert, conducted an analysis of this data and created a
20 comprehensive damages model to calculate the likely exposure that Shane Co. faced on each
21 claim.

22 21. On October 8, 2020, the Parties participated in a mediation with Steven G. Mehta,
23 Esq., a highly respected wage and hour class action mediator. During mediation, the Parties
24 exchanged divergent views on Shane Co.’s liability and exposure valuations, their legal positions,
25 and the likelihood of certification of Plaintiff’s claims. With the help of Mr. Mehta, the Parties
26 reached a class-wide resolution at the conclusion of the mediation. A true and correct copy of the
27 Settlement Agreement (“Settlement Agreement”) is attached hereto as **Exhibit 1**. A true and
28 correct copy of the proposed Class Notice is attached hereto as **Exhibit 2**.

1 22. If the Court preliminarily approves this settlement, Shane Co. will pay a Gross
2 Settlement Payment of \$630,000.00. After deducting amounts for court-approved attorneys' fees
3 and costs, Plaintiff's enhancement payment, Settlement Administrator costs, and the PAGA
4 payment to the LWDA, the Settlement requires Shane Co. to pay the Net Settlement Amount of
5 approximately \$345,000 to the Settlement Class. Shane Co.'s records indicate that there are
6 approximately 261 potential Settlement Class members who worked a combined 20,833
7 workweeks during the Class Period. Based on the Net Settlement Amount allocations,
8 participating employees will receive, on average, a payment of approximately \$1,321.84.

9 23. As part of the Settlement, Plaintiff will apply for an enhancement payment at the
10 time of seeking final approval of the Settlement in the total amount of \$7,500.00 for her service
11 to the Settlement Class and general release of all claims (known or unknown) against Shane Co.
12 Plaintiff's enhancement payment is intended to recognize the significant benefits conferred upon
13 the Settlement Class due to the time and effort that Plaintiff expended on behalf of the Settlement
14 Class, including providing factual information and documents to her attorneys, identifying
15 potential witnesses, participating in meetings with her attorneys to discuss the claims and theories
16 at issue in the litigation, responding to Defendant's informal discovery requests, as well as the
17 significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, as
18 well as the fact that Plaintiff agreed to a general release of all claims subject to a waiver of
19 California Civil Code section 1542.

20 24. My firm will also apply for an attorneys' fee award of \$210,000.00 (one-third of
21 the Class Settlement Amount), and up to \$27,500.00 in verified costs. My firm incurred
22 substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims,
23 conducting legal research and analysis, reviewing documents and data produced by Shane Co.,
24 responding to Shane Co.'s informal discovery requests, building a comprehensive damages
25 model, preparing for and attending mediation, negotiating and preparing the long-form Settlement
26 Agreement, preparing this motion for preliminary approval, and otherwise litigating the case. My
27 firm will also expend future attorney time in attending the hearing on this Motion, overseeing the
28

1 notice process, fielding questions from Settlement Class Members, and drafting the Motion for
2 Final Approval along with supporting documents, and attending the Final Approval Hearing.

3 25. Concurrently with the filing of this motion, Plaintiff provided notice of the
4 proposed Settlement to the LWDA. Attached hereto as **Exhibit 3** are true and correct copies of
5 Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

6 I declare under penalty of perjury under the laws of California and the United States that
7 the foregoing is true and correct. Executed on January 5, 2021, at El Segundo, California.

8 
9 _____
10 Fletcher W. Schmidt

EXHIBIT 1

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*

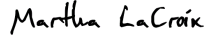
Cheyenne Robles

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

EXHIBIT 2

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

A proposed settlement (the “Settlement”) has been reached in the class action lawsuit entitled *Cheyenne Robles v. Western Stone & Metal Co., d/b/a Shane Co.*, Superior Court of California, County of Contra Costa (“Contra Costa Superior Court”), Case No. MSC20-00392 (the “Litigation”). Because your rights will be affected by this Settlement, it is important that you read this Notice carefully.

As explained in more detail below, current and former non-exempt employees who worked for Western Stone & Metal Co. d/b/a Shane Co. (“Shane Co.” or “Defendant”) in California between February 26, 2016 and the date of preliminary approval (“Class Members”) shall automatically receive a portion of the Settlement unless they request exclusion from the Settlement.

A. PURPOSE OF THIS NOTICE

The Contra Costa Superior Court has certified, for settlement purposes only, the following class (the “Class”) of current and former employees of Shane Co.: “All current and former non-exempt employees who worked for Defendant in California from February 26, 2016 until the date of preliminary approval.” According to Shane Co.’s records, you are a Class Member.

The purpose of this notice is to provide you with a brief description of the Litigation, to inform you of the terms of the 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.

B. DESCRIPTION OF THE LITIGATION

On February 26, 2020, in Case No. MSC20-00392, Plaintiff Cheyenne Robles (“Plaintiff”) filed the Litigation. The Litigation alleges 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 (B&P Code § 17200, et seq.); and (6) civil penalties under Private Attorneys General Act (Labor Code §§26988, et seq.).

Shane Co. denies Plaintiff’s claims and contends that it has not violated any laws and that Class Members were provided with all required meal and rest periods, were timely paid wages upon termination, and were provided accurate wage statements. Shane Co. also contends that the Litigation is not suitable for class action treatment.

This Settlement is the result of arms-length negotiations between Plaintiff and Shane Co. Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances. Please be advised that the Contra Costa Superior Court has not ruled on the merits of Plaintiff’s claims or Shane Co.’s defenses.

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

If you are still employed by Shane Co., your decision about whether to participate in the Settlement will not affect your employment. California law and Shane Co. policy strictly prohibit unlawful retaliation. Shane Co. will not take any adverse employment action against or otherwise target, retaliate,

or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

The attorneys for the Class in the Litigation (“Class Counsel”) are:

Haines Law Group, APC
Paul K. Haines
Fletcher W. Schmidt
Alexandra R. McIntosh
2155 Campus Drive, Suite 180
El Segundo, California 90245
Telephone: (424) 292-2350
Facsimile: (424) 292-2355

The Attorneys for Defendant Shane Co. are:

Michelle S. Strowhiro, Esq.
Marjorie C. Soto, Esq.
McDermott Will & Emery LLP
2049 Century Park East, 32nd Floor
Los Angeles, California 90067
Telephone: (310) 277-4110
Facsimile: (310) 277-4730

On [Date], the Court granted preliminary approval of the proposed Settlement. The Court will decide whether to give final approval to the proposed Settlement at a hearing that is currently scheduled to take place on [Date]. See Section H below for details.

C. SUMMARY OF TERMS OF THE PROPOSED SETTLEMENT

Subject to Court approval, the essential terms of the Settlement are as follows:

- Shane Co. shall pay a maximum sum of six hundred and thirty thousand dollars (\$630,000.00) that shall be referred to herein as a “Gross Fund Value” or “GFV.” The payment of the GFV shall settle all pending issues between the Releasees (which are Shane Co.’s past and present parent companies, controlling persons, subsidiaries, affiliates, directors, officers, agents, attorneys, employees, and benefit plans sponsored by any such entities) and the Class Members, including, but not limited to, all payments of class claims, payment to the Labor Workforce Development Agency (“LWDA Payment”), Claims Administration Fee, Class Counsel’s Attorneys’ Fees, Class Counsel’s Attorneys’ Costs, and a named plaintiff Service Award. The “Net Fund Value” or “NFV” shall mean the GFV minus the Claims Administration Fee, Attorneys’ Fees, Attorneys’ Costs, LWDA Payment, and Service Award. The following deductions from the GFV will be requested by the Parties:
 - Claims Administration Fee. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$10,000.00 from the GFV to pay the Settlement administration costs.
 - Attorneys’ Fees and Costs. Class Counsel have been prosecuting the Litigation on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the

actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the GFV. Settlement Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the GFV (which is currently estimated to be \$210,000.00) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Litigation through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$27,500.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

- Class Representative Settlement Award. Class Counsel will ask the Court to award \$7,500.00 to Plaintiff as a Class Representative Settlement Award. This is meant to compensate Plaintiff for her service and extra work provided on behalf of the Settlement Class Members.
- PAGA Payment to the State of California. The parties have agreed to allocate \$40,000.00 of the GFV as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$30,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$10,000.00) will be payable to the Settlement Class members as part of the Net Settlement Amount as the "PAGA Amount."
- Class Members shall automatically receive a settlement payment unless they request exclusion from the Settlement pursuant to Section E below.
- The amount of your approximate settlement payment, as well as the number of workweeks used to calculate your entitlement, are pre-printed on this Notice, below – see Section D. The period used for calculating shares is February 26, 2016 to <<PRELIM APPROVAL DATE>> (the "Class Period"), and shall be calculated as follows:
 - Wage Statement/PAGA Amount: Seven and a half percent (7.5%) of the NFV plus the portion of the NFV that is the PAGA payment payable to the Class Members as PAGA civil penalties shall be designated as the "Wage Statement/PAGA Amount." Each participating 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.
 - Waiting Time Amount: Fifteen percent (15%) of the NFV shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Class Member who separated their employment from Defendant at any time between February 26, 2017 and the close of the Class Period.
 - The remainder of the NFV will be distributed to each participating Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining NFV by a fraction, the numerator of which is the 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 Class Members during the Class Period.
 - "Workweeks" shall mean the calculation of each Class Member's work start date or dates to work end date or dates during which the Class Member worked as a non-exempt employee, based on Defendant's records. Any weeks that a Class Member was not performing services for Defendant shall not be counted as Workweeks for purposes of calculating a Class Member's proportionate share of the settlement.
- For purposes of tax treatment, the settlement payment to each Class Member will be allocated as one-third wages, and two-thirds penalties interest. You will receive a W-2 for the wage allocation and a 1099 for the balance.

- This GFV is non-reversionary. The Settlement shall become effective upon the entry of an Order granting final approval of the settlement (“Effective Date”). Payment will be provided by Shane Co. within thirty (30) calendar days after 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.
- Upon final approval by the Court, each Class Member who has not submitted a timely and valid Request for Exclusion will release, to the extent permitted by law, Shane Co. and the Releasees from any and all claims and/or causes of action that were pled or could have been pled, including without limitation under federal, state, or common law, based on the factual allegations asserted in the Litigation, 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 (B&P Code § 17200, et seq.); (6) civil penalties under Private Attorneys General Act (Labor Code §§ 26988, et seq.), and including all claims which were or could have been brought in the Litigation based on the factual allegations asserted in the Litigation, and any and all other claims that could arise from the allegations asserted in the Litigation, 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, arising between February 26, 2016 and preliminary approval (the “Released Claims”). With respect to the Released Claims, Class Members shall release such claims to the fullest permissible scope.
- Upon final approval by the Court, Individual Settlement Payments will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating 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. 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.

D. TO RECEIVE A SETTLEMENT PAYMENT

You have been identified to be a Class Member under this Settlement. You shall automatically receive a payment under the Settlement unless you request to be excluded from the Settlement, pursuant to Section E below

The amount of your approximate net settlement payment is: **[insert approximate payment]**.

This is based on your number of weeks worked, which date range according to Shane Co.’s records is as follows: **[insert date range(s)]**.

If you disagree with Shane Co.’s records regarding your weeks worked during the Class Period, you may provide documentation and/or an explanation to show contrary information by submitting such documentation and/or an explanation supporting your claim to compensation for a different number of workweeks to the Claims Administrator for review, at the following address:

Robles v. Shane Co. Claims Administrator
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA, 92863
(800) 523-5773

Any dispute must be postmarked within thirty (30) days of the Claims Administrator's mailing of this Class Notice. If disputes are not submitted in a timely manner, you will be paid based on Shane Co.'s records. If there is a dispute, after receiving your timely documentation and/or explanation, the Claims Administrator will consult with the Class Counsel and Defendant's counsel to determine whether an adjustment is warranted. The Claims Administrator shall determine the eligibility for, and the amounts of, any individual settlement payments under the terms of the Settlement. If the Settlement Administrator and Class Counsel and Defendant's counsel cannot agree on a resolution, Plaintiff and Defendant will submit the workweek dispute to the Court for a final determination. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

E. TO REQUEST EXCLUSION FROM THE SETTLEMENT

If you do not want to participate in the Settlement, you must submit an Election to Be Excluded from Class Action Settlement and request exclusion from the Settlement ("Request for Exclusion"). The Request for Exclusion must contain your full name, current home (or mailing) address, and last four digits of your Social Security number. All information must be legible. The Request for Exclusion must also be signed by you and returned by mail to the Claims Administrator at the address listed below, and contain the following statement: "I wish to be excluded from the Settlement of the case entitled *Cheyenne Robles v. Western Stone & Metal Co., d/b/a Shane Co., Case No. MSC20-00392*. I understand that if I ask to be excluded from the Settlement Class, I will not receive any money from the settlement of this lawsuit." In order to be valid, the Request for Exclusion must be postmarked no later than **[Insert Date – 60 days from mailing]**.

The Claims Administrator is:

Robles v. Shane Co. Claims Administrator
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA, 92863
(800) 523-5773

If you are excluded from the Settlement, you will not be eligible to receive any of the benefits under the Settlement. You will, however, retain whatever legal rights you may have against Shane Co. and the Releasees with regard to the Released Claims.

F. TO OBJECT TO THE SETTLEMENT

If you believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement, either personally or through an attorney, by filing a written objection with the Court and mailing a copy of your written objection to Class Counsel, Counsel for Shane Co., and the Claims Administrator at their respective addresses listed above.

All objections must be signed and must set forth your address, telephone number, and the name of the Litigation (*Cheyenne Robles v. Western Stone & Metal Co., d/b/a Shane Co., Case No. MSC20-00392*). All objections must be filed with the Court, and postmarked to Class Counsel, Defense Counsel and the Claims

Administrator, no later than **[Insert Date – 60 days from mailing]**. You may also choose to appear, either personally or through an attorney, at your own expense, at the final approval hearing, discussed below in Section H, to voice your objection to the Court. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or someone on your behalf intends to appear at the Final Approval Hearing.

Any member of the Class who does not object in the manner described above shall be deemed to have waived any objections, and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees, litigation costs, the service award to Plaintiff Cheyenne Robles, the claims process, and any and all other aspects of the Settlement. If the Settlement is not approved by the Court, the Litigation will continue with a contested class certification motion, and possibly trial or other judicial resolution.

G. IF YOU DO NOTHING

If you do nothing in response to this Notice, you will automatically receive a payment under the Settlement, and you will be deemed to have released all of the Released Claims against Shane Co. and the Releasees.

H. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Final Approval Hearing on the fairness and adequacy of the proposed Settlement, including the plan of distribution, the PAGA allocation and LWDA Payment, Class Counsel's request for attorneys' fees and costs, the administrative costs, and the service award to Plaintiff, as well as all other terms and conditions of the proposed Settlement, will be held on **[Insert Date]** at **[Insert Time]** in Department 39 of the Contra Costa Superior Court, located at 725 Court Street, Martinez CA 94553. The Final Approval Hearing may be conducted virtually, continued, or relocated without further notice.

I. ADDITIONAL INFORMATION

This Notice only summarizes the Litigation, the Settlement, and other related matters. For more information, you may review the Court's files at the Court Records department of the Contra Costa Superior Court located at 1111 Ward Street, Martinez CA 94553, from 8:00 a.m. to 3:00 p.m. Monday through Friday, except court holidays. You can also review the court file online at the court's website: <http://icms.cc-courts.org/tellme/>.

Any questions regarding this Notice should be addressed to the Claims Administrator at the above address and/or telephone number.

If your address changes, or is different from the one on the envelope enclosing this Notice, please promptly notify the Claims Administrator.

EXHIBIT 3