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Juan Olivares

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

JUAN OLIVARES, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

BRICKLEY CONSTRUCTION COMPANY,
INC. a California corporation; and DOES 1
through 100, inclusive,

Defendant.

Case No.: CIV SB 2025107

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

1 **TO THE COURT:**

2 This Joint Stipulation for Class Action Settlement ("Settlement Agreement") is made
3 and entered into by and between Plaintiff Juan Olivares ("Plaintiff"), individually and on behalf
4 of all members of the Settlement Class, defined below, and Defendant Brickley Construction
5 Company, Inc. dba Brickley Environmental ("Brickley" or "Defendant") (collectively,
6 Defendant and Plaintiff will be referred to as the "Parties"), and is subject to the terms and
7 conditions below, and to the Court's approval. The Parties expressly acknowledge that this
8 Settlement Agreement is entered into solely for the purpose of compromising significantly
9 disputed claims and that nothing in this Settlement Agreement is an admission of liability or
10 wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved, it will
11 be of no force or effect, and the Parties will be returned to their respective positions immediately
12 prior to and as if they had never executed this Settlement Agreement as more fully set forth
13 below.
14

15 **DEFINITIONS**

16 The following definitions are applicable to this Settlement Agreement. Definitions
17 contained elsewhere in this Settlement Agreement will also be effective:

18 1. "Action" means the case of *Juan Olivares v. Brickley Construction Company*,
19 San Bernardino County Superior Court, Case No. CIV-SB-2025107, filed on November 3,
20 2020, which alleges individual causes of action for: (1) minimum wage violations (2) failure to
21 pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure to
22 reimburse for necessary business expenses; (6) wage statement violations; (7) waiting time
23 penalties; (8) failure to pay wages timely during employment, (9) unfair competition; and, (10)
24 civil penalties under the Private Attorneys General Act.

25 2. "Claims Administrator" means ILYM Group, Inc., or any other third party class
26 action settlement claims administrator agreed to by the Parties and approved by the Court for
27 the purposes of administering this Settlement. The Parties each represent that they do not have
28

1 any financial interest in the Claims Administrator or otherwise have a relationship with the
2 Claims Administrator that could create a conflict of interest.

3 3. "Claims Administration Expenses" means the costs payable to the Claims
4 Administrator for administering this Settlement, including, but not limited to, printing,
5 translating into Spanish, conducting a National Change of Address ("NCOA") search,
6 distributing (including with appropriate postage), and tracking documents for this Settlement in
7 English and Spanish, any searches to locate any Class Members, tax reporting, distributing the
8 Individual Settlement Payments, Class Representatives Enhancement Payment, Class Counsel
9 Fees and Costs, and providing necessary certification of completion of notice, reports and
10 declarations, establishing and administering a qualified settlement fund account and other
11 responsibilities set forth in this Settlement Agreement and as requested by the Parties. The
12 Claims Administration Expenses are currently estimated to be not more than Seven Thousand
13 Six Hundred Seventy-One Dollars and Fifty-Six Cents (\$7,671.56).

14
15 4. "Class Counsel" means Daniel J. Brown of Stansbury Brown Law.

16 5. "Class Counsel Fees and Costs" means attorneys' fees, costs, and expenses
17 approved by the Court for Class Counsel's litigation and resolution of the Action, and all costs
18 incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs
19 associated with documenting the Settlement, providing any notices required as part of the
20 Settlement or Court order, securing the Court's approval of the Settlement, administering the
21 Settlement, and obtaining entry of the Judgment terminating the Action. Class Counsel will
22 request attorneys' fees are currently estimated to be One Hundred Sixty-Six Thousand Five
23 Hundred Dollars (\$166,500.00), plus up to Fifteen Thousand Dollars and Zero Cents
24 (\$15,000.00) in verified costs and expenses related to the Lawsuit as supported by declaration.
25 Defendant has agreed not to oppose Class Counsel's request for Class Counsel Fees and Costs.

26 6. "Class List" means a complete list of all Class Members that Plaintiff and
27 Defendant will diligently and in good faith compile from their records, and records obtained
28 from non-party staffing agencies, and provide on a confidential basis to the Claims

1 Administrator within twenty-one (21) calendar days after the Court's entry of an order granting
2 preliminary approval of this Settlement. The Class List will be formatted in Microsoft Office
3 Excel and Defendant will use its best efforts to include each Class Member's full name; most
4 recent mailing address; last known telephone number if readily available; dates of employment
5 or number of workweeks worked during the Class Period; and Social Security number.

6 7. "Class Member(s)" or "Settlement Class" means Plaintiff and all current and
7 former hourly non-exempt employees of Brickley Construction Company, dba Brickley
8 Environmental, within California at any time during the Class Period.

9 8. "Class Period" means the period from November 3, 2016 through September 15,
10 2021.

11 9. "Class Representative Enhancement Payment" means the amount to be paid from
12 the Gross Settlement Amount to the named Plaintiff in exchange for executing a general release
13 and in recognition of his effort in prosecuting the Action on behalf of Class Members. Plaintiff
14 will request and Defendant will not oppose Plaintiff's application to the court for a payment of
15 Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff's willingness to serve as Class
16 Representative.

17 10. "Court" means the San Bernardino County Superior Court, or any other court
18 taking jurisdiction of the Action.

19 11. "Effective Date" means the date when the Final Approval Order becomes final
20 and Defendant fully funds the Gross Settlement Amount. For purposes of this Paragraph, the
21 Final Approval Order "becomes final" upon the last to occur of the following: (a) if there are
22 no objections to the Settlement, the date the Court enters an order granting final approval of the
23 Settlement; (b) if there are objections to the Settlement, and if an appeal, review, or writ is not
24 sought from the Final Approval Order, the day after the time period to appeal the Settlement
25 has expired, i.e., 60 days from the date the Court enters an order granting final approval of the
26 Settlement; or (c) if there are objections to the Settlement, and an appeal, review, or writ is
27 timely sought from the Final Approval Order, the day after the Final Approval Order is affirmed
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1 or the appeal, review, or writ is dismissed or denied, and the Final Approval Order is no longer
2 subject to further judicial review.

3 12. "Gross Settlement Amount" means the maximum settlement amount of Five
4 Hundred Thousand Dollars and Zero Cents (\$500,000.00) ("Gross Settlement Amount"), which
5 has been and/or will be paid by Defendant in full satisfaction of all claims arising from the
6 Action. The Gross Settlement Amount includes all Individual Settlement Payments to
7 Participating Class Members, the Class Representative Enhancement Payments, Claims
8 Administration Expenses, Class Counsel Fees and Cost, and PAGA penalties in the amount of
9 Twenty Thousand Dollars and Zero (\$20,000.00) of which 75% or Fifteen Thousand Dollars
10 and Zero Cents (\$15,000.00) will be paid to the Labor Workforce Development Agency
11 ("LWDA") and 25% or Five Thousand Dollars and Zero Cents (\$5,000.00) to PAGA Group
12 Members. Defendant will pay the employer's share of payroll taxes, as applicable, in addition
13 to the Gross Settlement Amount.
14

15 13. "Individual Settlement Payment" means each Participating Class Member's and
16 PAGA Group Member's share of the Net Settlement Amount, to be distributed to Plaintiff,
17 PAGA Group Members, and Class Members who do not request exclusion from the settlement.

18 14. "Net Settlement Amount" means the maximum amount available for distribution
19 to the Class Members, after deduction of Class Counsel Fees and Costs, Class Representative
20 Enhancement Payment, Claims Administration Expenses, and \$15,000 as PAGA penalties from
21 the Gross Settlement Amount.

22 15. "Notice of Objection" means a Class Member's valid and timely written
23 objection to the Settlement Agreement. For the objection to be valid, it must include: (i) the
24 objector's full name, signature, address, and telephone number; and (ii) a written statement of
25 all grounds for the objection accompanied by any legal support for such objection. Further, an
26 objector may appear at the Final Approval hearing, either in person or through counsel, at his
27 or her expense, regardless of whether the objector submitted a Notice of Objection. The Parties
28

1 will be permitted to respond in writing to such objections at least seven calendar days prior to
2 the Final Approval hearing or within the time period set by the Court.

3 16. "Notice" means the Notice of Class Action Settlement, substantially in the form
4 attached as Exhibit A.

5 17. "PAGA" means the California Private Attorneys General Act of 2004, which is
6 codified in California Labor Code §2698, et seq.

7 18. "PAGA Group Member(s)" means Plaintiffs and all current and former hourly
8 non-exempt employees of Defendant within California at any time during the PAGA Period.

9 19. "PAGA Period" means the period from June 24, 2019, to September 15, 2021.

10 20. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
11 allocated to the resolution of Class Members' claims arising under PAGA. The Parties have
12 agreed that the PAGA Settlement Amount is Twenty Thousand Dollars (\$20,000), subject to
13 Court approval. Of the PAGA Settlement Amount, 75% or Fifteen Thousand Dollars (\$15,000)
14 will be paid to the LWDA and the remaining 25% or Five Thousand Dollars (\$5,000) will be
15 distributed to PAGA Group Members.
16

17 21. "Participating Class Members" means all Class Members who do not submit
18 valid Requests for Exclusion.

19 22. "Preliminary Approval" means the Court order granting preliminary approval of
20 the Settlement Agreement.

21 23. "Released PAGA Claims" means any and all claims for civil penalties under
22 PAGA based on the labor code violations alleged, or that could have been alleged, upon the
23 factual allegations in each and every Notice sent by each Plaintiff to the LWDA, including, but
24 not limited to California Labor Code Sections: 200, 201, 202, 203, 204, 210, 225.5, 226, 226(a),
25 226(e), 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197,
26 1197.1, 1198, 2698, 2699, 2699.3, 2800, 2802, 2802(a), 2804, 2699.3(a)(1)(A),
27 2699.3(a)(1)(B), 2699.3(a)(2)(A), 2699.3(c)(1)(A), 2699.3(c)(1)(B), regardless of whether
28 PAGA Group Members opt out from the Settlement Agreement.

1 24. “Released Claims” means any and all claims, liabilities, demands, obligations,
2 penalties, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind
3 or nature, whether known or unknown, contingent or accrued, that are alleged, or that
4 reasonably could have been alleged based on the facts alleged in the Action, including claims
5 for: (a) failure to pay minimum wages ((California Labor Code sections 558, 558.1 1194, 1197;
6 IWC Wage Order No. 16-2001, section 4); (b) failure to pay overtime wages (California Labor
7 Code sections 510, 558, 558.1, 1194, 1198; IWC Wage Order No. 16-2001, section 3); (c)
8 failure to provide accurate itemized wage statements (California Labor Code sections 226(a);
9 IWC Wage Order No. 16-2001, section 7); (d) failure to pay final wages upon separation of
10 employment (California Labor Code section 201-203); (e) failure to pay wages during
11 employment (California Labor Code sections 204, 210, 558, and 558.1) (f) failure to provide
12 timely, duty-free meal periods and/or pay required meal period premiums (Labor Code sections
13 226.7, 512, 558, 558.1, and IWC Wage Order 16-2001); (g) failure to provide compliant rest
14 periods and/or pay rest required period premiums (Labor Code section 226.7, 512, 558, 558.1,
15 and IWC Wage Order 16-2001; IWC Sage Order No. 16-2001, section 11); (h) failure to
16 reimburse necessary expenditures in discharge of duties (California Labor Code section
17 2800, 2802, and 2804); & (i) all claims for unfair business practices under California Business
18 & Professions Code Section 17200 *et seq.* that could have been premised on the claims, causes
19 of action or legal theories of relief described above in (a)–(i). The Parties agree that the
20 judgment, and Released Claims provided herein, shall have *res judicata* effect. This Released
21 Claims will cover all Class Members who do not opt out.

23 25. “Released Parties” means Defendant and Defendant’s former and present
24 parents, subsidiaries and affiliated companies and entities, franchisors and franchisees, and its
25 current, former, and future owners, officers, shareholders, directors, members, managers,
26 operators, employees, partners, affiliates, subsidiaries, shareholders, attorneys, insurers, payroll
27 providers, joint venturers, and agents, and any successors, assigns, or legal representatives and
28 any individual or entity who or which could be jointly liable with Defendant and all persons or

1 entities acting by, through under or in concert with any of them.

2 26. "Request for Exclusion" means a timely letter submitted by a Class Member
3 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a)
4 set forth the name, address, telephone number and last four digits of the Social Security Number
5 of the Class Member requesting exclusion; (b) be signed by the Class Member; (c) be returned
6 by mail or fax to the Claims Administrator at the specified address or fax number indicated in
7 the Notice; (d) clearly state that the Class Member does not wish to be included in the
8 Settlement; and (e) be faxed or postmarked on or before the Response Deadline.

9 27. "Response Deadline" means the deadline by which Class Members must fax or
10 postmark to the Claims Administrator a valid Request for Exclusion, submit objections to the
11 Settlement or dispute workweeks. The Response Deadline will be forty-five (45) calendar days
12 from the initial mailing of the Notice by the Claims Administrator. The Response Deadline for
13 Request for Exclusion, objection or dispute workweeks will be extended fifteen (15) calendar
14 days for any Class Member who is re-mailed a Notice by the Claims Administrator in
15 accordance with the notice procedure described in Paragraphs 38 through 41 of this Settlement
16 Agreement. The Response Deadline may also be extended by express agreement between Class
17 Counsel and Defendant's counsel.

18 **TERMS OF AGREEMENT**

19
20 Plaintiff, on behalf of himself and the Settlement Class, and Defendant agrees as
21 follows:

22 28. Impact of Any Court Determination Not to Enter Final Approval Order. In the
23 event that the Court does not enter a Final Approval Order and this Settlement Agreement does
24 not become effective, the following will occur:

- 25 a. on the date final approval is denied, the status of the Action will be deemed
26 to return to its status at the time immediately prior to and as if the Parties
27 had never executed this Settlement Agreement; and
28

1 b. Defendant will pay the Claims Administrator for any costs incurred by the
2 Claims Administrator out of the Gross Settlement Amount.

3 29. Settlement Funding. Within five (5) calendar days of the Preliminary Approval
4 Order becoming final, Defendant will make the first of three installment payments of the Gross
5 Settlement Amount in the amount of Seventy Five Thousand Dollars (\$75,000). The second
6 installment payment in the amount of Two Hundred Twelve Thousand Five Hundred Dollars
7 (\$212,500) will be made within six months from the date of the initial installment payment.
8 The Third and final installment payment in the amount of Two Hundred Twelve Thousand Five
9 Hundred Dollars (\$212,500) and Defendant's share of payroll taxes will be made within one
10 year from the date of the first installment payment. The three installment payments shall be
11 deposited with the Claims Administrator who will deposit the funds into an interest-bearing
12 trust account referred to as the Qualified Settlement Fund account from which the Claims
13 Administrator will have authority to distribute money in accordance with the terms of this
14 Settlement Agreement. The employers' share of the payroll taxes, which shall be paid in
15 addition to the Gross Settlement Amount, for the installment payments will be made with the
16 assistance of the Claims Administrator to calculate the appropriate amount of the employers'
17 share of the payroll taxes.
18

19 30. Class Counsel Fees and Costs. Defendant agrees not to oppose or impede any
20 application or motion by Class Counsel for Class Counsel Fees in the amount of up to One
21 Hundred Sixty-Six Thousand Five Hundred Dollars (\$166,500.00), plus up to Fifteen Thousand
22 Dollars and Zero Cents (\$15,000.00) in verified costs and expenses related to the Lawsuit as
23 supported by declaration. In consideration of their awarded attorneys' fees and costs and
24 expenses, and subject to the provisions of paragraph 48 below, Plaintiff and Class Counsel
25 waive any and all claims to any further attorneys' fees and expenses in connection with the
26 Action. The Settlement Administrator shall disburse Class Counsel's litigation costs and
27 expenses, and twenty-five percent (25%) of Class Counsel's attorneys' fees within fifteen (15)
28 days of Final Approval. The Settlement Administrator shall disburse an additional forty-percent

1 (40%) of Class Counsel's attorneys' fees within fifteen (15) days of receipt of the second
2 installment payment, or within fifteen (15) days of final approval, whichever is later.
3 Disbursement of the remaining thirty-five percent (35%) of Class Counsel's attorneys' fees,
4 shall be made within fifteen (15) days of the final installment payment.

5 31. Class Representative Enhancement Payment. In exchange for named Plaintiff
6 executing a general release, and in recognition of his effort in prosecuting the Action on behalf
7 of Class Members, Defendant agrees not to oppose or impede any application or motion for a
8 Class Representative Enhancement Payment of up to Five Thousand Dollars (\$5,000), which
9 will be paid from the Gross Settlement Amount, will be in addition to Plaintiff's Individual
10 Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely and legally
11 responsible to pay any and all applicable taxes, penalties and interest on the payment made
12 pursuant to this paragraph and will hold Defendant harmless from any claim or liability for
13 taxes, penalties, or interest arising as a result of the payment.

14 32. Claims Administration Expenses. The Claims Administrator will be paid for the
15 reasonable fees and costs of administration of the Settlement, which are estimated no to exceed
16 Seven Thousand Six Hundred Seventy-One Dollars and Fifty-Six Cents (\$7,671.56). These
17 will include, *inter alia*, fees and costs payable to the Claims Administrator for printing,
18 translating into Spanish (or other first-languages of Class Members, if necessary), distributing
19 (including with appropriate postage), and tracking documents for this Settlement in English and
20 Spanish, any searches to locate any Class Members, calculating estimated amounts per Class
21 Member, tax reporting, distributing the Individual Settlement Payments, Class Representative
22 Enhancement Payment, Class Counsel Fees and Costs, payment to LWDA for PAGA penalties,
23 and providing necessary certification of completion of notice, reports and declarations,
24 establishing and administering a Qualified Settlement Fund account, required tax reporting on
25 the Individual Settlement Payments, the issuing of 1099 and W-2 IRS forms, calculating the
26 employers' share of payroll taxes on the wage portion of the Individual Settlement Payments
27
28

1 and coordinating related reporting, and other responsibilities as requested by the Parties. The
2 Claims Administration Expenses will be paid from the Gross Settlement Amount.

3 33. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
4 Individual Settlement Payments to Participating Class Members from the Settlement Class and
5 PAGA Group Members in accordance with the terms of this Agreement.

6 34. Individual Settlement Payment Calculations. Defendant will provide the Claims
7 Administrator with the total number of workweeks for each Participating Class Member and
8 PAGA Group Member. The Claims Administrator will divide the Net Settlement Amount less
9 \$5,000 (or the Court approved amount from the PAGA Settlement Amount allocated for PAGA
10 penalties to PAGA Group Members) by the total number of workweeks for Participating Class
11 Members ("Work Week Rate Amount") and then multiply this amount by each Participating
12 Class Member's total number of workweeks to yield that employee's Net Settlement Payment.
13 In the event a Class Member submits a timely Request for Exclusion from the settlement, his/her
14 share of the settlement will be added to the Net Settlement Amount. This is a non-reversionary
15 settlement and Class Members will not have to submit a claim form to obtain their Individual
16 Settlement Payment.
17

NET SETTLEMENT AMOUNT	X	Participating Class Member's Workweeks
Total number of Workweeks for all Participating Class Members		

24 In additional, each Class Member who is a PAGA Group Member will be paid a pro-
25 rata share of the \$5,000.00 allocated for PAGA penalties to PAGA Group Members, as
26 calculated by the Claims Administrator, with a formula similar to payments to Participating
27 Class Members.
28

\$5,000	for	PAGA	
Penalties to PAGA Group			
Members			
	X	Individual	PAGA
		Group	Member's
<u>Total number of</u>		Workweeks	during
Workweeks for all PAGA		PAGA Period	
Group Members during			
PAGA Period			

The Individual Settlement Payment for any Participating Class Member who is also a PAGA Group Member shall include the Participating Class Member's share of the PAGA Settlement Amount allocated for PAGA penalties to PAGA Group Members.

Class Members who are PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the Settlement. PAGA penalty settlement payments in the appropriate amounts will be distributed by the Claims Administrator by mail to the PAGA Group Members including to those Class Members who are PAGA Group Members who submitted a request for exclusion.

35. No Credit Toward Benefit Plans. All Individual Settlement Payments to Class Members shall be deemed to be income to such Class Members solely in the year in which such payments actually are received by the Class Members. It is expressly understood and agreed that the receipt of such Individual Settlement Payments will not entitle any Class Member to additional compensation or benefits under any company bonus, paid time off (including vacation and sick leave), or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the Individual Settlement Payments provided for in this Agreement are the sole payments to be made by Defendant to the Class Members in connection with this Settlement, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Payments (notwithstanding

1 any contrary language or agreement in any benefit or compensation plan document that might
2 have been in effect during the period covered by this Settlement).

3 36. Claims Administration Process. The Parties agree to cooperate in the
4 administration of the settlement and to make all reasonable efforts to control and minimize the
5 costs and expenses incurred in administration of the Settlement.

6 37. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary
7 Approval, Defendant, with the assistance of Plaintiff, will provide the Class List to the Claims
8 Administrator.

9 38. Notice by First-Class U.S. Mail. Within five (5) calendar days after receiving
10 the Class List from Defendant, the Claims Administrator will mail the Notice to all Class
11 Members via regular First-Class U.S. Mail.

12 39. Confirmation of Contact Information in the Class Lists. Prior to mailing, the
13 Claims Administrator will perform a search based on the National Change of Address Database
14 for information to update and correct for any known or identifiable address changes. Any
15 Notice returned to the Claims Administrator as non-deliverable on or before the Response
16 Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address, and
17 the Claims Administrator will indicate the date of such re-mailing on the Notice. If no
18 forwarding address is provided, the Claims Administrator will promptly attempt to determine
19 the correct address using a skip-trace, or other search using the name, address and/or Social
20 Security number of the Class Member involved, and will then perform a single re-mailing.
21 Those Class Members who receive a re-mailed Notice will have between the later of (i) an
22 additional fifteen calendar (15) days or (ii) the Response Deadline to fax or postmark a Request
23 for Exclusion, submit an objection to the Settlement or dispute workweeks.

24 40. Notice. All Class Members will be mailed the Notice. The Notice will provide:
25 (1) information regarding the nature of the Action, (2) a summary of the Settlement's principal
26 terms, (3) the Settlement Class definition, (4) each Class Member's number of workweeks
27 worked during the Class Period, (5) each Class Member's estimated Individual Settlement
28

1 Payment; (6) the dates which comprise the Class Period, (7) instructions on how to submit valid
2 Requests for Exclusion, objections or dispute workweeks, (8) the deadlines by which the Class
3 Member must fax or postmark Request for Exclusions, submit objections to the Settlement or
4 dispute workweeks, and (9) the claims to be released, as set forth in this Settlement Agreement.

5 41. Request for Exclusion Procedures. Any Class Member wishing to opt out from
6 the Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the
7 Claims Administrator within the Response Deadline. The date of the fax or postmark on the
8 return mailing envelope will be the exclusive means to determine whether a Request for
9 Exclusion has been timely submitted. The Parties to this Agreement and their counsel agree that
10 they will not solicit or encourage Class Members to opt-out or object to this Settlement
11 Agreement. If the Court approves the compromise of the PAGA claim, all PAGA Group
12 Members are bound by the Court's resolution of that claim. Class Members who are also PAGA
13 Group Members submitting a request for exclusion will nevertheless receive their pro-rata share
14 of the 25% of the PAGA Settlement Amount allocated for PAGA penalties to PAGA Group
15 Members.
16

17 42. Defective Submissions. If a Class Member's Request for Exclusion is defective
18 as to the requirements listed in this Settlement Agreement, that Class Member will be given an
19 opportunity to cure the defect(s). The Claims Administrator will mail the Class Member a cure
20 letter within three (3) calendar days of receiving the defective submission to advise the Class
21 Member that his or her submission is defective and that the defect must be cured to render the
22 Request for Exclusion valid. The Class Member will have until the later of (i) the Response
23 Deadline or (ii) fifteen (15) calendar days from the date of the cure letter to fax or postmark a
24 revised Request for Exclusion.

25 43. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
26 Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely
27 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to
28 the Released Claims (other than as it applies to the PAGA claims with respect to the PAGA

1 Group Members), as well as any Judgment that may be entered by the Court if it grants final
2 approval to the Settlement. If the Court approves the compromise of the PAGA claim, Class
3 Members who are also PAGA Group Members submitting a request for exclusion will
4 nevertheless be bound by the Court's resolution of that claim and receive their pro-rata share of
5 the 25% of the PAGA Payment allocated to the PAGA Group Members.

6 44. Objection Procedures. To object to the Settlement Agreement, a Class Member
7 may not submit a Request for Exclusion and may mail a valid Notice of Objection to the Claims
8 Administrator by the Response Deadline. The Claims Administrator will notify counsel for the
9 Parties forthwith via email. Class Counsel will lodge the objection with the Court. The Notice
10 of Objection must be signed by the Class Member and contain all information required by this
11 Settlement Agreement. The postmark date of the mailing will be deemed the exclusive means
12 for determining that the Notice of Objection is timely. Class Members who wish to object will
13 have a right to appear at the Final Approval Hearing, with or without counsel at his/her own
14 expense, in order to have their objections heard by the Court, regardless of whether they
15 submitted a Notice of Objection. At no time will any of the Parties or their counsel seek to
16 solicit or otherwise encourage Class Members to submit written objections to the Settlement
17 Agreement or appeal from the Final Approval Order and Judgment.

18 45. Certification Reports Regarding Individual Settlement Payment Calculations.
19 The Claims Administrator will provide Defendant's counsel and Class Counsel a weekly report
20 which certifies: (i) the number of Class Members who have submitted a valid Request for
21 Exclusion; (ii) the number of Class Members who have submitted a valid Notice of Objection;
22 and (iii) the number of any deficient Requests for Exclusion or objections. Additionally, the
23 Claims Administrator will provide to counsel for both Parties any updated reports regarding the
24 administration of the Settlement Agreement as needed or requested.

25 46. Timing of Distribution of Individual Settlement Payments. Within three (3)
26 calendar days of Defendant depositing the third and final installment payment as set forth above,
27 the Claims Administrator will issue payments to (1) Participating Class Members and PAGA
28

1 Group Members; (2) Plaintiff; (3) Class Counsel; and (4) payment to LWDA. The Claims
2 Administrator will also issue a payment to itself for Court-approved services performed in
3 connection with the settlement.

4 47. Uncashed or Undeliverable Settlement Checks. Individual settlement checks
5 paid to participating Class Members will be valid for 180 days. Participating Class Members
6 will have one hundred eighty (180) calendar days from the date of issuance of the check to cash
7 their check. For any check not cashed after 180 calendar days, the Claims Administrator will
8 send the amount represented by the check to the California State Controller's Office Unclaimed
9 Property Fund, with the identity of the Participating Class Member to whom the funds belong,
10 to be held for the participating Class Member per California Unclaimed Property Law, in the
11 interest of justice. The money paid to the California State Controller's Office Unclaimed
12 Property Fund will remain the Participating Class Member's property. This will allow
13 Participating Class Members who did not cash their checks to collect their Individual Settlement
14 Amounts at any time in the future. Therefore, there will be no unpaid residue or unclaimed or
15 abandoned class member funds, and California Code of Civil Procedure section 384 shall not
16 apply. The funds will be held by the State until claimed by the employee and the uncashed
17 check never ceases to be the employee's property.

19 48. Increase in Workweeks. Defendant represents that as of July 15, 2021, there
20 were approximately 9,858 weekly pay periods worked by Settlement Class Members. If, at the
21 time of preliminary approval, the number of weekly pay periods worked by Settlement Class
22 Members has increased by 10% or more (i.e., if there are 10,843 or more weekly pay period
23 worked by Settlement Class Members), then Defendant shall increase the Maximum Settlement
24 Amount on a pro-rata basis equal to the increase in the number of weekly pay periods worked
25 (e.g., if the actual number of weekly pay periods worked were 25% greater than 9,858
26 Settlement Class Members, Defendant will increase the Maximum Settlement Amount by 25%).
27
28

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

4 50. Treatment of Individual Settlement Payments. All Individual Settlement
5 Payments will be allocated as follows: 100% of each PAGA Groups Members pro-rate share of
6 the \$5,000 allocated for PAGA penalties shall be allocated as penalties; 20% of each Individual
7 Settlement Payment will be allocated for the settlement of wage claims; and 80% of each
8 Individual Settlement Payment will be allocated for the settlement of interest and penalties. The
9 portion allocated to wages in each Individual Settlement Payment will be reported on an IRS
10 Form W-2 and the portion allocated to interest and penalties will be reported on an IRS Form-
11 1099 by the Claims Administrator.

12 51. Administration of Taxes by the Claims Administrator. The Claims
13 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, PAGA
14 Group Members, Class Counsel, and Defendant any W-2, 1099, or other tax forms as may be
15 required by law for all amounts paid pursuant to this Settlement Agreement. The Claims
16 Administrator will also be responsible for forwarding all payroll taxes and other legally required
17 withholdings, and related reporting, to the appropriate government authorities.

18 52. Defendant's Responsibility for Employer Taxes: For any portion of the Class
19 Members' Individual Settlement Payments that are designated as "wages" for purposes of tax
20 reporting, the employer's taxes, employer contributions of all federal, state, and local taxes
21 (including, but not limited to, FICA, FUTA, and SDI), will be paid in addition to the Gross
22 Settlement Amount, via and with the Claims Administrator's assistance.

23 53. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
24 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
25 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
26 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
27 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
28

1 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
2 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
3 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX
4 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
5 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
6 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT
7 LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
8 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
9 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR
10 ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED
11 TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
12 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
13 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
14 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
15 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S
16 TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
17 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
18 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
19 TRANSACTION CONTEMPLATED BY THIS AGREEMENT.
20

21 54. No Prior Assignments. The Parties and their counsel represent, covenant, and
22 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
23 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
24 demand, action, cause of action or right released and discharged in this Settlement Agreement.

25 55. Release of Claims by Class Members. Upon the date the Court enters an order
26 granting final approval of the Settlement and Defendant fully funds the Gross Settlement
27 Amount, all Class Members who do not timely submit a valid Request for Exclusion do and
28 will be deemed to have fully, finally and forever released, settled, compromised, relinquished,

1 waived, and discharged any and all of the Released Parties of and from any and all Released
2 Claims accruing during the Class Period. In addition, on the date the Court enters an order
3 granting final approval of the Settlement and Defendant fully funds the Gross Settlement
4 Amount, all Class Members who do not timely submit a valid Request for Exclusion and all
5 successors in interest will be barred from prosecuting or participating in any and all Released
6 Claims against the Released Parties. Furthermore, upon the date the Court enters an order
7 granting final approval of the Settlement and Defendant fully funds the Gross Settlement
8 Amount, the State of California and PAGA Group Members (regardless of whether PAGA
9 Group Members opt out of the Class Settlement) release the Released Parties from the Released
10 PAGA Claims.

11
12 56. Release by Plaintiff. Upon the date the Court enters an order granting final
13 approval of the settlement and Defendant fully funds the Gross Settlement Amount, in addition
14 to the claims being released by all Class Members, Plaintiff will provide the following
15 additional general release ("General Release"): Plaintiff, on his own behalf and on behalf of
16 his heirs, spouses, executors, administrators, attorneys, agents and assigns, fully and finally
17 releases the Released Parties from all claims, demands, rights, liabilities and causes of action
18 of every nature and description whatsoever, known or unknown, asserted or that might have
19 been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or
20 regulation arising out of, relating to, or in connection with any act or omission by or on the part
21 of any of the Released Parties committed or omitted prior to the execution of this Agreement.
22 This General Release includes any unknown claims Plaintiff does not know or suspect to exist
23 in his favor at the time of this General Release, which, if known by him, might have affected
24 his settlement with, and release of, the Released Parties or might have affected his decision not
25 to object to this Settlement or this Release. To the extent the foregoing releases are releases to
26 which Section 1542 of the California Civil Code or similar provisions of other applicable law
27 may apply, Plaintiff expressly waive any and all rights and benefits conferred upon him by the
28

1 provisions of Section 1542 of the California Civil Code or similar provisions of applicable law
2 which are as follows:

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

10 The significance of this release and waiver of Civil Code Section 1542 has been explained to
11 Plaintiff by his counsel. Release by Plaintiff expressly excludes any claims for workers
12 compensation against Defendant.

13
14 57. Reciprocal References. Plaintiff agrees that he will not disparage, induce or
15 encourage others to disparage Defendant, or make or cause to be made any statement that is
16 critical of or otherwise maligns the business reputation of Defendant. Defendant agrees that it
17 will instruct Plaintiff's managers and human resources partners that they shall not engage in
18 any conduct or speech that disparages, induces or encourages others to disparage Plaintiff, or
19 make or cause to be made any statement that is critical of or otherwise maligns Plaintiff's
20 business reputation. Defendant further agrees that should it be contacted by any third party
21 regarding a reference for Plaintiff, that it will provide a neutral reference consisting only of,
22 and only of: (1) confirmation of employment and (2) dates of employment. Defendant further
23 agrees to further inform any such third party that this neutral reference is being provided
24 pursuant to Defendant's policies. .

25 58. Nullification of Settlement Agreement. In the event that: (i) the Court does not
26 finally approve the Settlement as provided in this Settlement Agreement; or (ii) the Settlement
27 does not become final for any other reason, then this Settlement Agreement and any documents
28 generated to bring it into effect will be null and void. Any order or judgment entered by the

1 Court in furtherance of this Settlement Agreement will likewise be treated as void from the
2 beginning. In such case, the Settlement shall not be used or be admissible in any subsequent
3 proceedings, either in this Action, this Court, or any other Court or forum.

4 59. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court
5 to request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
6 Approval Order for: (i) conditional certification of the Settlement Class for settlement purposes
7 only, (ii) preliminary approval of the proposed Settlement Agreement, and (iii) setting a date
8 for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will
9 provide for the Notice to be sent to all Class Members as specified in this Settlement Agreement.
10 In conjunction with the Preliminary Approval motion, Plaintiff will submit this Settlement
11 Agreement, which sets forth the terms of this Settlement and will include the proposed Notice.
12

13 60. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
14 the deadlines to fax or postmark Request for Exclusion or submit objections to the Settlement
15 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will
16 be conducted to determine the Final Approval of the Settlement Agreement along with the
17 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Counsel Fees
18 and Costs; (iii) the Class Representative Enhancement Payment; (iv) payment to LWDA for
19 PAGA penalties; and (v) all Claims Administration Expenses. Class Counsel will be
20 responsible for drafting all documents necessary to obtain final approval. Class Counsel will
21 also be responsible for drafting the attorneys' fees and costs application to be heard at the Final
22 Approval/Settlement Fairness Hearing.

23 61. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
24 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present a
25 proposed Judgment to the Court for its approval. Pursuant to California Rules of Court, Rule
26 3.771(b), the Claims Administrator shall post on its website a copy of the Judgment for a period
27 of thirty days from the date the Court signs the Judgment. After entry of the Judgment, the
28 Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation

1 and enforcement of the terms of the Settlement Agreement, (ii) settlement administration
2 matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set
3 forth in this Settlement Agreement.

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

8 63. Entire Agreement. This Settlement Agreement and any attached Exhibits
9 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
10 written or oral agreements may be deemed binding on the Parties. The Parties expressly
11 recognize California Civil Code Section 1625 and California Code of Civil Procedure Section
12 1856(a), which provide that a written agreement is to be construed according to its terms and
13 may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such
14 extrinsic oral or written representations or terms will modify, vary or contradict the terms of
15 this Agreement.
16

17 64. Amendment or Modification. This Settlement Agreement may be amended or
18 modified only by a written instrument signed by counsel for all Parties or their successors-in-
19 interest.

20 65. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
21 warrant and represent they are expressly authorized by the Parties whom they represent to
22 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
23 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
24 execute any other documents required to effectuate the terms of this Settlement Agreement.
25 The Parties and their counsel will cooperate with each other and use their best efforts to effect
26 the implementation of the Settlement. If the Parties are unable to reach agreement on the form
27 or content of any document needed to implement the Settlement Agreement, or on any
28

1 supplemental provisions that may become necessary to effectuate the terms of this Settlement
2 Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

3 66. Binding on Successors and Assigns. This Settlement Agreement will be binding
4 upon, and inure to the benefit of, the successors or assigns of the Parties to this Settlement
5 Agreement, as previously defined.

6 67. Execution and Counterparts. This Settlement Agreement is subject only to the
7 execution of all Parties. However, the Settlement Agreement may be executed in one or more
8 counterparts. All executed counterparts and each of them, including facsimile and scanned
9 copies of the signature page, will be deemed to be one and the same instrument provided that
10 counsel for the Parties will exchange among themselves original signed counterparts.

11 68. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
12 believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action
13 and have arrived at this Settlement Agreement after arm's-length negotiations and in the context
14 of adversarial litigation, taking into account all relevant factors, present and potential. The
15 Parties further acknowledge that they are each represented by competent counsel and that they
16 have had an opportunity to consult with their counsel regarding the fairness and reasonableness
17 of this Settlement Agreement.

18 69. Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
20 extent possible consistent with applicable precedents so as to define all provisions of this
21 Settlement Agreement valid and enforceable.

22 70. Captions. The captions and section numbers in this Agreement are inserted for
23 the reader's convenience, and in no way define, limit, construe or describe the scope or intent
24 of the provisions of this Agreement.

25 71. Waiver. No waiver of any condition or covenant contained in this Agreement or
26 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
27
28

1 constitute a further waiver by such party of the same or any other condition, covenant, right or
2 remedy.

3 72. Enforcement Actions. In the event that one or more of the Parties institutes any
4 legal action or other proceeding against any other Party to enforce the provisions of this
5 Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement,
6 the successful Party will be entitled to recover from the unsuccessful Party reasonable attorneys'
7 fees and costs, including expert witness fees incurred in connection with any enforcement
8 actions.

9 73. Mutual Preparation. The Parties have had a full opportunity to negotiate the
10 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement
11 will not be construed more strictly against one party than another merely by virtue of the fact
12 that it may have been prepared by counsel for one of the Parties, it being recognized that,
13 because of the arms-length negotiations between the Parties, all Parties have contributed to the
14 preparation of this Agreement.

15 74. Representation By Counsel. The Parties acknowledge that they have been
16 represented by counsel throughout all negotiations that preceded the execution of this
17 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
18 and advice of counsel.

19 75. All Terms Subject to Final Court Approval. All amounts and procedures
20 described in this Settlement Agreement will be subject to final Court approval.

21 76. Cooperation and Execution of Necessary Documents. All Parties will cooperate
22 in good faith and execute all documents to the extent reasonably necessary to effectuate the
23 terms of this Settlement Agreement.

24 77. Binding Agreement. The Parties warrant that they understand and have full
25 authority to enter into this Agreement, and further intend that this Agreement will be fully
26 enforceable and binding on all Parties, and agree that it will be admissible and subject to
27
28

1 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
2 provisions that otherwise might apply under federal or state law.

3 78. No Admission of Liability. Nothing contained in this Settlement Agreement shall
4 be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
5 part of Defendant. Each of the Parties has entered into this Settlement Agreement with the
6 intention to avoid further disputes and litigation, and the attendant inconvenience and expense,
7 and to fully and forever buy their respective peace. This Settlement Agreement shall be
8 inadmissible in evidence in any action or proceeding, by any party, except an action or
9 proceeding by one of the Parties to approve, interpret, or enforce the Settlement Agreement's
10 terms.

11 79. Communications. The Parties and their counsel agree that they will not publicize
12 or issue or post any press releases, advertising, or marketing, or initiate any contact with the
13 media about this case or the parties involved, including the fact, amount, or terms of the
14 Settlement. If counsel for either Party receives an inquiry about the Settlement from the media,
15 counsel may only respond that a settlement has been reached.

16 80. Disputes. Any dispute between the Parties concerning the interpretation or
17 implementation of this Settlement Agreement will be resolved by the Court. Prior to any such
18 resort to the Court, counsel for the Parties will confer in good faith to resolve the dispute. If
19 the Parties are unable to resolve the dispute themselves, the dispute will be mediated before
20 being submitted to the Court, unless the Parties agree otherwise.

21 81. Applicable Law. All terms and conditions of this Stipulation and its exhibits will
22 be governed by and interpreted according to the laws of the State of California, without giving
23 effect to any conflict of law or choice of law principles.

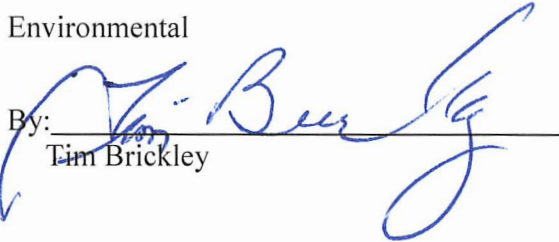
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28

[SIGNATURES ON FOLLOWING PAGE]

1 **EXECUTION BY PARTIES AND COUNSEL**

2
3
4 DATED: 20 SEP 21

Brickley Construction Company, Inc. dba Brickley
Environmental

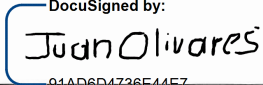
6 By: 

7 Tim Brickley

8
9 DATED: 9/20/2021

Juan Olivares

10 DocuSigned by:

11 By: 

12 Plaintiff and Settlement Class Representative

13
14 **APPROVED AS TO FORM:**

15
16
17 DATED:

EPSTEIN BECKER & GREEN, P.C.

18 By: Robert H. Pepple

Digitally signed by: Robert H. Pepple
DN: cn = Robert H. Pepple OU = EBG Users, Employees,
West, LA
Date: 2021.09.20 16:25:23 -0700

19 Richard J. Frey
20 Robert H. Pepple
21 Alejandro J. Castro
22 Attorneys for Defendant

23 DATED: September 21,
2021

STANSBURY BROWN LAW

24
25 By: 

26 Daniel J. Brown
27 Attorneys for Plaintiff
28

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Juan Olivares v. Brickley Construction Company
Case No. CIV-SB-2025107

NOTICE OF CLASS ACTION SETTLEMENT

A Court approved this Notice. This is not a solicitation from an attorney.

To: ALL CURRENT AND FORMER HOURLY NON-EXEMPT EMPLOYEES OF BRICKLEY CONSTRUCTION COMPANY, DBA BRICKLEY ENVIRONMENTAL WITHIN CALIFORNIA AND HOURLY NON-EXEMPT TEMPORARY EMPLOYEES WHO WORKED WITHIN CALIFORNIA AT ANY TIME DURING THE PERIOD OF NOVEMBER 3, 2016 THROUGH SEPTEMBER 15, 2021.

PLEASE READ THIS NOTICE CAREFULLY
AS YOUR LEGAL RIGHTS MAY BE AFFECTED.

YOU MAY BE ENTITLED TO RECEIVE MONEY
FROM THIS SETTLEMENT.

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

WHY DID I GET THIS NOTICE?

You are receiving this Notice because you are or were an hourly non-exempt employee of Brickley Construction Company, dba Brickley Environmental (“Brickley”) employed in California from November 3, 2016 to September 15, 2021 (“Settlement Class Member”) and may be entitled to recover money from a class action settlement.

This Notice informs you of your rights to share in the settlement of the class action lawsuit *Juan Olivares v. Brickley Construction Company*. Case No. CIV-SB-2025107 (the “Lawsuit”). This Notice is being sent to you by the order of the Superior Court of California, County of San Bernardino, which preliminarily approved this class action settlement on [TBD]. This Notice informs you of your rights to share in the settlement, or, if you so choose, to exclude yourself from the settlement or to object to the settlement terms.

If you wish to participate in the settlement and receive a settlement payment, you need not take any action at this time. If the Court approves the settlement, you will be mailed a settlement check at the address on file with the Settlement Administrator.

WHAT IS THIS LAWSUIT AND SETTLEMENT ABOUT?

The Lawsuit was filed by plaintiff, Juan Olivares (“Plaintiff”), on behalf of all hourly non-exempt employees who worked for Brickley in California during the time period of November 3, 2016 through September 15, 2021. The Lawsuit sought, and seeks, monetary and statutory damages, interest, attorneys’ fees, and civil penalties for the following alleged claims: (a) failure to pay minimum and overtime wages; (b) failure to provide compliant meal breaks or compensation in lieu thereof; (c) failure to provide compliant rest breaks or compensation in lieu thereof; (d) failure to reimburse for business related expenses; (e) failure to provide accurate wage statements; (f) failure to pay all wages upon termination; (g) failure to pay all wages timely during employment, (h) civil penalties pursuant to Labor Code Section 2699, *et seq.* premised on the above claims; and (i) unfair business practices premised on the above claims. Plaintiff sought all damages, penalties, interest, fees, costs, and other amounts recoverable under the above causes of action under California law, including but not limited to under the California Labor Code.

Brickley denies Plaintiff’s allegations or that it violated the law and assert that it has no liability for any of Plaintiff’s or the Settlement Class Members’ claims under any statute, wage order, common law, or equitable theory. The Court did not decide in favor of Plaintiff or Defendant and there was no trial. Plaintiff thinks he could have won at trial. Defendant thinks Plaintiff would not have won anything at trial. Defendant does not admit any of the claims alleged in the Lawsuit and denies that it owes money to Plaintiff or to the Settlement Class Members for any of the alleged claims. Defendant has entered into this settlement solely for purposes of resolving this dispute and so the parties may buy their peace and avoid further time and costs associated with litigation. Plaintiffs and their attorneys think the settlement is best for the Settlement Class Members.

The Parties participated in a mediation session with a respected class action mediator, and as a result, the Parties reached a class-wide settlement. The Parties have since entered into the Joint Stipulation for Class Action Settlement (“Settlement” or “Settlement Agreement”).

WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Juan Olivares is the Class Representative and Named Plaintiff in the Lawsuit, and he asserts claims on behalf of himself and on behalf of employees who are similarly situated and have similar claims, who are referred to as “Class Members.” A class action allows the Court to resolve the claims of all the class members at the same time, rather than litigating or settling multiple individual lawsuits. A class member is bound by the determination or judgment entered in the case and may not file his or her own lawsuit on the same claims that were decided in the class action, unless he/she excludes him/herself from the Class.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All current and former hourly non-exempt employees of Brickley in California who worked during the period of November 3, 2016 to September 15, 2021 (the “Class Period”). The “Settlement Class Members” shall not include any person who submits a timely and valid request for exclusion as provided in this Notice.

If the Court approves the compromise of the claim for civil penalties pursuant to Labor Code Section 2699, *et seq.* (“PAGA claim”), all current and former hourly non-exempt employees of Defendant in California who worked during the “PAGA Period” of June 24, 2019 to September 15, 2021 (“PAGA Group Members”) are nevertheless bound by the Court’s resolution of the PAGA claim. Class Members who are also PAGA Group Members who submit a request for exclusion will nevertheless receive their pro-rata share of the \$5,000 allocated for PAGA penalties.

WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

Defendant has agreed to pay \$500,000 (“Gross Settlement Amount”) to cover (a) Individual Settlement Payments to Settlement Class Members; (b) the Class Representative Enhancement Payment to the named Plaintiff, not to exceed \$5,000; (c) Private Attorney General Act (“PAGA”) penalties in the amount of \$20,000 of which 75% or \$15,000 will be paid to the Labor Workforce Development Agency (“LWDA”) and 25% or \$5,000 to PAGA Group Members; (d) Claims Administration Expenses not to exceed \$7,671.56; and (e) attorney’s fees and costs awarded by the Court to Class Counsel (the “Class Counsel Award”), not to exceed \$166,500.00 in fees and \$15,000 in costs. After deducting items b, c, d and e from the Gross Settlement Amount, the remaining balance is the “Net Settlement Amount.” The Net Settlement Amount will be distributed to all Settlement Class Members who do not exclude themselves from the Settlement. Per item c, \$5,000 from the Gross Settlement Amount will be distributed to all PAGA Group Members. The Class Counsel Fees and Costs and the Class Representative Enhancement Payment are subject to Court approval.

This class action settlement includes a release of Defendant by Settlement Class Members, who do not

submit a valid and timely Request for Exclusion to exclude themselves from the Settlement. Upon the date the Court enters an order granting final approval of the Settlement and Defendant funding the Gross Settlement Amount, and the employer's share of payroll taxes, all Class Members who do not timely submit a valid Request for Exclusion do and will be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged Defendant from any and all claims, liabilities, demands, obligations, penalties, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably could have been alleged based on the facts alleged in the Action, including, but not limited to claims for: (a) failure to pay minimum wages (California Labor Code sections 558, 558.1, 1194, 1197; IWC Wage Order No. 16-2001, section 4); (b) failure to pay overtime wages (California Labor Code sections 510, 558, 558.1, 1194, 1198; IWC Wage Order No. 16-2001, section 3); (c) failure to provide accurate itemized wage statements (California Labor Code sections 226(a), 246; IWC Wage Order No. 16-2001, section 7); (d) failure to pay final wages upon separation of employment (California Labor Code section 201-203); (e) failure to provide timely, duty-free meal periods and/or pay required meal period premiums (Labor Code sections 226.7, 512, 558, 558.1 and IWC Wage Order 16-2001); (f) failure to provide compliant rest periods and/or pay rest required period premiums (Labor Code section 226.7, 512, 558, 558.1 IWC Wage Order No. 16-2001, section 11); (g) failure to reimburse necessary expenditures in discharge of duties (California Labor Code sections 2800, 2802, and 2804); (h) failure to pay all wages timely during employment (Labor Code section 204, 210, 558, 558.1); & (i) all claims for unfair business practices under California Business & Professions Code Section 17200 *et seq.* that could have been premised on the claims, causes of action or legal theories of relief described above in (a)–(h); (“Released Claims”). The Released Claims will cover all Class Members who do not opt out.

Furthermore, upon the date the Court enters an order granting final approval of the Settlement and Defendant funding the Gross Settlement Amount, the State of California and all PAGA Group Members (regardless of whether PAGA Group Member submits a valid and timely Request for Exclusion to exclude themselves from the Settlement) do and will be deemed to have fully, finally and forever released the Released Parties from any and all claims for civil Penalties under PAGA [Cal. Lab. Code §§ 2699, *et seq.*] based on the labor code violations alleged and that are based upon or arise from the factual allegations in Plaintiff's notice(s) sent to the LWDA and alleged in the operative Complaint, including all attorneys' fees and costs related thereto (“Released PAGA Claims”).

HOW MUCH WILL MY PAYMENT BE?

Your share of the settlement will depend on (i) the final number of Settlement Class Members who have not excluded themselves from the Settlement; and (ii) the number of workweeks you were employed during the Class Period and PAGA Period.

“Workweeks” are determined by calculating the number of days you were an hourly non-exempt employee of Brickley in California between November 3, 2016 to September 15, 2021.

The Settlement Administrator will calculate the total workweeks for all Settlement Class Members. The Net Settlement Amount (not including the \$5,000 allocated for PAGA Group Members) is then divided by the total number of workweeks worked by all Class Members during the Class Period, and then

multiplying this amount by each Class Members' total number of workweeks to provide that employee's individual share of the Net Settlement Amount.

In addition, the Settlement Administrator will calculate the total workweeks for all PAGA Group Members during the PAGA Period. The \$5,000 allocated for PAGA penalties to PAGA Group Members is then divided by the total number of workweeks worked by all PAGA Group Members during the PAGA Period, and then this amount is multiplied by each PAGA Group Members' total number of workweeks to provide that employee's individual share of the \$5,000 allocated for PAGA penalties.

Defendant's records show that you were employed by Brickley as an hourly non-exempt employee in California from [start date] to [end date] between November 3, 2016 and September 15, 2021 and worked _[##]_ workweeks. (You may have worked for Brickley prior to November 3, 2016, but that time period is not included for purposes of this settlement.) If the settlement is approved, based on those records, your estimated payment is \$[XXX.XX], less applicable taxes and payroll deductions. This amount is only an estimate. The actual amount of the Individual Settlement Payment may increase or decrease based on several factors, including the number of employees who exclude themselves from the settlement.

*If you disagree with the employment dates listed above for employment during the periods between November 3, 2016 to September 15, 2021, please contact the Settlement Administrator no later than , 2021. You will be asked to provide documents to support your dispute. **If you do not provide any documents or other evidence to support your challenge, the Settlement Administrator may reject your challenge.***

Contact information for the Settlement Administrator is provided below.

Olivares v. Brickley Construction Company

c/o CLAIMS ADMINISTRATOR

Mailing Address

Telephone numbers

All Individual Settlement Payments will be allocated as follows: 100% of each PAGA Groups Members pro-rate share of the \$5,000 allocated for PAGA penalties shall be allocated as penalties and shall not be subject to payroll withholding; 20% of each Individual Settlement Payment (not including amounts attributed to PAGA penalties) will be allocated for the settlement of alleged unpaid wages and subject to the withholding of federal, state and local income taxes, including FICA taxes, among other legally required withholdings and deductions; and 80% of each Individual Settlement Payment (not including amounts attributed to PAGA penalties) will be allocated for the settlement of interest and penalties and shall not be subject to payroll withholding.

The Settlement Administrator shall issue to each Settlement Class Member an IRS Form W-2 for the portion of the individual settlement that is designated as unpaid wages. The Settlement Administrator may issue an IRS Form 1099 to each Settlement Class Member and PAGA Group Member for the remaining portion of the Individual Settlement Payment that is not designated as unpaid wages and other

amounts paid pursuant to this settlement. All Settlement Class Members will be responsible for correctly characterizing this income for tax purposes and for paying any taxes on the amounts received.

WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT?

To receive a settlement payment, you do not need to do anything. If the Court approves this settlement at the final approval hearing, the Settlement Administrator will mail you a check within approximately three years from the date the Court grants final approval, unless an appeal is filed. If you do not exclude yourself from the Settlement, you will receive an Individual Settlement Payment and you will be bound by the terms of the Settlement Agreement.

HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

To exclude yourself from the settlement, you must submit a written request for exclusion to the Settlement Administrator at the following address or fax number:

Olivares v. Brickley Construction Company
c/o Settlement Administrator
Mailing Address
Telephone numbers
Fax numbers

To be valid and timely, a written request for exclusion must: (1) explicitly and unambiguously state “I wish to exclude myself from the settlement reached in the matter of *Juan Olivares v. Brickley Construction Company*, Case No. CIV-SB-2025107, I understand by excluding myself, I will not receive any money from the settlement reached in this matter;” (2) contain the name, address, telephone number and the last four digits of the Social Security number of the person requesting exclusion; (3) be signed by the Settlement Class Member; and (4) **be postmarked or fax stamped by _____, 2021** and returned to and received by the Settlement Administrator at the specified address or fax telephone number above. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement, including the Release of Claims described in this Notice.

If you timely request to be excluded from the settlement, you will not be entitled to receive any payment under the settlement, and you cannot object to the settlement. Class Counsel will not represent your interests in this Lawsuit if you request to be excluded. If you are PAGA Group Member, however, you will not be permitted to exclude yourself from the settlement of the PAGA claim. If you are a PAGA Group Member, you will still receive a pro-rata share of the \$5,000 allocated to the PAGA Group Members and be bound by the release of the Released PAGA Claims.

WHAT IF I DO NOTHING?

If you do nothing, you will receive a settlement payment and you will be bound by the terms of the Settlement Agreement.

WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

If you are a Settlement Class Member who has not asked to be excluded from the settlement, you may object to the settlement and appear at the hearing where the Court will make a final decision whether or not to approve the settlement (the “Final Approval Hearing”). The Final Approval Hearing is scheduled to take place on _____, 2021, at 8:30 a.m., in Department S-26 of the San Bernardino County Superior Court, located at 247 West 3rd St., San Bernardino, California 92415.

A Settlement Class Member who wishes to object must mail to the Settlement Administrator (at the address above) or fax a written statement of objection (“Notice of Objection”), postmarked or faxed by no later than _____, 2021. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name, address and telephone number of the Settlement Class Member; (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a list of all persons who will be called to testify in support of the objection. You are not required to appear at the Final Approval/Settlement Fairness Hearing in order for the Court to consider your objection. You have the right to retain your own attorney, at your own expense, to submit an objection or appear on your behalf at the Final Approval Hearing. If you choose to appear at the Final Approval Hearing, you can appear remotely by visiting the Court’s website at <https://www.sb-court.org/general-information/remote-access> for instructions on how to schedule your remote appearance.

Submitting an objection will *not* exclude you from the Settlement Class. You will still have the right to receive an Individual Settlement Payment, unless you request to be excluded.

WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is simply telling the Court that you disagree with the terms of the settlement. You can object only if you stay in the Settlement Class. If you submit an objection, you will still receive an Individual Settlement Payment and be bound by the Settlement, if it is approved by the Court.

Excluding yourself is telling the Court that you don’t want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you and you will not receive any Settlement Payment.

WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The settlement, if finally approved by the Court, will bind all Settlement Class Members who do not request to be excluded from the settlement whether or not they timely cash their Individual Settlement Payments.

Final approval of the settlement will bar any Settlement Class Member who does not request to be excluded from the settlement from hereafter initiating a lawsuit or proceeding regarding a Released Claim originating between November 3, 2016 and September 15, 2021, which was alleged or that could have been alleged in the operative complaint based on the facts alleged in the operative complaint.

The Settlement Agreement contains additional details about the settlement terms and the scope of the release.

DO I HAVE A LAWYER IN THIS CASE?

The Court has ordered that, for purposes of this Settlement, the interests of Plaintiff and the Settlement Class Members are represented by:

STANSBURY BROWN LAW
Daniel J. Brown
dbrown@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, California 90291
Tel: (323) 207-5925
www.stansburybrownlaw.com

Settlement Class Members will not be charged for these lawyers. Instead, they will be paid from the settlement fund.

WHAT IF MY INFORMATION CHANGES?

If your address has changed or you plan to change your address in the near future, please contact the Settlement Administrator

Olivares v. Brickley Construction Company
c/o Settlement Administrator
Mailing Address
Telephone numbers
Fax number

IT IS YOUR RESPONSIBILITY TO KEEP AN UPDATED ADDRESS ON FILE WITH THE SETTLEMENT ADMINISTRATOR. YOUR FAILURE TO UPDATE YOUR ADDRESS COULD RESULT IN YOUR SETTLEMENT PAYMENT BEING TRANSMITTED TO THE CALIFORNIA STATE CONTROLLER UNCLAIMED PROPERTY.

FURTHER INFORMATION

The foregoing is only a summary of the settlement. To see a copy of the Joint Stipulation for Class Action Settlement, the Court's Preliminary Approval Order, Motion for Final Approval, the operative Complaint filed in the Lawsuit, and other filed documents related to the Lawsuit and this Settlement, you may view all such files at the Civil Clerk's Office at the San Bernardino Superior Court located at 247 West 3rd St., San Bernardino, California 92415 or by visiting at portal.sb-court.org/Portal/ selecting "Smart Search," and entering the case number information.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [REDACTED]. Please refer to the *Olivares v. Brickley Construction Company* Class Action Settlement.

If you have any questions about the settlement, you can contact Class Counsel:

STANSBURY BROWN LAW

Daniel J. Brown

dbrown@stansburybrownlaw.com

2610 ½ Abbot Kinney Blvd.

Venice, California 90291

Tel: (323) 207-5925

www.stansburybrownlaw.com

***PLEASE DO NOT TELEPHONE OR CONTACT THE COURT FOR INFORMATION
REGARDING THIS SETTLEMENT.***

***PLEASE DO NOT CONTACT DEFENDANT, THEIR MANAGERS, OR ATTORNEYS FOR
INFORMATION ABOUT THIS SETTLEMENT.***

EXHIBIT 2

REQUEST FOR EXCLUSION FORM

Juan Olivares v. Brickley Construction Company, Inc., dba Brickley Environmental
San Bernardino County Superior Court
Case No. CIV-SB-2025107

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MAY COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:

ILYM GROUP, INC. <i>Juan Olivares v. Brickley Construction Company, Inc., dba Brickley Environmental</i> CLASS ACTION ADMINISTRATOR ADDRESS ADDRESS PHONE FAX
--

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Juan Olivares v. Brickley Construction Company, Inc., dba Brickley Environmental*, San Bernardino County Superior Court, Case No. CIV-SB-2025107.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *JUAN OLIVARES V. BRICKLEY CONSTRUCTION COMPANY, INC., DBA BRICKLEY ENVIRONMENTAL* LAWSUIT. 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.

Name _____ Telephone Number _____

Address _____

Date _____ Signature _____

Last Four Digits of Social Security Number: ____ _

EXHIBIT 3

OBJECTION FORM

Juan Oliveras v. Brickley Construction Company, Inc., dba Brickley Environmental
San Bernardino Superior Court
Case No.: CIV-SB-2025107

All objections must be mailed or delivered to the Settlement Administrator, ILYM Group, Inc. at <<INSERT ADMINISTRATOR CONTACT INFO>> on or before <<RESPONSE DEADLINE>>. All objections must be postmarked on or before <<RESPONSE DEADLINE>>.

Objecting Settlement Class Member Information:

Name

Telephone Number

Address

Date

Signature

Describe the Nature of Each Objection and Please Attach Additional Pages if Necessary:

EXHIBIT 4

STANSBURY BROWN LAW
DANIEL J. BROWN (SBN 307604)
dbrown@stansburybrownlaw.com
2610 ½ Abbot Kinney Blvd.
Venice, CA 90291
Tel: 323-207-5925

Attorney for Plaintiff

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

JUAN OLIVARES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BRICKLEY CONSTRUCTION COMPANY,
INC., dba BRICKLEY ENVIRONMENTAL,
a California corporation; and DOES 1 through
100,

Defendants.

Case No. CIV-SB-2025107

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

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 558, 558.1,
1182.12, 1194, 1194.2, AND 1197);**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 551, 552, 558,
558.1, 1194, AND 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558,
AND 558.1);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558,
AND 558.1);**
- (5) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE §§
2800, 2802, AND 2804);**
- (6) FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§§ 226, AND 246 et seq.);**
- (7) WAITING TIME PENALTIES
(LABOR CODE §§ 201-204);**
- (8) FAILURE TO PAY WAGES
TIMELY DURING EMPLOYMENT
(LABOR CODE §§ 204, 210, 558,
AND 558.1);**
- (9) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 et seq.); and**

**(10) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 et seq.).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Juan Olivares (“Plaintiff”), on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against Brickley Construction Company, Inc., dba Brickley Environmental, a California corporation; and, DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this Complaint for recovery of unpaid wages and penalties under California Business & Professions Code § 17200 *et. seq.*, Labor Code §§ 201-204, 210, 226 *et seq.*, 226.7, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2800, 2802, and 2804; and Industrial Welfare Commission Wage Order 16 (“Wage Order 16”), in addition to seeking declaratory relief and restitution. This Court has jurisdiction over Defendants violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of San Bernardino. One or more of the Defendants own, maintain offices, transact business, have agent(s) within the County of San Bernardino, and/or otherwise are found within the County of San Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the four years immediately preceding

1 the filing of the Complaint in this action and within the statute of limitations periods applicable
2 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
3 employee. Plaintiff was, and is, a victim of Defendant's policies and/or practices complained of
4 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
5 §§ 201-204, 210, 226 *et seq.*, 226.7, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1198,
6 2698 *et seq.*, 2800, 2802, 2804; California Business & Professions Code § 17200 *et seq.* ("Unfair
7 Competition Law"); and Wage Order 16, which sets employment standards for Construction
8 Occupations.

9 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
10 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
11 continue to do) business by employing individuals who specialize in hazardous waste abatement
12 and remediation in the United States, and employed Plaintiff, and other similarly-situated non-
13 exempt employees, within San Bernardino County and the state of California and, therefore, were
14 (and are) doing business in San Bernardino County and the State of California.

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

23 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
24 herein, Defendants were and are the employers of Plaintiff and the Class.

25 7. At all times herein mentioned, each of said Defendants participated in the doing
26 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
27 Defendants, and each of them, were the agents, servants, and employees of each and every one of
28 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned

1 were acting within the course and scope of said agency and employment. Defendants, and each
2 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
3 omissions complained of herein.

4 8. At all times mentioned herein, Defendants, and each of them, were members of
5 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
6 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
7 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
8 Class.

9 **GENERAL FACTUAL ALLEGATIONS**

10 9. Defendants operate a business specializing in hazardous waste abatement and
11 remediation. Plaintiff commenced employment with Defendants as a non-exempt employee from
12 approximately June 2011 until approximately January 2020 in the position of "Lead Man."
13 Plaintiff's job duties included removing mold and asbestos, lead and lead-based paint, and other
14 hazardous wastes from homes, schools, military bases, and prisons. The vast majority of
15 Plaintiff's work was performed on military bases. Defendants credited Plaintiff with working
16 approximately 8.0-8.5 hours per shift, five to six days a week. However, as discussed below,
17 Plaintiff usually worked considerably more hours per shift.

18 **Off-The-Clock/Overtime**

19 10. During Plaintiff's employment with Defendants, Plaintiff was generally credited
20 with starting each shift at 7am and ending each shift at 3:30pm. Plaintiff's timesheets were in the
21 exclusive possession of his supervisors and Plaintiff was at no point during his employment with
22 Defendants made to clock in and clock out for his shifts.

23 11. In practice, Plaintiff and other non-exempt employees would be required to arrive
24 at Defendant's facilities between 5am and 6am. From there, Plaintiff and other non-exempt
25 employees would travel to the work-site location for the day. It was only when Plaintiff arrived
26 at the worksite location, typically at 7am, when his supervisors start tracking his hours meaning
27 he was working under Defendant's control and off-the-clock for at least one hour before he started
28 to be credited with time worked.

1 12. Furthermore, as Plaintiff's timecards were pre-scheduled by Defendants, they
2 erroneously indicate that he finished his shifts at 3:30pm daily. In practice, Defendants would
3 stop logging the hours of Plaintiff at 3:30pm and he would be off-the-clock for the entirety of the
4 time it would take for him to clean the work area and drive back to Defendant's facilities from
5 the daily work site. On an average day, Plaintiff did not arrive back at Defendant's facilities until
6 between 5-6pm and sometimes even later depending on the assignment. As such, Plaintiff worked
7 overtime off-the-clock for at least 1.5 hours after he was credited with having clocked out by his
8 supervisors.

9 13. Plaintiff estimates that between the time spent working prior to being "clocked in"
10 and the time spent working after being "clocked out" by his supervisors he worked at least three
11 hours off-the-clock per day which should have been compensated as overtime hours.

12 **Late/Interrupted Meal Periods**

13 14. During Plaintiff's employment with Defendants, Plaintiff was not provided all
14 required meal periods due to Defendant's meal periods policies which fail to provide
15 uninterrupted, duty-free 30-minute meal periods prior to the sixth hour of work commencing.
16 Despite what is reflected in Defendant's fraudulent timesheets, Plaintiff and other non-exempt
17 employees did not exercise the use of their meal periods until well after their 5th hour worked. In
18 practice, Plaintiff and other non-exempt employees almost always received late meal periods by
19 virtue of the fact that they should have been on-the-clock when they arrived at Defendant's
20 facilities to report to work for the day. Furthermore, while Defendant's timesheets would indicate
21 that Plaintiff and other non-exempt employees would take hour-long meal periods, in practice the
22 foreman would instruct them to change into their protective equipment and prepare to get ready
23 to return to working after around 45 minutes. Despite Defendants failure to authorize and permit
24 Plaintiff and other non-exempt employees to take compliant meal periods, due to their uniform
25 and unlawful practices, Defendants never provided Plaintiff and other non-exempt employees
26 with an hour of pay at their regular rate for each rest period violation as required by Labor Code
27 § 226.7.

28 15. In addition to Defendants failure to provide Plaintiff and other non-exempt

1 employees with all legally required first meal periods, Defendants also failed to provide a second
2 meal period to Plaintiff and other non-exempt employees when they worked shifts in excess of
3 10.0 hours. At no point during Plaintiff's employment with Defendants was he provided a second
4 meal period despite the fact, as detailed above, that he worked in excess of 10.0 hours on a daily
5 basis. Again, Despite Defendant's failure to authorize and permit Plaintiff and other non-exempt
6 employees to take all lawful paid second meal periods, due to their uniform and unlawful
7 practices, Defendants never provided Plaintiff and other non-exempt employees with an hour of
8 pay at their regular rate for each rest period violation as required by Labor Code § 226.7.

9 16. Further, upon information and belief, Defendants maintained no payroll code or
10 other mechanism for the payment of meal period premium payments required by Labor Code §
11 226.7 in the event that a legally compliant meal period was not provided to any of their non-
12 exempt employees.

13 **Missed Rest Periods**

14 17. Plaintiff and other non-exempt employees were also not authorized and permitted
15 to take all required rest periods due to Defendants rest period policies/practices, which fail to
16 authorize and permit all rest periods for every four hours worked, or major fraction thereof. At
17 no point during their employment with Defendants were Plaintiff and other non-exempt
18 employees permitted to exercise legally compliant rest periods. As stated above, Plaintiff was
19 constantly required to attend to his work duties, without interruption of breaks, and therefore,
20 Defendants failed to authorize and permit Plaintiff to take off-duty rest periods that were
21 completely free of employer control in violation of California law. Furthermore, management
22 never mentioned to Plaintiff and other non-exempt employees that they were permitted by law to
23 exercise their right to take duty-free rest periods. Instead, Defendants attempted to unlawfully
24 purport that the "hour-long" meal period provided to Plaintiff and other non-exempt employees
25 was inclusive of statutorily required rest periods. Despite Defendant's failure to authorize and
26 permit Plaintiff and other non-exempt employees to take all lawful paid rest periods, due to their
27 uniform and unlawful practices, Defendants never provided Plaintiff and other non-exempt
28 employees with an hour of pay at their regular rate for each rest period violation as required by

1 Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant period,
2 Defendants maintained no payroll code or another mechanism for the payment of rest period
3 premiums in the event Plaintiff and other non-exempt employees were not authorized to take
4 lawful rest periods.

5 **Inaccurate Wage Statements**

6 18. As result of Defendant's failure to properly keep track of all hours worked and pay
7 all minimum wages, overtime wages, meal and rest period premium wages, Defendants
8 maintained inaccurate payroll records, and issued inaccurate and facially deficient wage
9 statements

10 **Failure to Reimburse for All Necessary Business Expenses**

11 19. Defendants failed to adequately reimburse Plaintiff for all reasonable and
12 necessary work expenditures, including but not limited to, requiring Plaintiff to purchase and
13 maintain tools such as hammers, crowbars, knives, scissors, and scrappers which Defendants
14 required Plaintiff and other non-exempt employees to purchase as a necessary precondition of
15 employment. As a further matter, Plaintiff and other non-exempt employees were required to
16 purchase work boots, which cost around \$400 per year, and plastic boots for use when working
17 with chemicals, which cost around \$50 per year. At no point during Plaintiff's employment was
18 he ever reimbursed by Defendants for the purchase of these necessary business expenditures.

19 20. As a further result of Defendant's failure to pay Plaintiff and other non-exempt
20 employees all minimum, overtime wages, and meal/rest period premium wages, Defendants have
21 failed to timely pay all wages owed to separating employees at the time of their separation.

22 **CLASS ACTION ALLEGATIONS**

23 21. **Class Definition:** Plaintiff brings this action on behalf of himself and the
24 following "Class" pursuant to § 382 of the Code of Civil Procedure:

- 25 a. All individuals who worked for Defendant Brickley Construction Company,
26 Inc., in California as non-exempt employees from November 3, 2016 through
27 September 15, 2021.

28 22. **Numerosity/Ascertainability:** The members of the Class are so numerous that

joinder of all members would be unfeasible and not practicable. It is estimated that the members of the Class number greater than ninety (90) individuals. The identity of such class members is readily ascertainable via inspection of Defendants' employment records.

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

- a. Whether Defendants paid all minimum wages owed for all hours worked to members of the Class pursuant to Labor Code §§ 118.2, 1194, 1194.2, and 1197;
- b. Whether Defendants failed to pay an overtime rate of pay for all overtime hours worked for the members of the Class;
- c. Whether Defendants provided all legally compliant meal periods to members of the Class pursuant to Labor Code §§ 226.7 and 512;
- d. Whether Defendants provided all legally compliant rest periods to members of the Class pursuant to Labor Code §§ 226.7 and 516;
- e. Whether Defendants failed to reimburse members of the Class for business expenditures necessarily incurred in the performance of their duties;
- f. Whether Defendants provided accurate, itemized wage statements to members of the Classes;
- g. Whether Defendants' policies and/or practices for the timing and amount of payment of wages to members of the Class pursuant to Labor Code Sections §§ 201-203 at the time of their separation of employment were lawful; and
- h. Whether Defendants' policies and/or practices for the timing and amount of payment of wages to members of the Class pursuant to Labor Code Sections §§ 204, 210 during their employment were lawful.

24. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Class. The common

1 questions of law set forth above are numerous and substantial and stem from Defendants' policies
2 and/or practices applicable to each individual class member, such as Defendants' uniform pay
3 structure, meal and rest period policies and practices, timekeeping policies and practices, non-
4 reimbursement, wage statement, and payment of final wages policies and practices. As such, the
5 common questions predominate over individual questions concerning each individual class
6 member's showing as to his or her eligibility for recovery or as to the amount of his or her
7 damages.

8 25. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
9 Plaintiff was employed by Defendants as a non-exempt employee in California during the
10 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
11 herein, Plaintiff, like the members of the Class, was paid on an hourly basis, was subject to
12 Defendants' meal and rest period and timekeeping policies and practices, was subjected to
13 Defendants' unlawful failure to reimburse business expenses, was furnished with inaccurate and
14 incomplete wage statements, and was not paid all wages earned at the time of his separation of
15 employment.

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

22 27. **Superiority:** The California Labor Code is broadly remedial in nature and serves
23 an important public interest in establishing minimum working conditions and standards in
24 California. These laws and labor standards protect the average working employee from
25 exploitation by employers who have the responsibility to follow the laws and who may seek to
26 take advantage of superior economic and bargaining power in setting onerous terms and
27 conditions of employment. The nature of this action and the format of laws available to Plaintiff
28 and members of the Class make the class action format a particularly efficient and appropriate

1 procedure to redress the violations alleged herein. If each employee were required to file an
2 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
3 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
4 their vastly superior financial and legal resources. Moreover, requiring each member of the Class
5 to pursue an individual remedy would also discourage the assertion of lawful claims by employees
6 who would be disinclined to file an action against their former and/or current employer for real
7 and justifiable fear of retaliation and permanent damages to their careers at subsequent
8 employment. Further, the prosecution of separate actions by the individual class members, even
9 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
10 with respect to the individual class members against Defendants herein; and which would
11 establish potentially incompatible standards of conduct for Defendants; and/or legal
12 determinations with respect to individual class members which would, as a practical matter, be
13 dispositive of the interest of the other class members not parties to adjudications or which would
14 substantially impair or impede the ability of the class members to protect their interests. Further,
15 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
16 individual prosecution considering all of the concomitant costs and expenses attending thereto.
17 As such, the Class (as defined herein) are maintainable as a Class under § 382 of the Code of
18 Civil Procedure.

19 **FIRST CAUSE OF ACTION**

20 **MINIMUM WAGE VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

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

23 29. Wage Order 16, § 4 and California Labor Code §§ 558, 558.1, 1197 and 1182.12
24 establish the right of employees to be paid minimum wages for all hours worked in amounts set
25 by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
26 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
27 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal
28 to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed

1 to conform their pay practices to the requirements of the law by failing to pay Plaintiff and other
2 non-exempt employees for all hours actually worked including, but not limited to, all hours they
3 were subject to the control of Defendants and/or suffered or permitted to work under the
4 California Labor Code and Wage Order 16.

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

10 31. As a direct and proximate result of Defendant's unlawful conduct as alleged
11 herein, Plaintiff and other non-exempt employees have sustained economic damages, including
12 but not limited to, unpaid wages and lost interest in an amount to be established at trial, and they
13 are entitled to recover economic and statutory damages and penalties and other appropriate relief
14 as a result of Defendant's violations of the California Labor Code and Wage Order 16.

15 32. Defendant's practice and uniform administration of corporate policy regarding
16 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
17 other non-exempt employees a civil action for the unpaid amount of minimum wages, liquidated
18 damages, including interest thereon, statutory penalties, and attorneys' fees and costs of suit
19 according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of Civil
20 Procedure § 1021.5.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY ALL OVERTIME WAGE**

23 **(AGAINST ALL DEFENDANTS)**

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

25 34. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 558.1,
26 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all
27 overtime hours worked, and provide a private right of action for the failure to pay all overtime
28 compensation for overtime work performed.

1 35. At all times relevant herein, Defendants were required to properly compensate
2 Plaintiff and other non-exempt employees for all overtime hours worked pursuant to California
3 Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay overtime
4 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
5 in the Wage Order.

6 36. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
7 employees to work overtime hours but did not compensate Plaintiff other non-exempt employees
8 at one and one-half times their regular rate of pay for such hours.

9 37. The foregoing policies and practices are unlawful and create entitlement to
10 recovery by Plaintiff and the other non-exempt employees in a civil action for the unpaid amount
11 of overtime premiums owing, including interest thereon, statutory and civil penalties, and
12 attorneys' fees and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and
13 1198, Wage Order 16, and Code of Civil Procedure § 1021.5.

14 **THIRD CAUSE OF ACTION**

15 **MEAL PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

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

18 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 failed in their affirmative obligation to provide all of their non-exempt employees in California,
20 including Plaintiff and other non-exempt employees with all legally compliant meal periods in
21 accordance with the mandates of the California Labor Code and Wage Order 16, § 10. Despite
22 Defendant's violations, Defendants did not pay an additional hour of pay to Plaintiff other non-
23 exempt employees at their respective regular rates of compensation, in accordance with California
24 Labor Code §§ 226.7, and 512.

25 40. As a result, Defendants are responsible for paying premium compensation for meal
26 period violations including interest thereon, as well as statutory penalties, civil penalties, and
27 costs of suit, pursuant to Labor Code §§ 226.7, 512, 558, and 558.1 Wage Order 16, and Civil
28 Code §§ 3287(b) and 3289.

1 **FOURTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 42. Wage Order 16, § 11 and California Labor Code §§ 226.7 and 516 establish the
6 right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
7 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

8 43. As alleged herein, Defendants failed to authorize and permit Plaintiff other non-
9 exempt employees to take all legally compliant rest periods.

10 44. The foregoing violations create an entitlement to recovery by Plaintiff and other
11 non-exempt employees in a civil action for the unpaid amount of rest period premiums owing,
12 including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according
13 to California Labor Code §§ 226.7, 516, 558, 558.1 and Civil Code §§ 3287(b) and 3289.

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

16 **(AGAINST ALL DEFENDANTS)**

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

18 46. At all relevant times herein, Defendants were subject to Labor Code §§ 2800,
19 2802, and 2804, which states that “an employer shall indemnify his or her employees for all
20 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
21 of his or her duties, or of his or her obedience to the directions of the employer...”

22 47. Due to Defendant’s unlawful policy and practice of requiring employees to
23 purchase and maintain tools necessary for the performance of their job duties, Defendants have
24 violated Labor Code §§ 2800, 2802, and 2804.

25 48. Plaintiff and other non-exempt employees are entitled to attorneys’ fees and costs
26 of suit pursuant to Labor Code § 2802(c) for bringing this action.

27 49. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
28 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,

1 Plaintiff and other non-exempt employees are entitled to interest, which shall accrue from the date
2 on which they incurred the initial necessary expenditure.

3 **SIXTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

7 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
9 and other non-exempt employees with accurate, itemized wage statements that included, among
10 other requirements, accurate total gross wages earned, meal and rest period premiums, and total
11 net wages earned in violation of Labor Code §226 *et seq.*, and § 246.

12 52. Defendant's failure to furnish Plaintiff and other non-exempt employees with
13 complete and accurate, itemized wage statements resulted in actual injury, as said failures led to,
14 among other things, the non-payment of all of their meal and rest period premiums, and deprived
15 them of the information necessary to identify discrepancies in Defendant's reported data.

16 53. Defendant's failures created an entitlement to Plaintiff other non-exempt
17 employees in a civil action for damages and/or penalties pursuant to Labor Code § 226, including
18 statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit pursuant
19 to Labor Code § 226 *et seq.* and § 246

20 **SEVENTH CAUSE OF ACTION**

21 **WAITING TIME PENALTIES**

22 **(AGAINST ALL DEFENDANTS)**

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

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

1 employee's last date of employment.

2 56. Defendants failed to timely pay Plaintiff and other non-exempt employees all
3 wages earned, including all final wages due to them at the time of their separation including,
4 among other things, underpaid overtime and minimum wages owed, and meal and rest period
5 premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
6 matter of uniform policy and practice, Defendants continue to fail to pay other non-exempt
7 employees all earned wages at the end of employment in a timely manner pursuant to the
8 requirements of Labor Code §§ 201-203. Defendant's failure to pay all final wages was willful
9 within the meaning of Labor Code § 203.

10 57. Defendant's willful failure to timely pay Plaintiff and other non-exempt
11 employees their earned wages upon separation from employment results in a continued payment
12 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff other non-
13 exempt employees are entitled to compensation pursuant to Labor Code § 203, plus reasonable
14 attorneys' fees and costs of suit.

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO PAY ALL WAGES TIMELY DURING EMPLOYMENT**

17 **(AGAINST ALL DEFENDANTS)**

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

19 59. This cause of action is brought pursuant to Labor Code §§ 204, 210, 558, and
20 558.1. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in any
21 employment are due and payable twice during each calendar month, on days designated in
22 advance by the employer as the regular paydays." Pursuant to Labor Code § 204(d), these
23 requirements are "deemed satisfied by the payment of wages for weekly, biweekly or
24 semimonthly payroll if the wages are paid not more than seven calendar days following the close
25 of the payroll period.

26 60. Due to Defendants' failure to pay Plaintiff and the other non-exempt employees
27 all meal and rest break period premiums owed, Defendants violated Labor Code § 204 by failing
28 to pay all wages due within seven (7) days of the close of the payroll period on a regular and

consistent basis. (*See Parson v. Golden State FC, LLC*, N.D. (Cal. May 2, 2016) 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 [finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204]).

61. Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other non-exempt employees are entitled to recover penalties under Labor Code § 210.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

63. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and other non-exempt employees all minimum and overtime wages, provide all required meal periods and failing to authorize and permit all required rest periods, failing to pay meal and rest period premium wage payments, failing to reimburse for necessary business expenditures, and failing to furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiff and other non-exempt employees all final wages upon separation of employment.

64. Defendant’s utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive other non-exempt employees of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendant’s competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

1 65. Because Plaintiff is a victim of Defendant's unfair and/or unlawful conduct alleged
2 herein, Plaintiff for himself and on behalf of other non-exempt employees seeks full restitution
3 of monies, as necessary and according to proof, to restore any and all monies withheld, acquired
4 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

5 66. The acts complained of herein occurred within the last four years immediately
6 preceding the filing of the Complaint in this action.

7 67. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect his interests and those of other non-exempt employees to obtain restitution and injunctive
9 relief on behalf of Defendant's current non-exempt employees, and to enforce important rights
10 affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees
11 and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

12 **TENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(AGAINST ALL DEFENDANTS)**

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

16 69. Defendants have committed several Labor Code violations against Plaintiff, and other
17 aggrieved employees. Plaintiff, an "Aggrieved Employee" within the meaning of Labor Code §
18 2698 *et seq.*, acting on behalf of himself and other Aggrieved Employees, brings this
19 representative action against Defendants to recover the civil penalties due to Plaintiff, other non-
20 exempt employees, and the State of California according to proof pursuant to Labor Code § 558,
21 § 558.1 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation
22 for each failure to pay each employee and \$200 for each subsequent violation or willful or
23 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
24 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each
25 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
26 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
27 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
28 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)

\$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code:

- a. Failing to pay minimum wages for all hours worked to Plaintiff, and other Aggrieved Employees in violation of Labor Code §§ 558, 558.1, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff and other Aggrieved Employees all earned overtime compensation in violation of Labor Code §§ 510, 558, 558.1, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff and other Aggrieved Employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, 558.1, and 1198;
- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff and other Aggrieved Employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, 558.1, and 1198;
- e. Failing to reimburse Plaintiff and other Aggrieved Employees for all necessary work expenses incurred in violation of Labor Code §§ 2800, 2802 and 2804;
- f. Failing to furnish Plaintiff and other Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code §§ 226 and 246;
- g. Failing to timely pay all wages, including all final wages and compensation earned by Plaintiff and other Aggrieved Employees at the time of separation in violation of Labor Code §§ 201, 202, and 203,
- h. Failing to timely pay all wages earned by Plaintiff and other Aggrieved Employees during the course of regular employment in violation of Labor Code §§ 204, 210, 558, and 558.1; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other Aggrieved Employees in violation of Labor Code § 1174.

70. On June 24, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendant’s

1 violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties
2 under California Labor Code § 2698 et seq. with respect to violations of the California Labor
3 Code identified in Paragraph 58 (a)-(h). Now that sixty-five days have passed from Plaintiff's
4 notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice
5 that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements
6 for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

11 **PRAYER**

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

14 1. Upon the First Cause of Action, for payment of minimum wages, liquidated
15 damages, and penalties according to proof pursuant to Labor Code §§ 558, 558.1, 1182.12, 1194,
16 1194.2, and 1197;

17 2. Upon the Second Cause of Action, for compensatory, consequential, general, and
18 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 558.1, 1194, and
19 1198;

20 3. Upon the Third Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 226.7, 512, 558, and 558.1;

22 4. Upon the Fourth Cause of Action, for compensatory, consequential, general and
23 special damages according to proof pursuant to Labor Code §§ 226.7, 516, 558, and 558.1;

24 5. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
25 special damages according to proof pursuant to Labor Code §§ 2800, 2802, and 2804;

26 6. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
27 226, *et seq* and 246;
28

1 7. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
2 to Labor Code § 201-203;

3 8. Upon the Eighth Cause of Action, for statutory penalties pursuant to Labor Code
4 §§ 204, 210, 558, and 558.1;

5 9. Upon the Ninth Cause of Action, for restitution to Plaintiff and other non-exempt
6 employees of all money and/or property unlawfully acquired by Defendants by means of any acts
7 or practices declared by this Court to be in violation of Business and Professions Code § 17200
8 *et seq.*; and

9 10. Upon the Tenth Cause of Action, (1) \$100.00 for each initial violation for each
10 failure to pay each employee and \$200 for each subsequent violation or willful or intentional
11 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
12 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
13 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
14 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
15 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
16 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
17 each initial violation and \$200 for each subsequent violation per employee per pay period for the
18 violations of the Labor Code Sections cited in Labor Code § 2699.5.

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

21 12. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
22 Procedure § 1021.5 and all other applicable statutes; and

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

24
25
26
27 Dated: September 20, 2021

Respectfully submitted,
STANSBURY BROWN LAW

1 By: 
2 Daniel J. Brown
3 Attorneys for Plaintiff
4

5 **DEMAND FOR JURY TRIAL**

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

7 Dated: September 20, 2021 Respectfully submitted,
8 STANSBURY BROWN LAW

9 By: 
10 Daniel J. Brown
11 Attorneys for Plaintiff
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