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 14 FOUNDATION BUILDING MATERIALS, LLC DBA
 15 FOUNDATION BUILDING MATERIALS; AND
 FOUNDATION BUILDING MATERIALS, INC.

17 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 18 **IN AND FOR COUNTY OF LOS ANGELES**

19 **MIGUEL OLIVAS**, an individual;

21 Plaintiff,

23 vs.

24 **FOUNDATION BUILDING MATERIALS,**
 25 **INC.** a California Corporation; and
 26 **FOUNDATION BUILDING MATERIALS,**
LLC, a California Limited Liability Company

27 Defendants.

Case No.: 20STCV22778
[Unlimited Jurisdiction]

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

[IMAGED – E-FILE]

Honorable William F. Highberger
 Dept. 10

RECITALS

1. On September 24, 2020, the operative First Amended Class Action Complaint was filed
 by Plaintiff MIGUEL OLIVAS against Defendants FOUNDATION BUILDING MATERIALS, INC.
 a California Corporation; and FOUNDATION BUILDING MATERIALS, LLC, a California Limited

1 Liability Company dba FOUNDATION BUILDING MATERIALS (collectively “Defendants”),
2 designated as Case No. 20STCV22778. The First Amended Complaint arose from Plaintiff’s originally
3 filed complaint on June 15, 2020.
4

5 2. The operative First Amended Class Action Complaint alleges that Defendants: (i) Failed
6 to pay overtime; (ii) Failed to pay meal period premiums; (iii) Failed to pay rest period premiums; (iv)
7 Failed to pay minimum wages; (v) Failed to pay wages at termination; (vi) Failed to provide accurately
8 itemized wage statements; (vii) Failed to reimburse business expenses; (viii) Violation of the unfair
9 competition law; and (ix) Violation of the PAGA. Plaintiff sought to represent all current and former
10 employees who had been employed by Defendants in California as non-exempt employees within four
11 (4) years prior to the filing of this action until resolution of this lawsuit. On behalf of themselves and
12 the proposed class, Plaintiff sought injunctive and equitable relief, actual, consequential and incidental
13 damages, statutory damages, statutory penalties, restitution, interest, attorneys’ fees, costs, and civil
14 penalties pursuant to California Labor Code section 2699, subdivisions (f) and (g).
15

16 3. The Parris Law Firm (referred to as “Class Counsel”) represents as follows: Class
17 Counsel has diligently pursued an investigation of the proposed class members’ claims against
18 Defendants, any and all applicable defenses, and the applicable law. The investigation included, *inter*
19 *alia*, analysis of time and attendance records, wage reports, and wage and hour policies. Based on the
20 foregoing data and on the Parties’ own independent investigation and evaluation, Class Counsel is of
21 the opinion that this settlement, for the consideration and on the terms set forth in this Joint Stipulation
22 of Class Action Settlement (“Settlement” or “Settlement Agreement”), which was reached after
23 extensive arms-length negotiations, is fair, reasonable and adequate, and is in the best interest of the
24 Settlement Class (as defined below) in light of all known facts and circumstances, including the risk of
25 not obtaining class certification, significant delay and uncertainty associated with litigation, various
26 defenses asserted by Defendants, and numerous potential appellate issues.
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29 DEFINITIONS

30 The following definitions are applicable to this Settlement Agreement. Definitions contained
31 elsewhere in this Settlement Agreement also shall be effective.
32

1 1. “Action” means the operative First Amended Class Action Complaint, designated as
2 Case No. 20STCV22778.

3
4 2. “Claims Administrator” means Phoenix Class Action Administration Solutions or any
5 other experienced third-party class action settlement claims administrator approved of by the Parties
6 and approved of by the Court for the purposes of administering this Settlement.

7 3. “Claims Administration Costs” means the cost payable to the Claims Administrator for
8 administering this Settlement, including, but not limited to, printing, distributing, and tracking notices
9 for this Settlement, calculating estimated amounts per Class Member, tax reporting, distributing the
10 LWDA Payment, the Class Representative Enhancement, Individual Settlement Payments from the
11 Net Settlement Fund and Class Counsel’s Fees and Expenses and providing necessary reports and
12 declarations, and other duties and responsibilities set forth herein to process this Settlement, as
13 requested by the Parties. The Claims Administration Costs are estimated to be NINE THOUSAND
14 DOLLARS (\$9,000.00). All Claims Administration Costs will be paid from the Maximum Settlement
15 Fund, including any such costs in excess of the amount originally represented by the Claims
16 Administrator as being the maximum costs necessary to administer the Settlement.
17

18
19 4. “Class Counsel” or “Plaintiff” Counsel” means the Parris Law Firm.

20 5. “Class Counsel’s Fees and Expenses” means attorneys’ fees and costs agreed upon by
21 the Parties and approved by the Court for Class Counsel’s litigation and resolution of this Action, and
22 all fees and costs incurred and to be incurred by Class Counsel in the Action, including, but not limited
23 to, fees and costs associated with documenting the Settlement, providing any notices required as part
24 of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the
25 Settlement, obtaining entry of the Judgment terminating this Action, resolving any disputes that would
26 arise out of or relating to the administration and/or performance of the terms of this Settlement
27 Agreement, and expenses for any experts. The Class Counsel’s Fees and Expenses shall not include
28 the Claims Administration Costs. Subject to Court approval, Class Counsel will receive FIVE
29 HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$525,000.00), and costs not to exceed
30 TWENTY FIVE THOUSAND DOLLARS (\$25,000.00). Defendants agree that they will not oppose
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1 a motion for Class Counsel's Fees and Expenses of up to the amount specified above, subject to the
2 Court finally approving this Settlement Agreement. In consideration of the awarded attorneys' fees
3 and expenses, Class Counsel waives all claims to any further attorneys' fees and expenses in connection
4 with the Action. To the extent the Court awards less than the requested attorneys' fees and/or expenses
5 to Class Counsel, the amounts reduced shall be available in the Net Settlement Fund to pay the
6 "Individual Settlement Payments" as defined in paragraph 3.2 below.
7

8 6. "Class List" means a list of Class Members that Defendants will diligently and in good
9 faith compile from its records and provide to the Claims Administrator and Class Counsel within
10 twenty (20) business days after the Court grants preliminary approval of this Settlement, and will
11 supplement the list as additional names, contact information and/or other information becomes
12 available. The Class List shall be formatted as a Microsoft Office Excel spreadsheet and shall include,
13 to the extent Defendants' records indicate, each Class Member's full name; last known address; Social
14 Security number; dates of employment during the Class Period; and the number of weeks worked
15 during the Class Period as an hourly-paid employee; and any other relevant information needed to
16 identify Class Members and calculate settlement payments. To the extent names, contact information,
17 or workweek information for some putative class members is not available, Plaintiff will provide notice
18 by publication in a periodical that services the region where the putative class members were last known
19 to reside. The cost of all such publication(s) will be deducted from the Maximum Settlement Fund.
20

21 7. "Class Members" means all current and former hourly-paid or non-exempt employees
22 employed by Defendants within the State of California at any time during the period from June 15,
23 2016, to Preliminary Approval.
24

25 8. "Class Period" means the period from June 15, 2016, through the date of preliminary
26 approval of the Settlement Agreement.
27

28 9. "Class Representative Enhancement" means the amount to be paid to Plaintiff in
29 recognition of his effort and risk in prosecuting the Action on behalf of the Class Members. Subject to
30 the Court finally approving such an award and this Settlement Agreement, Defendants agree to pay a
31 Class Representative Enhancement to Plaintiff in the amount of TEN THOUSAND DOLLARS
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1 (\$10,000.00). The Class Representative Enhancement shall be in addition to the Individual Settlement
2 Payment (as defined below) that Plaintiff will be eligible to receive as Settlement Class Members.

3
4 10. "Court" means the Superior Court of the State of California, County of Los Angeles, or
5 any other court taking jurisdiction of the litigation.

6 11. "Defendants" means FOUNDATION BUILDING MATERIALS, INC. a California
7 Corporation; and FOUNDATION BUILDING MATERIALS, LLC, a California Limited Liability
8 Company dba FOUNDATION BUILDING MATERIALS.

9
10 12. "Defendants' Counsel" is Robert L. Shipley, Esq. and Brandon S. Gray, Esq. of Robert
11 L. Shipley, APLC.

12 13. "Effective Date" means: (1) if no objection is filed or otherwise presented to the Court,
13 the date on which the Court grants final approval of the Settlement; or (2) if an objection is filed or
14 otherwise presented to the Court, the date upon which the Court's order granting final approval of the
15 Settlement becomes non-appealable.

16 14. "Final Approval" means the Court's order granting final approval of this Settlement
17 Agreement.

18
19 15. "Individual Release" means the release included on the Notice of Proposed Class Action
20 Settlement and Hearing for Court Approval and includes all Released Claims.

21 16. "Individual Settlement Payment" means each Settlement Class Member's share of the
22 Net Settlement Fund calculated in accordance with the formulae set forth in paragraph 3.2 below.

23 17. "Judgment" refers to the judgment entered by the Court in conjunction with an order
24 finally approving this Settlement and releasing the Released Claims specified herein.

25
26 18. "LWDA Payment" means the amount to be paid to the California Labor and Workforce
27 Development Agency ("LWDA") pursuant to California Labor Code section 2699, subdivision (i). The
28 Parties have negotiated and agreed that 25% of the Net Settlement Fund shall be allocated to the PAGA
29 claims ("PAGA Fund"). Accordingly, 75% of the PAGA Fund shall be paid from the Maximum
30 Settlement Fund to the LWDA, subject to the Court finally approving this Settlement Agreement.
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1 19. “Mailing Date” means the date that the Claims Administrator initially mails the Notice
2 of Proposed Class Action Settlement and Hearing for Court Approval to Class Members by regular
3 First Class United States Mail.
4

5 20. “Maximum Settlement Fund” means the maximum value of the settlement paid by
6 Defendants in this Action. The Maximum Settlement Fund shall be ONE MILLION FIVE HUNDRED
7 THOUSAND DOLLARS (\$1,500,000.00), inclusive of the Claims Administration Costs, Class
8 Representative Enhancement, LWDA Payment and Class Counsel’s Fees and Expenses.
9

10 21. “Net Settlement Fund” means the portion of the Maximum Settlement Fund remaining
11 after deduction of the Class Representative Enhancement, LWDA Payment, Claims Administrator’s
12 Costs, and Class Counsel’s Fees and Expenses, which will be available for distribution to Settlement
13 Class Members.

14 22. “Notice of Proposed Class Action Settlement and Hearing for Court Approval” means
15 the notice (substantially in the form attached hereto as “Exhibit A”) advising the Class Members of
16 their rights under this Settlement Agreement. Each Class Members’ Notice of Proposed Class Action
17 Settlement and Hearing for Court Approval will list, without limitation: (1) the Class Member’s number
18 of Workweeks during the Class Period, based on Defendants’ business records; (2) the Class Member’s
19 estimated Individual Settlement Payment; (3) the claims being released by the Class Member; and (4)
20 the Opt-Out/Objection Deadline. The estimated Individual Settlement Payment listed on the Notice of
21 Proposed Class Action Settlement and Hearing for Court Approval will be calculated based on the
22 assumption that all Class Members are eligible for Individual Settlement Payments.
23

24 23. “Opt-Out/Objection Deadline” means the thirty (30) calendar day period which begins
25 on the Mailing Date of the Notice of Proposed Class Action Settlement and Hearing for Court
26 Approval. An Opt-Out Request must be returned to the Claims Administrator with a postmark date on
27 or before the Opt-Out/Objection Deadline to be valid and effective. An objection must be filed with
28 the Court and served on Class Counsel and Defendants’ Counsel on or before the Opt-Out/Objection
29 Deadline to be considered.
30

31 24. “Opt-Out Request” means a written request from a Class Member which meets the
32

1 requirements of paragraph 3.1.4 of the Terms of Agreement, below.

2 25. "Parties" means Plaintiff and Defendants, collectively.

3 26. "Plaintiff" means MIGUEL OLIVAS.

4 27. "Unidentified Class Member" means any potential class member whose name, contact
5 information, or applicable number of workweeks is presently unknown to the Parties and not disclosed
6 to the Parties prior to the disbursement of settlement funds.

7 28. "Preliminary Approval" means the Court's order granting preliminary approval of the
8 Settlement Agreement.

9 29. "Released Claims" shall include: Any and all claims, rights, demands, charges, causes
10 of action, lawsuits, complaints, obligations, penalties, fines, promises, agreements, controversies and
11 liabilities, known and unknown, (collectively, "claims") for any relief whatsoever, including monetary,
12 injunctive, or declaratory, whether direct or indirect, whether suspected or unsuspected, whether
13 contingent or vested, arising from or related to any of the allegations in the First Amended Class Action
14 Complaint from the period of June 15, 2016, through the date of Preliminary Approval, including that
15 Defendants or any Released Party: (i) Failed to pay overtime; (ii) Failed to pay meal period premiums;
16 (iii) Failed to pay rest period premiums; (iv) Failed to pay minimum wages; (v) Failed to pay wages at
17 termination; (vi) Failed to provide accurately itemized wage statements; (vii) Failed to reimburse
18 business expenses; (viii) Violation of the unfair competition law; or (ix) Violation of the PAGA. The
19 Released Claims include all claims pled or which could have been pled in the First Amended Class
20 Action Complaint arising from any of the facts alleged therein, including but not limited to claims of
21 any and every nature based on any of the statutory provisions identified therein, and all penalty claims,
22 no matter how pled.

23 30. "Released Parties" means FOUNDATION BUILDING MATERIALS, INC. a
24 California Corporation; and FOUNDATION BUILDING MATERIALS, LLC, a California Limited
25 Liability Company dba FOUNDATION BUILDING MATERIALS, and their related entities and
26 businesses, former and present officers, officials, directors, administrators, attorneys, shareholders,
27 respective agents, general agents, insurers, reinsurers, payroll companies, representatives, owners,

1 stockholders, policyholders, partners, employees, trustees heirs, successors, predecessors, assigns,
2 subsidiaries, and entities to which they provided management services.

3
4 31. "Settlement" or "Settlement Agreement" means this Joint Stipulation of Class Action
5 Settlement, which is made and entered into by and between Plaintiff, individually and on behalf of all
6 others similarly situated, and Defendants.

7 32. "Settlement Class" and "Settlement Class Members" refers to and includes all Class
8 Members who do not timely and effectively exclude themselves from the Settlement, as provided
9 herein.

10 33. "Workweek" means a calendar week, with the start and end time/date defined according
11 to Defendants' payroll system, in which a Class Member performed any work for Defendants as an
12 hourly-paid non-exempt employee in California.

14 TERMS OF AGREEMENT

15 Plaintiff, on behalf of himself and the Settlement Class Members, and Defendants agree as
16 follows:

18 1. **General**

19 1.1 Incorporation of Recitals and Definitions into Terms of Agreement. The Parties
20 hereby agree that all of the "Recitals" and "Definitions" referenced hereinabove in this Settlement
21 Agreement are hereby incorporated by reference into this Settlement Agreement as material terms of
22 this Settlement Agreement.

23 1.2 Terms of Agreement Subject to Conditional Certification and Court Approval. This
24 Settlement Agreement is made and entered into by and between Plaintiff, individually and on behalf of
25 all others similarly situated, and Defendants, and subject to the terms and conditions hereof, and the
26 Court's approval. The Parties expressly acknowledge that this Settlement is entered into solely for the
27 purpose of compromising highly disputed claims and that nothing herein is an admission of liability or
28 wrongdoing by Defendants. The Parties agree that this Settlement Agreement, and the intention of
29 Defendants to enter into this Settlement Agreement shall not be evidence of liability or admissible in
30 any forum or proceeding, other than to enforce the terms of the Settlement Agreement, including as
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1 against any Settlement Class Member who asserts a Released Claim(s) in any forum. All terms set
2 forth in this Settlement Agreement are subject to Court approval and conditional certification for
3 settlement purposes only. The Plaintiff shall apply to the Court for approval of the Settlement
4 Agreement and for conditional certification of the Settlement Class for purposes of effectuating this
5 Settlement. Defendants shall support this application. Should the Court, or any other court taking
6 jurisdiction of this matter, decline to approve all material aspects of the Settlement, refuse to
7 conditionally certify the Settlement Class for purposes of this Settlement substantially as defined in
8 this Settlement Agreement, or fail to grant final approval of the Settlement, Defendants shall have no
9 obligation to make payment of the Maximum Settlement Fund or any portion thereof (except that
10 Defendants shall pay the Claims Administrator for work performed up to that point), or Class Counsel's
11 Fees and Expenses, and any release obtained through this process (i.e., resolution of the Action) from
12 any Settlement Class Member shall be void for want of consideration.
13
14

15 **2. Defendants' Obligations Under the Settlement Agreement**

16 2.1 Maximum Settlement Fund. Following the Effective Date, and in
17 consideration for the releases and other terms described herein, Defendants shall pay the Maximum
18 Settlement Fund of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00),
19 which will be used: (1) to satisfy the claims of all Settlement Class Members, as specified herein; (2)
20 to satisfy the Court-approved Class Representative Enhancement, as specified herein; (3) to satisfy
21 the LWDA Payment, as specified herein; (4) to pay the Claims Administration Costs, as specified
22 herein; and (5) to pay the Court-approved Class Counsel's Fees and Expenses, in an amount not to
23 exceed FIVE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$525,000.00) in attorneys'
24 fees and TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in costs incurred. The Maximum
25 Settlement Fund shall also be used to pay Defendants' portion of employer-side payroll taxes,
26 including Defendants' employer-side FICA and FUTA obligations and other applicable employer-
27 side payroll taxes that will be paid for the wage-related portions of the Individual Settlement
28 Payments. That portion of the Individual Settlement Payments paid to Settlement Class Members
29 which represent wages shall be reflected on such Class Members' IRS W-2 Forms, to the extent they
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1 are available. All remaining portions of any Individual Settlement Payment made to Individual Class
2 Members shall, if required by applicable state and/or federal law, be reported on an IRS Form 1099
3 that shall be provided to the Individual Class Members. Within fifteen (15) calendar days after the
4 Effective Date, FBM will pay or cause to be paid the Maximum Settlement Fund in accordance with
5 the instructions to be provided by the Escrow Agent. The Claims Administrator will distribute the
6 Maximum Settlement Fund in accordance with this Settlement Agreement.

8 2.1.1 Class Representative Enhancement. In exchange for a General Release,
9 the release of all Released Claims, and in recognition of both the risk, time and effort in bringing and
10 prosecuting the Action on behalf of the Class Members and the stigma they may suffer from being
11 involved in a suit against an employer, Defendants agree to pay a Class Representative Enhancement
12 from the Maximum Settlement Fund in the amount of TEN THOUSAND DOLLARS (\$10,000.00).
13 The Class Representative Enhancement payment shall be reflected on an IRS Form 1099 provided to
14 the Class Representatives. The Class Representative Enhancement shall be in addition to the Plaintiff
15 Individual Settlement Payment. However, if the Court awards less than the requested Class
16 Representative Enhancement, Plaintiff agrees to accept the Court's award as final and binding and any
17 reductions by the Court to the Class Representative Enhancement shall not be a basis for Plaintiff to
18 object to or otherwise not be bound by this Settlement Agreement. For purposes of this settlement,
19 Defendants agree not to oppose a request for the Class Representative Enhancement in the amount
20 described above. Any reduction in the amount of the Class Representative Enhancement by the Court
21 shall be available in the Net Settlement Fund.

25 2.1.2 Claims Administration Costs. The Claims Administrator shall be paid
26 for the costs of administration of the Settlement and distribution of all payments from the Maximum
27 Settlement Fund, including but not limited to, printing, distributing, calculating and distributing the
28 Maximum Settlement Fund, withholding and reporting taxes, responding to inquiries made by the Class
29 Members, providing necessary reports and declarations, and all other responsibilities delegated to the
30 Claims Administrator in this Agreement or ordered by the Court. The maximum payment for the
31 Claims Administrator shall not exceed NINE THOUSAND DOLLARS (\$9,000.00). No fewer than
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ten (10) calendar days prior to the deadline to file the final approval motion, the Claims Administrator shall provide all counsel for the Parties with a statement detailing the Claims Administration process and costs to be filed with the Court. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

2.1.3 Net Settlement Fund. The portion of the Maximum Settlement Fund remaining after payment of the Class Representative Enhancement, Claims Administration Costs, LWDA Payment, and Class Counsel's Fees and Expenses, shall be available for distribution to the Class Members in accordance with the notice procedure and formulae set forth in this Settlement Agreement.

2.2 Payment of Class Counsel's Fees and Expenses. Defendants agree not to oppose or impede any application or motion by Class Counsel for Class Counsel's Fees and Expenses not in excess of FIVE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$525,000.00) – plus Class Counsel's costs and expenses not to exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), to be paid out of the Maximum Settlement Fund.

2.3 Defendants Shall Pay No More Than the Settlement Amount. Should the Court, or any other court taking jurisdiction of this matter, decline to approve all material aspects of the Settlement, refuse to conditionally certify the Settlement Class for purposes of this Settlement substantially as defined in this Agreement, refuse to grant final approval of the Settlement, or for any reason determine that Defendants are not entitled to Judgment in this Action as set forth in this Settlement Agreement, Defendants shall have no obligation to make any payment, including payment of the Maximum Settlement Fund or any portion thereof, and in the event that Defendants have made any such payment, such monies shall be returned promptly. Upon the occurrence of any of the preceding events, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any costs already incurred by the Claims Administrator shall be paid by Defendants and shall not be returned to Defendant.

1 2.4 Defendants' Fees and Costs. Defendants will bear their own attorneys' fees
2 and costs.
3

4 **3. Claims Administration Process**

5 The Parties agree to cooperate in the settlement administration process and to make
6 all reasonable efforts to control and minimize the costs and expenses incurred in administration of
7 the Settlement.

8 3.1 Notice Procedure. The Claims Administrator shall be responsible for the
9 following notice procedure that shall be used to determine the Class Members' eligibility for their
10 Individual Settlement Payment from the Net Settlement Fund.
11

12 3.1.1 Delivery of the Class List. Within twenty (20) business days after
13 Preliminary Approval, Defendants shall provide the Class List to Class Counsel and the Claims
14 Administrator. The Class List shall remain confidential and shall not be disclosed to anyone or used
15 by Class Counsel for any purpose, except to carry out reasonable efforts described below, or pursuant
16 to express written authorization by the Defendants or by order of the Court. Class Counsel shall not
17 use the Class List to initiate contact with any Class Member who has not initiated contact with Class
18 Counsel, or for any reason other than to respond to inquiries from Class Members that are made in
19 response to the Notice or Settlement. The information provided to Class Counsel shall be on an
20 "attorneys eyes only confidential" basis, and shall be returned or destroyed at the conclusion of this
21 action. This includes any contact information provided by any staffing agencies.
22

23 3.1.2 Notice by First-Class U.S. Mail. Within seven (7) calendar days after
24 the delivery of the Class List as described in paragraph 3.1.1, the Claims Administrator shall perform
25 an electronic address search using the National Change of Address Database or a similar tool, and
26 shall send the Notice of Proposed Class Action Settlement and Hearing for Court Approval to all Class
27 Members via regular First Class United States Mail, using the most current mailing addresses
28 identified. The envelope containing the Notice of Proposed Class Action Settlement and Hearing for
29 Court Approval shall bear the following phrase in the bottom left hand corner: **"IMPORTANT—**
30 **FOUNDATION BUILDING MATERIALS CLASS ACTION SETTLEMENT**
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INFORMATION. PLEASE OPEN IMMEDIATELY.”

3.1.3 Telephone Support. The Claims Administrator shall maintain a toll-free telephone line that shall be staffed and/or provide automated Interactive Voice Response with the ability for Class Members to leave messages during non-business hours.

3.1.4 Opt-Out Request Procedure. Every Class Member shall be a part of the Settlement Class and bound by the terms and conditions of this Agreement and by the Court’s orders related hereto unless the Class Member effectively excludes himself or herself from the Settlement by timely submitting an Opt-Out Request. The Notice of Proposed Class Action Settlement and Hearing for Court Approval shall provide Class Members with instructions on how to exclude themselves from this Settlement. To be excluded, Class Members must submit an Opt-Out Request or exclusion request which is in writing, signed by the Class Member seeking exclusion from the Settlement, and postmarked on or before the Opt-Out/Objection Deadline. Such written request for exclusion must contain the name, address, telephone number, and the last four digits of the social security number of the person requesting exclusion, most recent job position held with Defendants and the dates (or approximately dates) of his or her employment. The request for exclusion must additionally state, in substance:

“I have read and fully understand the Notice of Proposed Class Action Settlement and Hearing for Court Approval and I wish to opt out of the class action and settlement in *Olivas v. Foundation Building Materials*.”

Members of the Settlement Class are free to consult counsel regarding the exclusion from the Settlement. However, the Opt-Out Request must be personally signed by the Class Member who seeks to opt out. No Class Member may opt out by an Opt-Out Request signed by an actual or purported agent or attorney acting on behalf of the Class Member. No Opt-Out Request may be made on behalf of a group of Class Members. Any Class Member who requests exclusion from the Settlement will not be entitled to an Individual Settlement Payment and will not be bound by the Settlement Agreement or have any right to object, appeal, or comment thereon, except those who are eligible to receive money from the PAGA Fund will still receive an Individual Settlement Payment

1 and release their PAGA claim. Class Members who fail to submit a valid and timely request for
2 exclusion on or before the Opt-Out/Objection Deadline shall be bound by all terms of the Settlement
3 Agreement, regardless of whether they otherwise have requested exclusion from the Settlement.
4

5 3.1.5 Defendants' Option to Terminate Settlement. If five percent (5%) or
6 more of the Class Members opt out of the Settlement, Defendants have the option, in their sole
7 discretion, to rescind/void the Settlement. Defendants must exercise this right to rescind in writing
8 to Class Counsel within fourteen (14) calendar days after the Claims Administrator notifies the
9 Parties of the total number of valid Opt-Out Requests. If the option to rescind is exercised pursuant
10 to this paragraph, Defendants shall be solely responsible for the Claims Administration Costs
11 incurred up to that point.
12

13 3.1.6 Objections. A Class Member may object to this Settlement Agreement.
14 In order for a Class Member to object to the Settlement Agreement, a Class Member must mail his
15 or her objection to the Claims Administrator by the Opt-Out/Objection Deadline (as determined by
16 the postmark date), a notice of objection, signed by the Class Member, stating: (i) the Class
17 Member's name; (ii) current address; (iii) telephone number; (iv) dates of employment with
18 Defendants and most recent job position; (v) last 4-digits of his or her social security number; and
19 (vi) every basis for the objection(s), and all supporting facts. An objector may not base his or her
20 objection on grounds or facts which are not stated in the written objection. The Claims Administrator
21 will submit the Class Members' objection to the Court, Class Counsel, and Defendants' Counsel.
22 Class Members who fail to make objections in the manner specified above shall be deemed to have
23 waived any objections and shall be foreclosed from making any objections (whether by appeal or
24 otherwise) to the Settlement Agreement. Class Members who mail timely notices of objection will
25 have a right, but not a duty, to appear at the Final Approval Hearing in order to have their objections
26 heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise
27 encourage Class Members to submit written objections to the Settlement Agreement or appeal from
28 the Judgment. Because of the inherent conflict that would result, Class Counsel shall not represent
29 any Class Members with respect to any such objections to this Settlement. This paragraph shall be
30 strictly applied and enforced. Failure to comply with its terms shall render an objection ineffective
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1 and waived. Written objections must also be verified by a declaration under penalty of perjury or a
2 sworn affidavit and must include: (a) the name of the Action, “*Olivas v. Foundation Building Materials,*
3 *Inc., et al.* LASC Case No. 20STCV22778. Objecting Class Member(s) must also make themselves
4 available for deposition between the time the objection is filed and the date of the Settlement Fairness
5 Hearing, and the objection must include the date when the objecting Class Member(s) will so present
6 for deposition. Any objections not so submitted shall be argued to be waived. Anyone wishing to
7 appear at the Settlement Fairness Hearing to object to the Settlement shall expressly so provide in his
8 or her written objections. Class Member(s), or his or her attorney, intending to make an appearance at
9 the Settlement Fairness Hearing, must deliver to Class Counsel and Defendants’ and file with the court,
10 no later than thirty (30) calendar days prior to the Settlement Fairness Hearing, a Notice of Intention to
11 Appear. The Notice of Intention to Appear must: (a) state how much time the Settlement Class Member
12 and/or their attorney anticipates needing to present the objection; (b) identify by name, address,
13 telephone number, and detailed summary of testimony, all witnesses for whom the Settlement Class
14 Member and/or their attorney intends to present any testimony; and (c) identify all exhibits the
15 Settlement Class Member and/or their attorney intends to offer in support of the objection and attach
16 complete copies of all such exhibits.
17
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19 3.1.7 Workweek Disputes. Each Class Member’s individualized Workweek
20 information (i.e., the number of workweeks worked during the Class Period as an hourly-paid
21 employee) based on Defendants’ business records will be stated in the Notice of Proposed Class
22 Action Settlement and Hearing for Court Approval. Class Members will have the opportunity, should
23 they disagree with Defendants’ records regarding their total Workweeks represented on the Notice of
24 Proposed Class Action Settlement and Hearing for Court Approval, to provide documentation and/or
25 an explanation to show a different number of Workweeks worked as an hourly-paid employee during
26 the Class Period. If there is a dispute or contrary evidence, the Claims Administrator may consult
27 with the Parties to determine whether an adjustment is warranted. If Class Counsel and Defendants’
28 Counsel cannot agree, the Claims Administrator shall make the final determination, and that
29 determination shall be conclusive, final and binding, provided that, in no event may the Claims
30 Administrator make a determination that conflicts with the terms of this Settlement Agreement.
31
32

1 3.1.8 Claims Raised by Unidentified Class Members. Defendants will use
2 best efforts in obtaining contact information and applicable workweeks for all Class Members that
3 remain unidentified before the Claims Administrator sends out the “Notice of Class Action Settlement”
4 set forth above.
5

6 3.1.9 Procedure for Lost and Undeliverable Notices. Within three (3) business
7 days, the Claims Administrator shall re-mail any Notice of Proposed Class Action Settlement and
8 Hearing for Court Approval upon request by the Class Member, but only if the request is made before
9 the Opt-Out/Objection Deadline. Any Notice Packets returned to the Claims Administrator as non-
10 delivered on or before the Opt-Out/Objection Deadline shall be sent to the forwarding address affixed
11 thereto. If no forwarding address is provided, within three (3) business days, the Claims
12 Administrator shall attempt to determine a correct address using a skip-trace, or other search using
13 the name, address and/or Social Security number of the Class Member involved, and shall re-mail
14 the Notice of Proposed Class Action Settlement and Hearing for Court Approval. If, after performing
15 a skip-trace search, the Notice of Proposed Class Action Settlement and Hearing for Court Approval
16 is still returned to the Claims Administrator as non-deliverable, that individual will be deemed a
17 Settlement Class Member for purposes of the Released Claims, and the Claims Administrator will
18 have no further obligation to obtain the Class Member’s current address. The deadline to submit an
19 Opt-Out Request or object for any Class Member who is re-mailed a Notice of Proposed Class Action
20 Settlement and Hearing for Court Approval shall be the initial Opt-Out/Objection Deadline or fifteen
21 (15) calendar days after the date of the re-mailing, whichever is longer. There shall be no obligation
22 to re-mail a Notice of Proposed Class Action Settlement and Hearing for Court Approval more than
23 one (1) time.
24
25
26

27 3.2 Individual Settlement Payments Calculations. After deducting the Class
28 Representative Enhancement, LWDA Payment, Class Counsel’s Fees and Expenses, and the Claims
29 Administrator’s fees and expenses, the balance of the Maximum Settlement Fund (the “Net
30 Settlement Fund”) will be available for payment to all Settlement Class Members. The Net
31 Settlement Fund will be apportioned among Settlement Class Members based on the number of
32

1 Workweeks worked during the Settlement Class Period. An “Individual Settlement Payment” for each
2 Settlement Class Member will then be determined by multiplying the Net Settlement Fund by a
3 fraction, the numerator of which is the total number of Workweeks the Settlement Class Member
4 worked as an hourly-paid employee during the Class Period and the denominator of which is the total
5 number of workweeks worked by all Settlement Class Members as hourly-paid employees during the
6 Class Period. One third of each Individual Settlement Payment will be allocated as wages, one third
7 penalties, and one third interest. Employee taxes will be withheld from the wages portion only in
8 accordance with the most recent W-4 or withholding instructions provided to Defendants. Defendants’
9 employer contributions of all federal, state, and local taxes (including, but not limited to, FICA, FUTA,
10 and SDI) in regard to the wage portion of the Individual Settlement Payments shall also be withheld
11 from the Individual Settlement Payment. To the extent necessary to ensure the payment of all such tax
12 obligations on the Individual Settlement Payments, the Individual Settlement Payments will be reduced
13 by any such required tax obligations for wages for each Settlement Class Member. All wages paid to
14 Settlement Class Members shall be reflected on their individual W-2 forms to be prepared and
15 distributed by the Claims Administrator. All remaining portions of any Individual Settlement Payments
16 made to Settlement Class Members shall, if required by applicable state and/or federal law, be reported
17 on a federal form 1099 to be prepared and distributed by the Claims Administrator and provided to the
18 individual Class Members.

22 3.3 Payment of Settlement Amounts. The Claims Administrator, on Defendants’
23 behalf, shall have the authority and obligation to make all payments, credits and disbursements,
24 calculated in accordance with the methodology set out in this Settlement Agreement and orders of
25 the Court. No person shall have any claim against Defendants, Defendants’ Counsel, the Plaintiff,
26 Class Members, Class Counsel or the Claims Administrator based on distributions and payments
27 made in accordance with this Settlement Agreement. Settlement checks which are not negotiated
28 within one hundred twenty (120) calendar days after the date they are mailed shall be void. Such
29 monies and any other funds not disbursed or negotiated as part of the Settlement shall be sent to the
30 Unclaimed Property in the Class Member’s name.
31
32

1 3.4 Timing of Distribution of Maximum Settlement Fund. Fifteen (15) calendar
2 days after the Effective Date, Defendants shall provide the Maximum Settlement Fund of ONE
3 MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) to the Claims Administrator
4 Phoenix Class Action Administration Solutions.
5

6 3.5 Claims Administrator's Reports. The Claims Administrator will provide
7 counsel for both Parties updated reports and declarations as needed or requested. Not less than five (5)
8 calendar days following the Opt-Out/Objection Deadline, the Claims Administrator shall provide
9 Defendants' Counsel and Class Counsel a report showing: (i) the number of Class Members who have
10 submitted valid Opt-Out requests; and (ii) the Individual Settlement Payments owed to each Settlement
11 Class Member. Consistent with the terms of this Settlement, the Claims Administrator shall timely
12 provide such reports, statements, and declarations as are requested by the Parties for purposes of
13 seeking final approval of the Settlement. Upon completion of administration of the Settlement, the
14 Claims Administrator shall provide written certification of such completion to counsel for all Parties
15 and the Court, if requested by the Parties.
16
17

18 **4. Release of Claims.**

19 4.1 Release of Settlement Class Members' Claims. Class Members who have not
20 timely and effectively opted out of the Settlement ("Settlement Class Members") release and forever
21 waive and extinguish their Released Claims against the Released Parties.
22

23 4.2 General Release by Plaintiff Only. As of the Effective Date, and with the
24 exceptions set forth herein, Plaintiff shall release his Released Claims against the Released Parties,
25 and Plaintiff makes the additional following General Release against the Released Parties:

26 As a condition of receiving any portion of the Maximum Settlement Fund, as provided
27 herein, the Plaintiff provides a full and final release as follows:

28 Plaintiff, and his respective agents, attorneys, representative, heirs,
29 successors, assigns, and each and all of them, hereby release, acquit,
30 and forever discharge Defendants and their respective agents, general
31 agents, insurers, reinsurers, payroll companies, attorneys,
32

1 representatives, owners, stockholders, policyholders, partners,
2 employees, officers, directors, trustees, heirs, successors, predecessors,
3 assigns, subsidiaries, and all Released Parties as defined herein
4 (collectively, "Releasees") of and from any and all obligations, debts,
5 claims, liabilities, demands, and causes of action of every kind, nature
6 and description whatsoever, whether or not now known, suspected or
7 claimed, which he ever had, now has or may hereafter acquire, by
8 reason of his employment with Defendants or any other matter accruing
9 from the beginning of his employment until the date that final approval
10 of the Settlement is granted, including more particularly, but without
11 limiting the foregoing, the following:

14 (1) claims asserted, directly or indirectly, impliedly or inferentially,
15 in the Action, or that may or could have been asserted in any cause of
16 action or claim therein;

18 (2) claims arising out of or in any way, directly or indirectly,
19 connected with Plaintiff's employment with Defendants or any
20 Releasee, including, but not limited to, any claims based on federal or
21 state statute with respect to employment, including but not limited to
22 the California Fair Employment and Housing Act, the Americans With
23 Disabilities Act, state and federal whistleblower laws, the Employee
24 Retirement Income and Security Act of 1974, the California Family
25 Rights Act, the Family Medical Leave Act, Title VII of the Civil Rights
26 Act of 1964 and as amended, and any common law principle; and,

28 (3) any claims for attorneys' fees, costs of prosecution other than
29 the amounts stated in this agreement and approved by the Court.

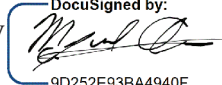
30 With respect to the General Release, Plaintiff stipulates and agrees that,
31 upon the Effective Date, Plaintiff shall be deemed to have, and by
32

operation of the Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

Plaintiff may hereafter discover facts in addition to or different from those he now knows or believes to be true with respect to the subject matter of the General Release, but Plaintiff upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all of the claims released pursuant to the General Release whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

9/1/2021, 2021

By  _____
DocuSigned by:
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5. Settlement Approval Process.

5.1 Preliminary Settlement Hearing. Plaintiff shall request a hearing before the Court to request Preliminary Approval of the Settlement Agreement, including but not limited to, a request for the entry of an order for certification of the Class for settlement purposes only and setting a date for a Final Approval/Settlement Fairness Hearing. The order shall provide for the Notice of Proposed Class Action Settlement and Hearing for Court Approval to be sent to Class Members in a

1 manner consistent with the terms of this Agreement. In conjunction with this hearing, Plaintiff will
2 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
3 proposed Notice of Proposed Class Action Settlement and Hearing for Court Approval, attached hereto
4 as Exhibit A, as necessary to implement the Settlement.
5

6 5.2 No Solicitation of Settlement Objections or Exclusions. Plaintiff and Class
7 Counsel shall support the Settlement and take such steps as are reasonably necessary to effectuate
8 the Settlement. Class Counsel shall recommend the Settlement to Class Members. Neither Plaintiff
9 nor Class Counsel shall directly or indirectly encourage Class Members to opt out of or object to the
10 Settlement. The Parties agree to use their best efforts to carry out the terms of this Settlement
11 Agreement. At no time shall any of the Parties or their counsel solicit, seek to solicit or otherwise
12 encourage Class Members to exclude themselves from the settlement, or to submit written objections
13 to the Settlement Agreement, or to appeal from the Court's Judgment.
14

15 5.3 Final Settlement Approval Hearing and Entry of Final Judgment. Upon
16 expiration of the Opt-Out/Objection Deadline, with the Court's permission, a Final
17 Approval/Settlement Fairness Hearing shall be conducted to determine final approval of the
18 Settlement along with the amount properly payable for: (i) the Class Counsel's Fees and Expenses;
19 (ii) the Class Representative Enhancement; (iii) the LWDA payment; and (iv) the Claims
20 Administration Costs. Upon final approval of the Settlement by the Court at or after the Final
21 Approval/Settlement Fairness Hearing, Plaintiff shall present the Judgment to the Court for its
22 approval. After entry of the Judgment, the Court shall have continuing jurisdiction solely for
23 purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii)
24 Settlement administration matters and (iii) such post-Judgment matters as may be appropriate under
25 court rules or as set forth in this Agreement.
26
27

28 5.4 Interim Stay of Proceedings. The Parties agree to refrain from further litigation
29 of this matter, except such proceedings as are necessary to implement and obtain an order granting
30 Final Approval of the terms of the Settlement. The Parties further agree that the mutual, voluntary
31 cessation of litigation shall terminate in the event that Final Approval cannot be obtained for this
32

1 Settlement, or for any settlement modified by the Parties in accordance with instructions or guidance
2 from the Court.

3
4 **6. Nullification of Settlement Agreement.**

5 In the event: (i) the Court does not enter the Preliminary Approval order specified
6 herein; (ii) the Court does not finally approve the Settlement as provided herein; (iii) the Court does
7 not enter a Judgment as provided herein, which becomes final as a result of the occurrence of the
8 Effective Date; (iv) the Defendants would be required to pay more than the Maximum Settlement
9 Fund; or (v) the Settlement does not become final for any other reason, this Settlement Agreement
10 shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement
11 shall be treated as void from the beginning. In such a case, the Parties and any funds to be awarded
12 under this Settlement Agreement shall be returned to their respective statuses as of the date and time
13 immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all
14 respects as if this Settlement Agreement had not been executed, except that any fees already incurred
15 by the Claims Administrator shall be paid as provided herein or, if not provided herein, by
16 Defendants.
17
18

19 **7. Liability.**

20 Defendants and Class Counsel make no representations as to the tax treatment or legal
21 effect of the payments called for hereunder, and Class Members are not relying on any statement or
22 representation by Defendants or Class Counsel in this regard. Class Members understand and agree
23 that Class Members will be solely responsible for the payment of their portion of any taxes and
24 penalties assessed on the payments described herein and will hold Defendants and Class Counsel free
25 and harmless from and against any claims resulting from treatment of such payments as non-taxable
26 damages.
27

28 **8. No Credit Toward Benefit Plans.**

29 The Individual Settlement Payments made to Settlement Class Members under this
30 Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which
31 any Settlement Class Member may be eligible including, but not limited to: retirement plans, profit-
32

1 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
2 plans, pension plans, or any other benefit plan. It is the Parties' intention that this Agreement will not
3 affect any rights, contributions, or amounts to which any Settlement Class Member may be entitled
4 under any benefit plans.
5

6 **9. Provisions.**

7 9.1 Fair, Adequate and Reasonable Settlement. The Parties agree that the
8 Settlement is fair and reasonable and Plaintiff and Class Counsel will so represent to the Court.
9 Defendants will not take any contrary position. Class Counsel will detail the reasons why Class
10 Counsel believes the settlement to be in the best interests of the Class Members including, but not
11 limited to, an explanation of the strengths versus the weaknesses of Plaintiff's and the Class
12 Members' case and why Settlement of the Action is in the Class' best interests.
13

14 9.2 No Further Confirmatory Discovery Needed. The Parties agree that the audit
15 process that was completed prior to the Settlement of the Class Action shall constitute satisfactory
16 confirmatory discovery and no further formal discovery shall be propounded by the Parties to this
17 Settlement pending final approval of this Settlement.
18

19 9.3 Waiver of Appeals. The Parties agree to waive all appeals, with two express
20 exceptions. First, either party may appeal any court order that materially alters the Settlement's
21 terms. Second, if the Court awards less than the requested attorneys' fees and/or costs, Class Counsel
22 reserves the right to appeal that reduction without any further payment by Defendants.
23

24 9.4 Class Certification for Settlement Purposes Only. The Parties agree to
25 stipulate to class certification only for purposes of the Settlement and only as to the Class Members
26 and for the Class Period described herein. If, for any reason, the Settlement is not approved, the
27 stipulation to certification will be void. The Parties further agree that certification for purposes of
28 the Settlement is not an admission that class certification is proper under the standard applied to
29 contested certification motions and that this Settlement will not be admissible in this or any other
30 proceeding as evidence that (i) a class should be certified or (ii) Defendants are liable to Plaintiff or
31 the Class Members, other than according to the Settlement's terms.
32

1 9.5 Binding Agreement. Subject to the limitations in paragraph 6, the Parties
2 intend that this Settlement shall be fully enforceable and binding on all Parties, including Class
3 Members, and that it shall be admissible and subject to disclosure in any proceeding to enforce its
4 terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under
5 federal or state law. The Parties further agree that this Settlement is enforceable pursuant to
6 California Code of Civil Procedure section 664.6.
7

8 9.6 Notices. Whenever this Stipulation requires or contemplates that one party,
9 the Court or the Settlement Claims Administrator shall or may give notice to another, notice shall be
10 provided by e-mail, facsimile and/or next-day (excluding Sunday) express delivery service as follows:
11

12 To the Settlement Class:

13 Kitty K. Szeto
14 PARRIS LAW FIRM
15 43364 10th Street West
16 Lancaster, California 93534
 kszeto@parrislawyers.com

17 To Defendants:

18 Robert L. Shipley
19 Brandon S. Gray
20 Robert L. Shipley, APLC
21 2784 Gateway Road, Suite 104
22 Carlsbad, CA 92009
 rshipley@shipleylaw.com
 bgray@shipleylaw.com

23 9.7 Disposition of the Action. The Parties agree that the Action will be disposed
24 of by entry of a final judgment by the Court, ending the case without any further payment or action
25 by Defendants, after final approval is granted. The Parties further agree that the Action shall be
26 stayed in all respects pending the occurrence or failure of the effective settlement date, except for
27 purpose of filing motions for preliminary approval and final approval, or any other matters sought
28 by the Court, or actions to carry out the terms of this Agreement. Notice of the final judgment shall
29 be given by posting the final judgment on the Claims Administrator's website.
30
31
32

1 9.8 Preclusive Effect of Settlement Agreement and Approval. The terms of this
2 Settlement Agreement, the Preliminary and Final Approval orders, and the Judgment are binding on
3 Plaintiff and all Settlement Class Members, as well as their heirs, executors and administrators,
4 successors and assigns, and those terms shall have *res judicata*, collateral estoppel and other
5 preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on
6 behalf of any such persons, to the extent those claims, lawsuits or other proceedings constitute
7 Released Claims as set forth in the Settlement Agreement. Notwithstanding any other provision in
8 this Agreement, this Agreement, the Final Approval order, and the Judgment in the Action may be
9 filed in any action against or by Defendants or the Released Parties to support a defense of *res judicata*,
10 collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and
11 credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.
12

13 9.9 No Admission of Liability. The Parties agree that Defendants entering into
14 this Settlement shall not constitute any admission of liability by Defendants and that this Settlement
15 is a settlement of disputed claims. The Parties enter into this Agreement to resolve the dispute that
16 has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering
17 into this Agreement, Defendants do not admit, and specifically deny, that they have violated any
18 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute
19 or any other applicable laws, regulations or legal requirements; breached any contract, violated or
20 breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
21 conduct with respect to Plaintiff or any Class Member. Neither this Agreement, nor any of its terms
22 or provisions, nor any of the negotiations connected with it, shall be construed as an admission or
23 concession by Defendants of any such violations or failures to comply with any applicable law.
24 Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its
25 terms and provisions shall not be offered or received as evidence in any action or proceeding to
26 establish any liability or admission on the part of Defendants or to establish the existence of any
27 condition constituting a violation of, or a non-compliance with, federal, state, local or other
28 applicable law.
29
30
31
32

1 9.10 Exhibits and Headings. The terms of this Settlement Agreement include the
2 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set
3 forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement. The
4 descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for
5 convenience of reference only and do not constitute a part of this Agreement.
6

7 9.11 Amendment or Modification. Unless otherwise provided herein, this Settlement
8 Agreement may be amended or modified only by a written instrument signed by the Parties and counsel
9 for all Parties or their successors-in-interest.
10

11 9.12 Entire Agreement. This Settlement Agreement, any supplemental written
12 agreement subsequently incorporated, and any attached Exhibits constitute the entire Settlement
13 Agreement among these Parties, and no oral or written representations, warranties or inducements have
14 been made to any Party concerning this Settlement Agreement or its Exhibits other than the
15 representations, warranties and covenants contained and memorialized in such documents. The
16 Mediator's Proposal agreed to by the Parties on or about June 18, 2021, shall be considered instructive
17 as to the meaning and intent of this Agreement, and any provisions in that Mediator's Proposal which
18 are not addressed herein shall remain in full force and effect.
19

20 9.13 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 negotiate
22 this Settlement Agreement and to take all appropriate action required or permitted to be taken by such
23 Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other
24 documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel
25 will cooperate with each other and use their best efforts to effect the implementation of the Settlement.
26 In the event the Parties are unable to reach agreement on the form or content of any document needed
27 to implement the Settlement, or on any supplemental provisions that may become necessary to
28 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such
29 disagreement. The persons signing this Agreement on behalf of Plaintiff and Defendants represent and
30 warrant that they are authorized to sign this Agreement on behalf of Plaintiff and Defendants.
31
32

9.14 Binding on Successors and Assigns. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

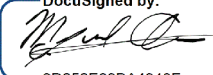
9.15 California Law Governs. All terms of this Settlement Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

9.16 Counterparts. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves original signed counterparts.

9.17. Dispute Resolution. The Parties hereto agree to have mediator Jeffrey Krivis resolve any and all disputes that may arise in connection with interpreting the terms of this Settlement, with the party raising the dispute agreeing to bear all of Mr. Krivis's associated costs of mediation.

DATED: 9/1/2021 _____

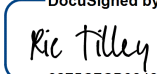
MIGUEL OLIVAS

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DATED: 9/1/2021 _____

FOUNDATION BUILDING
MATERIALS, INC.

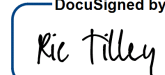
By: _____
 [SIGNOR] Ric Tilley
 [TITLE] General Counsel , FBM Legal

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DATED: 9/1/2021 _____

FOUNDATION BUILDING
MATERIALS, LLC dba
FOUNDATION BUILDING
MATERIALS

By: _____
 [SIGNOR] Ric Tilley
 [TITLE] General Counsel , FBM Legal

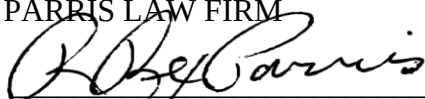
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1
2 APPROVED AS TO FORM:

3
4
5 DATED: September 1, 2021

PARRIS LAW FIRM

By:



R. Rex Parris

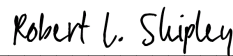
Attorney for Plaintiff, and the Plaintiff
Class

6
7
8
9 DATED: 9/9/2021

ROBERT L. SHIPLEY, APLC

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By:



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ROBERT L. SHIPLEY

BRANDON S. GRAY

Attorneys for Defendants

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
HEARING FOR COURT APPROVAL**

**IF YOU WORKED FOR FOUNDATION BUILDING MATERIALS AS AN HOURLY
OR NON-EXEMPT EMPLOYEE IN CALIFORNIA AT ANY TIME BETWEEN
JUNE 15, 2016 AND [PRELIMINARY APPROVAL DATE], YOU MAY BE
ENTITLED TO MONEY FROM THIS SETTLEMENT.**

A court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

On [Preliminary Approval Date], the Court in this action granted preliminary approval of a proposed settlement as set forth in the Joint Stipulation of Class Action Settlement (“Settlement Agreement”) concerning the lawsuit noted above (“the Lawsuit”). You are receiving this Notice because you worked for Defendants Foundation Building Materials, Inc. and Foundation Building Materials, LLC dba Foundation Building Materials (collectively “FBM”) as an hourly-paid or non-exempt employee in California at some point between June 15, 2016 and [Preliminary Approval Date] (“Class Period”), and you may be entitled to share in the funds to be made available for the proposed settlement of this class action.

You are not being sued. However, your rights may be affected by the legal proceedings in the Lawsuit. If the proposed settlement of this class action is granted final approval by the Court, you may have the right to be paid a share of the proposed settlement funds.

You do **NOT** have to do anything if you want to participate in this settlement.
A check will be automatically mailed to you.

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
YOUR RIGHTS MAY BE AFFECTED
BY THE PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE.**

You have received this Notice because FBM’s records indicate that you are a member of the Settlement Class. This notice is designed to inform you about your options in this Settlement, all of which are dependent on the Court’s final approval of the Settlement.

1. What Is This Case About?

Plaintiff was employed by FBM. He sued FBM on behalf of all current and former hourly-paid or non-exempt employees of FBM in the State of California claiming various wage-and-hour violations. The parties have agreed to settle this dispute without any finding of wrongdoing by FBM.

The Lawsuit is being settled as a “class action.” In a class action, the plaintiff, also referred to as a class representative, sues on behalf of himself and other persons with similar claims (“Class Members”). Based on FBM’s records, you were an hourly-paid or non-exempt employee employed by FBM in the State of California at any time between June 15, 2016 to [Preliminary Approval Date]. Therefore, you are a member of the Settlement Class and you may receive money from the proposed settlement.

If the Court approves the proposed settlement at the Final Approval Hearing scheduled for _____ the proposed settlement will bind all Settlement Class Members. If the Court does not approve the proposed settlement, the Settlement Agreement will have no effect or precedential value in any subsequent proceedings in the Lawsuit or in any other litigation.

2. How Can I Receive Money From The Settlement?

You do not have to do anything to receive money from this settlement. A check will be automatically mailed to you if the Court grants final approval of the settlement.

3. Will I Be Subject To Discipline Or Retaliation If I Participate In The Settlement?

No.

4. How Much Is The Settlement?

FBM has agreed to pay \$1,500,000.00 ("Maximum Settlement Fund") to settle the Released Claims defined below. After attorneys' fees and costs, a class representative enhancement, and claims administration costs are deducted from the Maximum Settlement Fund, the remaining amount ("Net Settlement Amount") will be automatically distributed to Settlement Class Members who do not opt out.

5. How Much Money Will I Receive?

The Net Settlement Amount of approximately \$698,250.00 prior to deduction for payroll taxes will be paid out to Settlement Class Members.

Your individual share of the Net Settlement Amount before deduction for payroll taxes will be calculated based on the total number of weeks you worked for FBM during the Class Period as reflected in FBM's records.

Your total number of Workweeks in the Class Period (June 15, 2016 through [date of preliminary approval]) as an hourly-paid or non-exempt employee based on FBM's records is _____. If you disagree with this number, you must provide documentation and/or an explanation to show a different number of Workweeks worked as an hourly-paid or non-exempt employee to the Claims Administrator by mail no later than _____.

Your Individual Settlement Amount shall be calculated by dividing the total Workweeks worked by all Settlement Class Members into the Net Settlement Amount, multiplied by your Workweeks listed above. Your estimated Individual Settlement Amount is \$_____. This amount may change depending on final rulings from the Court. Applicable payroll deductions will be made for withholding of state and federal taxes. Your Individual Settlement Amount will be allocated one third as wages, subject to withholding of applicable taxes, and two thirds to interest and penalties reported on an IRS Form 1099. You will have 120 days to cash your check. If you do not cash the check within 120 days, your check will be sent in your name to the Unclaimed Property Fund, <https://ucpi.sco.ca.gov/UCP>.

6. When Will I Receive the Money?

Please be patient. This Settlement must be approved by the Court before any payments can be issued.

7. Can I Object To The Settlement?

Yes. To do so, you must mail a notice of objection to the Claims Administrator at the address listed in Section 14 below.

Your notice of objection must be postmarked no later than [Opt-Out/Objection Deadline].

Your notice of objection must state: (i) the Class Member's name; (ii) current address; (iii) telephone number; (iv) dates of employment with FBM and most recent job position; (v) last 4-digits of his or her social security number; and (vi) every basis for the objection(s), and all supporting facts.

If you fail to make your objections in the manner specified above, you shall be deemed to have waived any objections and you shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement, or any aspect of the proposed settlement, including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement, the enhancement award to the Class Representative, or any award of attorneys' fees or reimbursement of costs and expenses.

If the Court rejects your objection, you will still be bound by the terms of the Settlement Agreement and you will still receive a settlement check.

8. Can I Opt Out of The Settlement?

Yes. To opt out, you must submit to the Claims Administrator a written Opt-Out Request that is postmarked on or before [Opt-Out/Objection Deadline] at the address listed in Section 14 below. Such written request for exclusion must contain the name, address, telephone number, and the last four digits of the social security number of the person requesting exclusion, most recent job position held with Defendants and the dates (or approximately dates) of his or her employment. The request for exclusion must additionally state, in substance: "I have read and fully understand the Notice of Proposed Class Action Settlement and Hearing for Court Approval and I wish to opt out of the class action and settlement in *Olivas v. Foundation Building Materials*." If a timely and valid Opt-Out Request is not received by the Claims Administrator from a Class Member on or before the Opt-Out/Objection Deadline, then that Class Member will be deemed to have forever waived his or her right to seek exclusion from the Settlement and Settlement Class and shall be bound by the Settlement and Judgment. Class Members who do validly request exclusion from the Settlement by submitting a valid and timely Opt-Out Request shall not be bound by the terms of the Settlement, shall not be allowed to object to the Settlement, and shall not be entitled to any benefits as a result of the Settlement.

9. What Happens If I Do Nothing?

You will receive money from this settlement and you will be bound by the Release described below.

10. What Rights Am I Giving Up?

Class Members who have not timely and effectively opted out of the Settlement ("Settlement Class Members") release and forever waive and extinguish their Released Claims against the Released Parties.

"Released Claims" shall include: Any and all claims, rights, demands, charges, causes of action, lawsuits, complaints, obligations, penalties, fines, promises, agreements, controversies and liabilities, known and unknown, (collectively, "claims") for any relief whatsoever, including monetary, injunctive, or declaratory, whether direct or indirect, whether suspected or unsuspected, whether contingent or vested, arising from or related to any of the allegations in the First Amended Class Action Complaint from the period of June 15, 2016, through the date of Preliminary Approval, including that Defendants or any Released Party: (i) Failed to pay overtime; (ii) Failed to pay meal period premiums; (iii) Failed to pay rest period premiums; (iv) Failed to pay minimum wages; (v) Failed to pay wages at termination; (vi) Failed to provide accurately

itemized wage statements; (vii) Failed to reimburse business expenses; (viii) Violation of the unfair competition law; or (ix) Violation of the PAGA. The Released Claims include all claims pled or which could have been pled in the First Amended Class Action Complaint arising from any of the facts alleged therein, including but not limited to claims of any and every nature based on any of the statutory provisions identified therein, and all penalty claims, no matter how pled.

“Released Parties” means FOUNDATION BUILDING MATERIALS, INC. a California Corporation; and FOUNDATION BUILDING MATERIALS, LLC, a California Limited Liability Company dba FOUNDATION BUILDING MATERIALS, and their related entities and businesses, former and present officers, officials, directors, administrators, attorneys, shareholders, respective agents, general agents, insurers, reinsurers, payroll companies, representatives, owners, stockholders, policyholders, partners, employees, trustees heirs, successors, predecessors, assigns, subsidiaries, and entities to which they provided management services.

11. Who Is The Class Representative?

The Court has appointed Miguel Olivas as the Class Representative to represent you in this settlement. He will ask the Court to approve an enhancement award in an amount not to exceed a total of \$10,000 to be paid from the Maximum Settlement Fund to compensate him for his efforts in filing and assisting with the prosecution of the Lawsuit and in reaching this settlement on your behalf.

12. How Will The Attorneys’ Fees For The Class Be Paid?

You do not need to pay any portion of either Class Counsel’s or FBM’s attorneys’ fees and costs. All payment for Class Counsel’s attorneys’ fees and costs will be deducted from the Maximum Settlement Fund. Class Counsel has actively litigated this matter since June 15, 2020. Class Counsel will ask the Court to approve an award of attorneys’ fees’ in the amount of \$525,000 to Class Counsel for their work in prosecuting this Lawsuit and obtaining this Settlement on your behalf. Class Counsel will also ask the Court to approve an award of \$25,000 to Class Counsel for reimbursement of the costs and expenses they have incurred on behalf of the Class.

13. When And Where Is The Final Approval Hearing?

The Final Approval Hearing has been scheduled on _____ at _____ before the Honorable William F. Highberger in Department SSC-10 of the Superior Court of California located at 312 North Spring Street, Los Angeles, California 90012, at which time Judge Highberger will determine: (1) whether the proposed settlement should be approved as fair, reasonable and adequate to the Settlement Class and (2) whether the proposed Final Approval Order and Judgment should be entered by the Court. The Final Approval Hearing date and time may change without further notice given to you. Please contact the Claims Administrator at the address and telephone below to find out if there has been a change to the date and time of the Final Approval Hearing.

You Are Not Required To Attend The Final Approval Hearing.

14. Where Can I Get Additional Information?

This Notice provides only a summary of the matters relating to the proposed settlement. For more information or questions, you may contact the Claims Administrator as follows:

Phoenix Class Action Administration Solutions

P.O. Box _____

City, California Zip Code

Telephone: (xxx) xxx-xxxx

Facsimile: (xxx) xxx-xxxx

**PLEASE DO NOT CALL OR CONTACT THE COURT WITH QUESTIONS ABOUT THE
PROPOSED SETTLEMENT OR THE SETTLEMENT PROCESS.**