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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ADRIAN VIDES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CELOSEAL ROOFING, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO. 30-2020-01162478-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Randall J. Sherman]*

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

Date: October 15, 2021
Time: 10:00 a.m.
Dept.: CX105
Reservation: 73603939

Action Filed: September 28, 2020
Trial Date: None Set

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I, FLETCHER W. SCHMIDT, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named
 of Adrian Vides (“Plaintiff”) in the above-captioned matter. I am a member in good
 of the bar of the State of California and am admitted to practice in this Court. I have
 al knowledge of the facts stated in this declaration and could testify competently to them
 d upon to do so.

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

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in California state and federal court. I am currently responsible for managing a caseload of over seventy-five (75) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action settlements in which I have served as Class Counsel, and which have been granted final approval: *Julio v. Anthony*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-00100-PJH, United States District Court, Northern District of California, Honorable Judge J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015).

1 presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
2 *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior
3 Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an
4 hourly rate of \$350 for work performed in 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No.
5 BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley
6 presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
7 *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California
8 Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving
9 an hourly rate of \$350 for work performed in 2014 and 2015); *Prado v. Warehouse Demo*
10 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
11 California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for
12 work performed in 2014 and 2015); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-
13 00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge
14 Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015,
15 and 2016); *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of
16 Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of
17 \$375 for work performed in 2014, 2015, and 2016); *Tesla Motors Wage and Hour Litigation*,
18 JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan
19 presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and
20 2016); *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of
21 Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375 for work
22 performed in 2013, 2014, 2015, and 2016); *Horta v. Searles Valley Minerals, Inc.*, Case No.
23 CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald
24 Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016);
25 *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of
26 California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an
27 hourly rate of \$425 for work performed in 2016 and 2017); *Khosravi v. Enterprise Rent-A-Car*
28 *Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior

1 Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw presiding
2 (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Nieves v. Ta Chen*
3 *International, Inc.*, Case No. BC609005, Superior Court of California, County of Los Angeles,
4 Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for work
5 performed in 2016 and 2017); *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-
6 OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Claster
7 presiding (approved at an hourly rate of \$425 for work performed in 2017 and 2018); *Ruvalcaba*
8 *Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior
9 Court of California, County of Orange, Honorable William D. Claster presiding (approving an
10 hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Armenta, et al., v. California*
11 *Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior
12 Court of California, County of Orange, Honorable Randall J. Sherman presiding (approving an
13 hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Sandra Zinnerman v.*
14 *Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California,
15 County of Los Angeles, Honorable Maren E. Nelson presiding (approving an hourly rate of
16 \$425 for work performed in 2016, 2017, and 2018); *Tina Arellano v. Williams Sonoma Stores,*
17 *Inc.*, Case No. BC693760, Los Angeles County Superior Court, Honorable Daniel J. Buckley,
18 presiding; *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County
19 Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$475 for
20 work performed in 2017, 2018 and 2019); *Maria C. Garcia, et al. v. Simplified Labor Staffing*
21 *Solutions, Inc.*, Case No. BC696898, Los Angeles County Superior Court, Honorable Elihu M.
22 Berle, presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019);
23 *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County
24 Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$595 for
25 work performed in 2018, 2019 and 2020); *Soto v. L I Metal Systems*, Case No. 37-2017-
26 00009607-CU-OE-CTL, San Diego County Superior Court, Honorable Timothy Taylor,
27 presiding (approving an hourly rate of \$595 for work performed in 2017-2020); *Michael*
28 *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San Bernardino County

1 Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595 for work
2 performed in 2019 and 2020); and *Francisco Garcia v. Searing Industries, Inc.*, Case No.
3 CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn, presiding
4 (approving an hourly rate of \$595 for work performed in 2019 and 2020).

5 5. I have also moved to certify and have received an order certifying a class action
6 and/or conditionally certifying a collective action as Class Counsel in the following cases:
7 *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC,
8 California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding
9 (certifying a class of employees who were misclassified as independent contractors); *Javine v.*
10 *San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District
11 Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding
12 (conditionally certifying an unpaid FLSA overtime wage class); *Prado v. Warehouse Demo*
13 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
14 California, Honorable Judge John F. Walter presiding (certifying a rest period violation class
15 and conditionally certifying a FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*,
16 Case No. CV14-2712 HSG, United States District Court, Northern District of California,
17 Honorable Judge Haywood S. Gilliam, Jr. presiding (conditionally certifying an unpaid FLSA
18 overtime wage class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-
19 JLT, United States District Court, Eastern District of California, Honorable Judge Jennifer L.
20 Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v.*
21 *AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
22 Superior Court, County of Orange, Honorable Judge William Claster presiding (certifying
23 unpaid overtime wage class and waiting time penalty class); *Camacho v. Residential Fire*
24 *Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-CXC, California Superior Court, County of
25 Orange, Honorable Judge Glenda Sanders presiding (certifying five separate classes for claims
26 for unpaid wages, unreimbursed expenses, failure to authorize and permit rest periods, and
27 derivative claims); *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG
28 (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee

1 presiding (certifying six classes of employees for rest period violations, wage statement
2 violations, meal period violations, and overtime and double-time violations); and *Staublein v.*
3 *Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San Bernardino Superior
4 Court, Honorable David Cohn presiding (certifying a wage statement class).

5 6. In 2018-2021, Thomson Reuters and Los Angeles Magazine recognized me as a
6 Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers.
7 This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the
8 age of forty in Southern California each year.

9 7. As counsel for Plaintiff, I have been closely involved in all aspects of this
10 litigation since its inception and believe that the proposed Settlement is a fair and reasonable
11 result for the aggrieved employees and the State of California.

12 8. Defendant operates a construction company specializing in commercial and
13 residential decking, roofing, and waterproofing services. Plaintiff worked for Defendant as a
14 non-exempt employee from approximately 1999 to April 3, 2020. Plaintiff, like all other
15 Settlement Class Members, worked for Defendant in California during the Class Period.

16 9. Throughout the Class Period, Plaintiff contends that Defendant did not record
17 employees' meal periods but instead deducted 45 minutes (0.75 hours) from daily hours
18 worked unless an employee affirmatively noted that they did not receive a meal period on a
19 particular shift. Even on occasions where an employee was provided a full-30 minute meal
20 period as required by California law, Plaintiff contends that Defendant deducted an additional
21 15 minutes from their daily hours worked, regardless of whether the employee was provided a
22 total of 45 minutes for the meal period. Plaintiff argues that Defendant is not entitled to
23 "presume" that an employee took a meal period where none was recorded, but rather has an
24 affirmative obligation under the Labor Code to accurately record all employee work periods,
25 including meal periods. Plaintiff's review of putative class member timekeeping records reflect
26 there were 1,560 total workweeks worked by individuals who did not sign *Pick Up Stix*
27 releases. Given that the vast majority of shifts worked by putative class members exceed 8.0
28 hours, Plaintiff assumed that all unpaid wages would be paid at the average overtime rate

1 (\$24.30). Based on discussions with Plaintiff and other putative class members, Plaintiff
2 determined that putative class members were not compensated for 1 hour of work each week,
3 on average, due to improper meal period deductions. Plaintiff therefore calculates Defendant's
4 exposure for unpaid wages due to improper meal deductions as follows: 1,560 workweeks
5 worked x 1 hour of unpaid overtime per week x \$24.30 average overtime rate = \$37,908.
6 Plaintiff discounted Defendant's potential liability by 25% for a risk of non-certification, and
7 by an additional 25% for the risk that Defendant could prevail on the merits outright, or at least
8 succeed in establishing a lower damages measure, for a projected total of \$21,323.

9 10. Defendant contends that employees were always expected to take a full 45-
10 minute, uninterrupted meal period each day and to report to their supervisors whenever a meal
11 period was not taken or was shorter than 45 minutes. Defendant argues that employee working
12 time was deducted for meal periods only when the employee was actually provided the meal
13 period. In addition to these defenses, Defendant contends individualized inquiries would be
14 required to determine whether an employee was not provided a 45 minute meal period on each
15 occasion that time was deducted from hours worked, thus posing an obstacle to certification.

16 11. Plaintiff's operative complaint also includes a claim for unpaid overtime and
17 minimum wages as a result of Defendant's alleged unlawful rounding policy. In association
18 with mediation, Defendant produced relevant timekeeping policies and employee timesheets
19 which specifically instruct employees to record their daily time to the nearest five minutes.
20 Plaintiff's counsel reviewed these documents and determined that there are significant
21 obstacles proving commonality because putative class members personally recorded their daily
22 hours using multiple methods (such as paper timecard, phone app) and there was no uniform
23 policy or practice enforced by Defendant. Even if successful in certifying the claim, Plaintiff's
24 counsel concluded that Plaintiff would be unlikely to prevail on the merits of the rounding
25 claim given that Defendant rounded employee hours to the nearest 5 minutes (as opposed to 10
26 or 15 minutes). Plaintiff therefore attributed nominal value to this claim at mediation.

27 12. With respect to first meal periods, Plaintiff contends that meal periods were
28 regularly provided after the fifth hour of work. With respect to second meal periods, putative

1 class member timekeeping and payroll records reflect that shifts in excess of 10.0 hours only
2 received a single 45-minute deduction, confirming that only a single meal period was provided
3 in practice. As a result of Defendant's meal period practices, Plaintiff contends employees
4 were deprived of wages for each shift that they were not provided a 45-minute meal period.
5 Additionally, Plaintiff alleges that Defendant failed to pay any meal period premiums for
6 missed or non-compliant meal periods. Plaintiff reviewed the timekeeping records produced for
7 mediation and determined that 390 shifts reflect a start time before 7:00 a.m. (approximately
8 5% of all shifts). Because Defendant designated lunch from 12:00 p.m. to 12:45 p.m. each day,
9 Plaintiff contends that employees who worked these "early" shifts were not provided with a
10 timely meal period commencing before the fifth hour of work. Plaintiff therefore calculates
11 Defendant's first meal period exposure as follows: 390 shifts with a first meal period violation
12 x \$16.20 average meal premium = \$6,318. Plaintiff's review of the timekeeping records also
13 reveal that 390 shifts exceeded 10 hours in length and were entitled to a second meal period.
14 However, Defendant only deducted a single 45 minute block from the daily hours worked, no
15 matter how long the shift actually was. Plaintiff argues that this practice highlights that
16 Defendant never provided a second meal period in the first place, despite its facially-compliant
17 second meal period policy. Plaintiff therefore calculates Defendant's second meal period
18 exposure as follows: 390 shifts with a second meal period violation x \$16.20 average meal
19 premium = \$6,318. Adding these figures together provide Plaintiff's calculation for
20 Defendant's total meal period exposure, $\$6,318 + \$6,318 = \$12,636$. Plaintiff discounted
21 Defendant's potential liability by 25% for a risk of non-certification, and by an additional 25%
22 for the risk that Defendant could prevail on the merits outright, or at least succeed in
23 establishing a lower damages measure, for a projected total of \$7,108.

24 13. Defendant maintains that employees were provided all legally compliant meal
25 periods and that any missed or non-compliant meal periods were the result of employee choice,
26 not Defendant's policy. Defendant also contend that employees waived their second meal
27 periods on shifts in excess of 10.0 hours (but less than 12.0 hours). Defendant further argues
28 that Plaintiff's meal period claims is unmanageable, since individual inquiries would be

1 required to assess whether meal periods were waived, and the reasons why a particular
2 employee recorded a non-compliant meal period or missed a meal period on a particular shift.

3 14. Plaintiff alleges that Defendant required employees to use their personal cell
4 phones for business purposes but did not reimburse them for that use. Some of these uses
5 included communicating with their supervisor throughout the workday, using their wireless
6 internet to navigate while driving company vehicles, and downloading and using a phone
7 application to record their daily hours worked. In *Cochran v. Schwan's Home Service, Inc.*
8 (2014) 228 Cal.App.4th 1137, 1140, the court held that Section 2802 requires employers to
9 always reimburse employees who are required to use personal cell phones for work-related
10 purposes for a reasonable percentage of their cell phone bills. Under Labor Code § 2802, the
11 employer must “indemnify its employees for expenses they necessarily incur in the discharge
12 of their duties...” Defendant argues that it maintains a policy to reimburse all reasonable and
13 necessary business expenditures and that, to the extent that any expenses were not reimbursed,
14 they were not reasonably incurred. Defendant also maintains that this claim faces similar
15 obstacles towards certification as Plaintiff’s other claims, particularly that it would require a
16 series of mini-trials to determine which expenses were reasonable and necessary for the
17 particular job duties of the affected employee. Plaintiff estimates the average monthly cell
18 phone expense incurred by employees was approximately \$50.00. Plaintiff therefore calculates
19 Defendant’s exposure for its failure to reimburse necessary business expenditures as follows:
20 $1,560 \text{ workweeks} \div 4.333 \text{ weeks per month} \times \$50.00 \text{ monthly business expense} = \$18,001.$
21 Plaintiff discounted Defendant’s potential liability by 25% for a risk of non-certification, and
22 by an additional 25% for the risk that Defendant could prevail on the merits, for a projected
23 total of \$10,126.

24 15. Plaintiff also contends that Defendant issued facially non-compliant wage
25 statements which fail to include “the address of the legal entity that is the employer,” because
26 the wage statements Defendant provided to its employees list only the city, state, and zip code,
27 with no street address whatsoever. Defendant contends that this omission was unintentional
28 (resulting from the inadvertent failure to check a specific box on the payroll software) and only

1 affected a handful of putative class members. Defendant also contends that wage statements
2 have been legally-complaint since February 2020 when Defendant changed payroll processors.
3 According to the data produced by Defendant, there were 303 wage statements issued to 81
4 putative class members who did not sign general releases during the time period associated
5 with wage statement penalties (1 year prior to the filing of the complaint to the present).
6 Defendant's exposure for wage statement penalties is as follows: 81 "initial" violations x
7 \$50.00 per violation + 222 "subsequent" violations x \$100.00 per violation = \$26,250. Plaintiff
8 discounted Defendant's potential liability by 25% for a risk of non-certification, and by an
9 additional 25% for the risk of losing on the merits or failing to prove violations were 'knowing
10 and intentional," for a projected total of \$14,766.

11 16. As a result of the alleged substantive violations, Plaintiff contends that
12 Defendant also failed to issue accurate and itemized wage statements and failed to pay all
13 wages owed at separation of employment. Additionally, Plaintiff contends that Defendant faces
14 liability for civil penalties under PAGA. Since these claims are derivative of the underlying
15 meal period claims, Defendant asserts that those claims will fail with the underlying claims.
16 Defendant also maintains that, given its good faith defenses, this Court would exercise its
17 discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for
18 any of Plaintiff's underlying claims. Defendant also argues that meal period claims cannot
19 support wage statement or waiting time penalties. Even if they could, Defendant contends that
20 employees could not show that they "suffer[ed] injury," as required by Labor Code § 226(e).
21 Defendant also argues it attempted to pay its employees all final wages owed in good faith
22 upon their separation, therefore precluding a finding of wilfulness which is necessary to obtain
23 waiting time penalties under 8 Cal. Code Regs. § 13520.

24 17. Plaintiff's review of the pre-mediation document production revealed there are
25 approximately 70 employees who have not signed general releases and have separated their
26 employment with Defendant during the time period applicable to waiting time penalties (3 year
27 prior to date of filing to the present). Plaintiff therefore calculated Defendant's waiting time
28 exposure as follows: 70 former employees x \$16.20 average hourly rate x 8 hours x 30 days =

1 \$272,160. Plaintiff discounted the value of this claim by 25% for the risk of non-certification
2 of the underlying claims, and 25% for a risk of being unsuccessful on the merits (including a
3 failure to establish wilfulness), for an estimated recovery on this claim of \$153,090.

4 18. The success of Plaintiff's PAGA claim is wholly dependent upon the success of
5 the underlying claims occurring within the time period associated with PAGA (1 year prior to
6 the submission of the LWDA letter to the present). Assuming that Plaintiff could prove at least
7 one substantive violation in each pay period for the PAGA time period, Defendant's potential
8 exposure for PAGA civil penalties is \$470,300 (4,703 pay periods x \$100.00 "initial" violation
9 rate). Plaintiff discounted Defendant's potential liability by 25% for the risk of manageability
10 issues preventing the case from proceeding on a representative basis, and by an additional 75%
11 to account for the potential for this Court to reduce the civil penalties, for a projected total of
12 \$88,181.

13 19. Plaintiff predicts that a realistic classwide recovery for all of these claims would
14 be approximately \$294,593. This Settlement provides a recovery to the Settlement Class of
15 \$265,000, which is approximately 89.95% of Plaintiff's projected potential recovery, while
16 avoiding the further expense and serious risk of proceeding towards class certification and trial.

17 20. Shortly after Plaintiff filed the Lawsuit, Defendant engaged in a campaign to
18 obtain general releases from putative class members. Defendant's counsel provided Plaintiff
19 with samples of the general release as well as the accompanying materials provided to putative
20 class members. Defendant's counsel represented that 128 of the approximately 209 putative
21 class members signed "Pick Up Stix" releases as a result of these efforts.

22 21. Following Defendant's *Pick Up Stix* campaign, the parties reached an agreement
23 to attend mediation on behalf of the individuals with PAGA standing as well as the individuals
24 who did not sign general releases. In connection with mediation and prior to formal written and
25 deposition discovery, Defendant provided Plaintiff with timekeeping and payroll records for
26 approximately 20% of putative class members who worked during the relevant time periods.
27 Defendant also produced the employee handbook, relevant policy documents, and a list of data
28 points necessary to complete a classwide exposure analysis for the claims at issue. Plaintiff

1 then conducted an analysis of this data and created a comprehensive damages model to
2 calculate the likely exposure that Defendant faced on each claim.

3 22. On April 7, 2021, the Parties participated in a mediation with Will Klatte, Esq.,
4 a respected wage and hour class action mediator in California. During mediation, the Parties
5 exchanged divergent views on Defendant's liability and Plaintiff's exposure valuations,
6 debated their legal positions, and shared their arguments regarding the likelihood of
7 certification of Plaintiff's claims. As a result of a mediator's proposal from Mr. Klatte, the
8 Parties were able to reach a classwide resolution of all claims. During the months that followed,
9 the Parties memorialized the terms into the Settlement Agreement. True and correct copies of
10 the Stipulation of Settlement ("Settlement Agreement") and the proposed Notice Packet (which
11 is comprised of the Notice of Class Action Settlement ("Class Notice") and Notice of
12 Settlement Award ("Dispute Form")) are attached hereto as **Exhibits 1 and 2**, respectively. A
13 true and correct copy of Plaintiff's pre-filing LWDA letter is attached hereto as **Exhibit 3**.

14 23. The Settlement includes a release of PAGA civil penalties for all individuals
15 who were employed by Defendant in California at any time between April 6, 2019 and the date
16 of preliminary approval of the Settlement (the "PAGA Period"), regardless of whether they
17 have signed a general release. These individuals are referred to in the Settlement as "PAGA
18 Aggrieved Employees." The PAGA release covers all PAGA claims that are based on the
19 Labor Code violations pled in Lawsuit or Plaintiff's letter to the LWDA dated July 22, 2020, or
20 which could have been pled in the operative complaint in the Lawsuit based on the factual
21 allegations therein, that arose during the PAGA Period.

22 24. Should the Court preliminarily approve this settlement, Defendant will pay a
23 Maximum Settlement Amount of \$265,000.00. This Settlement is non-reversionary and
24 Settlement Class Members will automatically receive their Individual Settlement Payment
25 unless they affirmatively opt-out of the Settlement. PAGA Aggrieved Employees will
26 automatically receive their share of the PAGA allocation, and will not have the ability to opt-
27 out.

28 25. Defendant's records as of the date of mediation indicate that there are

1 approximately 165 potential individuals who will take part in this Settlement (81 Settlement
2 Class members and 105 PAGA Aggrieved Employees, with 21 individuals meeting both
3 definitions). The Settlement Class members worked a total of approximately 1,560 workweeks
4 in the Settlement Class Period, and the PAGA Aggrieve Employees worked a total of
5 approximately 4,703 pay periods during the PAGA Period. Based on the proposed allocations
6 of the Net Settlement Amount, Settlement Class Members will receive average payments of
7 approximately \$1,224.28 on a per capita basis. The PAGA Aggrieved Employees will each
8 automatically receive payments of approximately \$119.00. Individuals who meet both the
9 definition of a Settlement Class Member and a PAGA Aggrieved Employee will receive both
10 payments. To ensure that individuals who experienced more Labor Code violations will receive
11 a greater share of the Net Settlement Amount, the Settlement utilizes workweeks worked (as
12 opposed to time employed) to calculate Individual Settlement Payments.

13 26. Should the Court grant preliminary approval of this Settlement, Plaintiff will
14 apply for an enhancement payment in the total amount of \$5,000.00. Plaintiff's Enhancement
15 Payment is intended to recognize the significant benefits conferred upon the Settlement Class
16 due to the time and effort that Plaintiff expended on their behalf, including providing factual
17 information and documents to his attorneys, identifying potential witnesses who also worked
18 for Defendant and experienced the same alleged Labor Code violations, and participating in
19 meetings with his attorneys to discuss the claims and theories at issue in the litigation.
20 Plaintiff's Enhancement Payment is also requested due to the significant risks that Plaintiff
21 undertook by agreeing to serve as the named Plaintiff in this case, as well as the fact that
22 Plaintiff agreed to a general release of all claims subject to a waiver of California Civil Code
23 § 1542.

24 27. My firm will also apply for an attorneys' fee award of \$88,333.33 (one-third of
25 the Maximum Settlement Amount) and up to \$15,000.00 in verified costs. My firm incurred
26 substantial attorneys' fees conducting the pre-filing investigation, analyzing Plaintiff's claims,
27 conducting legal research and analysis into those claims, reviewing data and documents
28 produced by Defendant, building a comprehensive damages model, preparing for and attending

1 mediation, preparing and revising the long-form Settlement Agreement, preparing this Motion
2 for Preliminary Approval, and otherwise litigating the case. My firm will also expend future
3 attorney time in attending the hearing on this Motion, overseeing the Notice process and
4 fielding questions from Settlement Class Members, drafting the Final Approval Motion along
5 with supporting documents, and attending the final approval hearing, among other tasks.

6 28. Plaintiff proposes that the Settlement be administered by Phoenix Settlement
7 Administrators, an experienced class action settlement administrator. Phoenix has never had
8 any financial interests in nor affiliation with the parties or counsel in this matter. Additionally,
9 Phoenix maintains a robust system of safeguards and redundancy policies to ensure the data
10 and funds entrusted to it. Phoenix also maintains an errors and omissions insurance policy
11 which covers data breaches.

12 29. Concurrently with the filing of this motion, Plaintiff provided notice of the
13 proposed Settlement (as well as copies of the motion and supporting papers) to the LWDA.
14 Attached hereto as **Exhibit 4** are true and correct copies of Plaintiff's submission and the
15 LWDA's confirmation of receipt.

16 30. I confirm that I do not have any interest or involvement in the governance or
17 work of the proposed cy pres recipient, Legal Aid SoCal. Likewise, I am not affiliated with the
18 proposed settlement administrator, Phoenix Settlement Administrators.

19 I declare under penalty of perjury under the laws of the United States and the state of
20 California that the foregoing is true and correct. Executed on September 9, 2021, at El Segundo,
21 California.

22 
23 Fletcher W. Schmidt

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Adrian Vides (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendant Celoseal Roofing, Inc. (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, and Alma V. Montenegro of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Nancy Rader Whitehead of Scott & Whitehead (“Defense Counsel”).

On September 28, 2020, Plaintiff filed the operative class and representative action complaint against Defendant in Orange County Superior Court titled *Adrian Vides v. Celoseal Roofing, Inc.*, Case No. 30-2020-01162478-CU-OE-CXC (the “Action”). The Action alleges that Defendant: (1) failed to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); (2) failed to pay all minimum wages (Labor Code §§ 1194, 1194.2, 1197); (3) failed to provide all meal periods (Labor Code §§ 226.7, 512, 558); (4) failed to reimburse necessary business expenses (Labor Code § 2802); (5) failed to issue accurate, itemized wage statements (Labor Code § 226 *et seq.*); (6) failed to timely pay all final wages due upon separation of employment (Labor Code §§ 201-203); (7) engaged in unfair competition (Business and Professions Code § 17200); and (8) is liable for civil penalties under the PAGA (Labor Code § 2698 *et seq.*).

Given the uncertainty of litigation, and without Defendant making any admission as to the merits of any of the claims asserted, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees who have worked for Celoseal Roofing, Inc. in California at any time between April 6, 2016 and the date of preliminary approval of the Settlement (the “Class Period”), and who have not signed a general release.

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

2. **PAGA Aggrieved Employees Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate that the PAGA Aggrieved Employees shall be defined as:

All individuals who were employed by Defendant in California at any time between April 6, 2019 and the date of preliminary approval of the Settlement (the “PAGA Period”), regardless of whether they have signed a general release.

3. **Release by Settlement Class Members, PAGA Aggrieved Employees, and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out of the Settlement) will release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, spouses, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively “Defendant’s Releasees”) as follows:

- A. All members of the Settlement Class who do not opt-out will release and discharge Defendant and Defendant’s Releasees from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the Action, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the Class Period (collectively the “Released Claims”). The time period covered by this release is April 6, 2016 and the date of preliminary approval of the Settlement.
- B. PAGA Aggrieved Employees, regardless of whether they opt-out of the Settlement, will release and discharge Defendant and Defendant’s Releasees from all PAGA claims that are based on the Labor Code violations pled in the operative complaint in the Action or Plaintiff’s letter to the LWDA dated July 22, 2020, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the PAGA Period (collectively the “PAGA Released Claims”).
- C. In light of Plaintiff’s Class Representative Enhancement Payment, Plaintiff also agrees to release, as an individual and in addition to the released claims described in Paragraph 3.A. and 3.B., above, all claims, whether known or unknown, under federal law or state law against Defendant and Defendant’s Releasees. The Parties understand and agree that Plaintiff is not, by way of this release, releasing any workers’ compensation claims nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims, and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.
- D. The Settlement along with all associated releases will become effective on the date of the Court’s signing an order granting final approval of the Settlement (“Effective Date”).

4. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a “Maximum Settlement Amount” of \$265,000.00 in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator to administer this Settlement.
- B. The Maximum Settlement Amount shall be paid by Defendant no later than 30 days after the Effective Date.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator associated with the administration of the Settlement, which are anticipated to be no greater than \$7,500.00;
 - (3) Up to \$5,000.00 for Plaintiff’s Class Representative Enhancement Payment in recognition for Plaintiff’s contributions to the Action and Plaintiff’s service to the Settlement Class;
 - (4) Up to one-third (33.33%) of the Maximum Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated at \$88,333.33), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$15,000.00; and
 - (5) \$50,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$37,500.00, will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25%, or \$12,500.00, will be payable to the PAGA Employees as the “PAGA Amount,” as described below.
- D. Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Settlement Class Members who do not opt-out.
- E. **Escalator Clause.** Defendant represents that there are an estimated 4,703 workweeks worked by the PAGA Aggrieved Employees during the PAGA Period and an estimated 1,560 total workweeks worked by the Settlement Class members during the Class Period, for a combined total of 6,263 covered workweeks. If the combined number of total covered workweeks is more than 10% greater than this figure (i.e., if there are 6,890 or more total covered workweeks), Defendant may elect to either: (1) increase the Maximum Settlement Amount on a proportional basis (i.e., if there was 15% increase in covered workweeks, Defendant would increase the Maximum Settlement Amount by 15%) or (2) cut off the Class Period and PAGA Period as of the date that there are 6,889 combined workweeks worked.
- F. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include the employer’s share of payroll taxes on any amounts designated as wages, which shall

be paid by Defendant separate and apart from, and in addition to, the Maximum Settlement Amount.

5. **Payments to the Settlement Class.** Settlement Class Members are not required to submit a claim form to receive a payment (“Individual Settlement Payment”) from the Settlement. Individual Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator’s fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment based on the following formula:
 - i. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendant at any time between April 6, 2019 and the date of preliminary approval, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
 - ii. PAGA Amount: The \$12,500.00 payable to PAGA Employees as PAGA civil penalties shall be designated as the “PAGA Amount.” Each individual who was employed by Defendant at any time between April 6, 2019 and the date of preliminary approval, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
 - iii. Waiting Time Amount: Twenty-five percent (25%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal shares to each participating Settlement Class member who separated their employment with Defendant on or after April 6, 2017.
 - iv. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

- C. Within 10 business days following the funding of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment, and will prepare and mail Individual Settlement Payments to Settlement Class Members.
- D. Each Settlement Payment shall be allocated as 20% wages and 80% penalties and interest. Amounts paid to PAGA Aggrieved Employees for the PAGA Payment (described in Paragraph 5.B.ii) will be allocated as 100% penalties. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Settlement Class Members will be responsible for all employee-side taxes due on Individual Settlement Payments.
- E. Defendant shall fully discharge its obligations to those Settlement Class Members to whom Defendant will pay a Settlement Amount through the mailing of a settlement check, regardless of whether such checks are actually received and/or negotiated by Settlement Class Members. Any check that is not negotiated within 180 days of mailing to a Settlement Class member shall be distributed by the Settlement Administrator to the cy pres, Community Legal Aid SoCal, a 501(c)(3) organization dedicated to providing legal services to the indigent population of Orange and Southeast Los Angeles Counties.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost, stolen, undelivered or misdelivered checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

6. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$88,333.33. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$15,000.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

7. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of \$5,000.00 for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

8. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrator as Settlement Administrator. Defendant will not object to Plaintiff

seeking approval to pay up to \$7,500.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices to the Settlement Class Members, (including obtaining updated class member addresses, performing a National Change of Address search, and/or skip-tracing), for calculating Individual Settlement Payments, , including the amount of all payroll tax deductions to be withheld or backup withholdings, deducting appropriate tax withholdings and paying them to the appropriate government entity, and for preparing all checks and mailings providing Class Counsel and Counsel for Defendant with weekly updates on the status of Settlement administration (including numbers and percentages of mailed Notices, returned Notices, re-mailed Notices, undeliverable Notices, opt-outs, and objections), providing declarations and/or reports as required for court filings, and for any other tasks that the Parties may mutually agree or the Court orders the Settlement Administrator to perform. . The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all Settlement Class Members. If the actual Settlement Administrator fees are less than the Parties' estimation, the difference between the actual and estimated Settlement Administrator fees will flow through to the Net Settlement Amount.

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

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, Andrew J. Rowbotham, and Alma V. Montenegro of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Adrian Vides as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrator as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Payment), and which counsel for all Parties shall mutually agree upon before submitting to the Court, and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

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

- A. Within 10 business days after the Court signs an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, addresses, phone numbers, social security numbers, dates of employment, and relevant workweek information for each Settlement Class Member during the Class Period and each PAGA Aggrieved Employee during the PAGA Period.

- B. Within 10 business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within 5 business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional 14 calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
- i. The Notice Packet shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this

Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

- ii. PAGA Aggrieved Employees may not opt-out of the release of PAGA claims (as described in Paragraph 3.B.) and will thus receive payment for their share of the PAGA Amount even if they request exclusion from the class and do not receive a class portion of their Individual Settlement Payment.
 - iii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.
- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Any such written objections must contain the Settlement Class Member's name, address, and last four digits of his or her social security number and must state the legal and factual bases for objection. The objection must also be signed by the Settlement Class member. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing. Settlement Class Members need not submit written objections to be heard by the Court at the Final Approval Hearing.
- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
- G. Defendant understands its legal obligation not to retaliate against the Settlement Class Members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

11. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

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

12. **Right to Terminate Settlement.** If ten (10%) percent or more members of the Settlement Class members exercise their rights to exclude themselves and opt out of the Settlement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate the Settlement no later than ten (10) business days after the Response Deadline. In the event of Defendant's withdrawal, no party may use the fact that the Parties agreed to the Resolution for any reason. In the event that Defendant elects to terminate this Settlement, Defendant shall pay all of the Administrative Costs incurred by the Settlement Administrator up to that point.

13. **Non-Approval of Settlement.** The Parties will work in good faith to obtain preliminary and final settlement approval. In the event that the Court denies final approval with prejudice, this Agreement shall be deemed void *ab initio* and the Parties shall be returned to their respective positions as though this Agreement was never executed, including with respect to any releases of claims.

14. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If the Effective Date does not occur or Defendant fails to fully fund the Settlement pursuant to Paragraph 4.B. above, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code section 1152.

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

16. **Confidentiality.** The Parties and their counsel will keep the Settlement, the Settlement-related documents, and their Settlement negotiations confidential, and will not disclose that information to any third party through the date of preliminary approval. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement.

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

if to Plaintiff: Fletcher W. Schmidt of Haines Law Group, APC
2155 Campus Drive, Suite 180, El Segundo, CA 90265
fschmidt@haineslawgroup.com

if to Defendant: Nancy Rader Whitehead of Scott & Whitehead
4675 MacArthur Court, Suite 1240, Newport Beach, CA 92660
nwhitehead@employerlaw.com

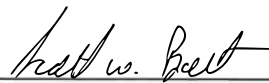
18. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the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

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

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

21. **Continuing Jurisdiction.** The Parties stipulate that, pursuant to California Code of Civil Procedure section 664.6, the Orange County Superior Court will retain jurisdiction over the Parties to enforce this Settlement Agreement until full performance of the terms of the settlement has been completed.

DATED: CELOSEAL ROOFING, INC.

By: 
Name: Scott W. Bolt
Title: President

DATED: May 20, 2021

PLAINTIFF ADRIAN VIDES

By: 
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: 5/24/21

SCOTT & WHITEHEAD

By:


Nancy Rader Whitehead
Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By:

Fletcher W. Schmidt
Attorneys for Plaintiff

APPROVED AS TO FORM:

DATED:

SCOTT & WHITEHEAD

By: _____
Nancy Rader Whitehead
Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By:  _____
Fletcher W. Schmidt
Attorneys for Plaintiff

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ADRIAN VIDES, as an individual and on behalf of all
others similarly situated,

Plaintiff,

vs.

CELOSEAL ROOFING, INC., a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 30-2020-01162478-CU-OE-CXC

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND FINAL HEARING**

To: All current and former non-exempt employees who have worked for Celoseal Roofing, Inc. in California at any time between April 6, 2016 and <<PRELIMINARY APPROVAL DATE>>, and who have not signed a general release. Collectively, these employees will be referred to as “Settlement Class Members;” and

All individuals who were employed by Celoseal Roofing, Inc. in California at any time between April 6, 2019 and <<PRELIMINARY APPROVAL DATE>>, regardless of whether they have signed a general release. Collectively, these employees will be referred to as “PAGA Employees.”

**THIS NOTICE IS BEING PROVIDED TO YOU IN ENGLISH AND SPANISH
PLEASE READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED.
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT.**

The Court authorized this notice. This is not a solicitation from a lawyer, and you are not being sued.

What is the purpose of this notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action (the “Action”) filed in Orange County Superior Court (the “Court”), has been reached by the parties and has been granted preliminary approval by the Court supervising the Action. Your rights may be affected by the Settlement, so it is important that you read this Notice carefully.

The purpose of this notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

You may be entitled to money from this Settlement. Celoseal Roofing, Inc. (“Celoseal”) records show that you were employed by Celoseal as a non-exempt employee in California between April 6, 2016, and <<PRELIMINARY APPROVAL DATE>> (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement unless you “opt out” of the Settlement, and because the Settlement affects your legal rights.

What is this case about?

Plaintiff Adrian Vides (“Plaintiff”) brought this lawsuit against Celoseal, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

In the operative Complaint, Plaintiff alleges that Celoseal failed to pay all overtime wages, failed to pay all minimum wages, failed to provide all lawful meal periods, failed to reimburse necessary business expenses, failed to issue accurate, itemized wage statements, failed to timely pay all wages due upon separation of employment, and engaged

in unfair competition. As a result, Plaintiff also seeks damages, interest, civil and statutory penalties under the Private Attorneys General Act (“PAGA”), attorneys’ fees and costs.

Celoseal denies Plaintiff’s claims, denies it has done anything wrong, and contends that it complied with all laws.

This Settlement is the result of extensive settlement discussions between the parties. Both sides agree that, in light of the risks and costs associated with further litigation, this Settlement is fair and appropriate under the circumstances. The Court has not ruled on the merits of Plaintiff’s claims, class certification outside of the Settlement, or on the merits of Celoseal’s defenses. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in the interest of the Class Members to settle the Action on the terms summarized in this Notice. The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Celoseal, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Celoseal, your decision about whether to participate in the Settlement will not affect your employment. California law and Celoseal’s policy strictly prohibit unlawful retaliation. Celoseal will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

What are the terms of the Settlement?

On <<PRELIMINARY APPROVAL DATE>>, the Court granted preliminary approval of the proposed Settlement, and preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees who have worked for Celoseal Roofing, Inc. in California at any time during the Class Period, and who have not signed a general release (“Settlement Class Members” and of all individuals who were employed by Celoseal Roofing, Inc. in California at any time between April 6, 2019 and <<PRELIMINARY APPROVAL DATE>>, regardless of whether they have signed a general release (“PAGA Aggrieved Employees”).

Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Celoseal, as described below in the “Release” section.

Celoseal has agreed to pay \$265,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Action, including payments to Settlement Class Members, payments to PAGA Aggrieved Employees, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative’s Enhancement Payment. The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you, and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$7,500.00 from the Maximum Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Costs. Class Counsel have been prosecuting the Action on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. Class Counsel is asking for fees of up to one-third of the Maximum Settlement Amount (which is currently estimated at \$83,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel is also seeking reimbursement of up to \$15,000.00 for verified costs which incurred by Class Counsel in connection with the Action.

Class Representative’s Enhancement Payment. Class Counsel has asked the Court to award \$5,000.00 to Plaintiff as a Class Representative Enhancement Payment. This is meant to compensate Plaintiff for his service provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The Parties have agreed to allocate \$50,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Pursuant to Labor Code section 2699(i), 75% of such penalties (\$37,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$12,500.00) will be payable to the PAGA Aggrieved Employees as part of the Net Settlement Amount.

Calculation of Settlement Class Members' Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the "Net Settlement Amount," which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion ("opt outs") or objections (as described in the "Objecting to the Settlement" paragraph beginning on page 4). The Net Settlement Amount will be divided as follows:

- (i) Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Celoseal at any time between April 6, 2019 and <<PRELIMINARY APPROVAL DATE>>, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period
- (ii) The \$12,500.00 payable to PAGA Aggrieved Employees as PAGA civil penalties shall be designated as the "PAGA Amount." Each individual who was employed by Celoseal at any time between April 6, 2019 and <<PRELIMINARY APPROVAL DATE>>, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (iii) Twenty-five percent (25%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal shares to each participating Settlement Class member who separated their employment with Celoseal on or after April 6, 2017.
- (iv) The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

Settlement Payments to Settlement Class Members and to PAGA Aggrieved Employees If the Court grants final approval of the Settlement, Settlement Payments will be mailed to Settlement Class Members who did not opt out of the settlement by submitting a valid and timely Request for Exclusion. PAGA Aggrieved Employees may not opt-out of the release of PAGA claims (as described in the "Release" paragraph beginning on page 3) and will thus receive payment for their share of the PAGA Amount even if they opt out of the Settlement and do not receive a class portion of their Settlement Payments.

Each participating Settlement Class Member and PAGA Aggrieved Employee who receives a Settlement Payment must cash that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not cashed within 180 calendar days after mailing will be distributed by the Settlement Administrator to Community Legal Aid SoCal, a 501(c)(3) organization dedicated to providing legal services to the indigent population of Orange and Southeast Los Angeles Counties.

Allocation and Taxes. For tax purposes, each Settlement Payment will be allocated as 20% wages, which will be reported as such on an IRS Form W-2 with payroll withholdings withheld and 80% penalties and interest, which will be reported as such on an IRS Form 1099. Amounts paid to PAGA Aggrieved Employees for the PAGA Payment will be allocated as 100% penalties. Settlement Class Members are responsible for the proper income tax treatment of the Settlement Payments. The Settlement Administrator, Celoseal and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Employer Payroll Taxes. The Maximum Settlement Amount does not include any employer-side payroll taxes, which will be paid by Celoseal separate and apart from, and in addition to, the Maximum Settlement Amount

Release. If the Court approves the Settlement, each Settlement Class Member who does not timely and properly opt out of the Settlement by submitting a Request for Exclusion will be deemed to have fully released and discharged Celoseal, its past and present officers, directors, shareholders, managers, employees, agents, principals, spouses, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively “Celoseal’s Releasees”), from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the Action, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose during the Class Period. The time period covered by this release is April 6, 2016 and <<PRELIMINARY APPROVAL DATE>>.

PAGA Aggrieved Employees, regardless of whether they opt-out of the Settlement, will release and discharge Celoseal and Celoseal’s Releasees from all PAGA claims that are based on the Labor Code violations pled in the operative complaint in the Action or Plaintiff’s letter to the LWDA dated July 22, 2020, or which could have been pled in the operative complaint in the Action based on the factual allegations therein, that arose between April 6, 2019 and <<PRELIMINARY APPROVAL DATE>>.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and the entry of Judgment. The Settlement along with all associated releases will become effective on the date of the Court’s signing an order granting final approval of the Settlement (“Effective Date”).

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to receive your allotted Settlement Payment, which has been calculated for you based on the formula set forth above, and as stated in the accompanying Notice of Settlement Payment. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Payment. Your award is based on the proportionate number of workweeks that you worked during the relevant time periods and whether your employment separated on or after April 6, 2016. The information contained in Celoseal’s records regarding this information, along with your Settlement Payment, is listed on the accompanying Notice of Settlement Payment. If you disagree with the information in your Notice of Settlement Payment, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Payment. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **PLEASE DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself from the Settlement by sending the Settlement Administrator a written “Request for Exclusion from the Class Action Settlement” letter or card postmarked no later than <<RESPONSE DEADLINE>>, with your full name, address, name, address, telephone number, the last four digits of the Social Security number, and your signature. The Request for Exclusion should state your desire not to participate in the lawsuit. An example of such a statement is as follows:

“I REQUEST TO BE EXCLUDED FROM THIS CLASS ACTION SETTLEMENT. I HAVE RECEIVED NOTICE OF THE SETTLEMENT AND UNDERSTAND THAT IF I AM EXCLUDED FROM THE CLASS ACTION SETTLEMENT, I WILL NOT RECEIVE ANY MONEY AS A RESULT OF THE SETTLEMENT.”

Send the Request for Exclusion directly to the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and

you will be bound by the terms of the Settlement. Additionally, if you are a PAGA Employee you may not opt-out of the PAGA release and you will receive your share of the PAGA Payment even if you opt-out of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. In order to object to the Settlement, you must mail your written objection to the Settlement Administrator, <<ADMINISTRATOR CONTACT INFO>> bearing a post-mark with a date no later than <<RESPONSE DEADLINE>>. Written objections must include: (a) the name of the Action, (b) your full name, address, and the contact information for any attorney representing you regarding your objection; (c) a statement of each objection; (d) a written explanation setting forth the specific basis or reason, for each objection, including any legal and factual support and any evidence you wish to introduce in support of the objection(s); and (e) and your signature. All objections or other correspondence must state the name and number of the case, which is *Adrian Vides v. Celoseal Roofing, Inc.*, Orange County Superior Court, Case No. 30-2020-01162478-CU-OE-CXC. Objections in writing must be filed with the Court on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department CX105 of the Orange County Superior Court, located at 700 W. Civic Center Dr., Santa Ana, CA 92701. If you wish to appear at the final approval hearing to object to the Settlement, you should so indicate in your written objection. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. Any written objection that is not mailed prior to <<RESPONSE DEADLINE>> will not be considered. However, Class Members still retain the right to object in person if they so wish. Class Members who timely and validly return a Request for Exclusion from the Settlement shall have no right to object and shall be foreclosed from making any objection to the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department CX105 of the Orange County Superior Court, located at 700 W. Civic Center Dr., Santa Ana, CA 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to, and do not need to attend the Final Approval Hearing to receive your Settlement Payment.**

Who are the Attorneys in this Action?

Attorneys for Plaintiff / Settlement Class Members:	Attorneys for Celoseal:
HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Fletcher W. Schmidt (SBN 286462) fschmidt@haineslawgroup.com Andrew J. Rowbotham (SBN 301367) arowbotham@haineslawgroup.com Alma V. Montenegro (SBN 323158) amontenegro@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	SCOTT & WHITEHEAD Nancy Rader Whitehead (SBN 107332) nwhitehead@employerlaw.com Sherri Fanger McInnes (SBN 203996) smicinnes@employerlaw.com 4675 Mac Arthur Court, Ste. 1240 Newport Beach, CA 92660 Tel: (949) 222-0166 Fax: (949) 222-0113

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Orange County Courthouse, located at 700 W. Civic Center Dr., Santa Ana, CA 92701, during regular business hours. You may also contact the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>, toll free, or Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE CLERK OF THE COURT OR THE JUDGE FOR INFORMATION
ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

NOTICE OF SETTLEMENT PAYMENT

ADRIAN VIDES v. CELOSEAL ROOFING, INC.

ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2020-01162478-CU-OE-CXC

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

(I) Please type or print your name:

(First, Middle, Last)

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

Former Names (if any)

New Street Address

City State Zip Code

(III) Information Used to Calculate Your Settlement Payment:

According to Celoseal's records:

- (a) You worked _____ workweeks between April 6, 2016 and <<PRELIMINARY APPROVAL DATE>>;
- (b) There was a total of _____ workweeks worked by all Settlement Class Members from April 6, 2016 and <<PRELIMINARY APPROVAL DATE>>;
- (c) You worked _____ workweeks between April 6, 2019 and <<PRELIMINARY APPROVAL DATE>>;
- (d) There was a total of _____ workweeks worked by all Settlement Class Members from April 6, 2019 and <<PRELIMINARY APPROVAL DATE>>;
- (e) Your employment with Celoseal <<DID/DID NOT>> end on or after April 6, 2017.

Based on the above, your Settlement Payment is estimated to be \$ _____ and your estimated share of the PAGA Payment is estimated to be \$ _____.

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

If you dispute the above information from Celoseal's records, those records will control unless you are able to provide documentation that establishes that Celoseal's records are mistaken. If there is a dispute about whether Celoseal's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination. **ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____ Date: _____

EXHIBIT 3

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

July 22, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Adrian Vides v. Celoseal Roofing, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Adrian Vides (“Mr. Vides”) in claims arising from his employment with Celoseal Roofing, Inc.; and Does 1 through 100 (collectively “Defendants”). Mr. Vides is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Mr. Vides was hired by Defendants in approximately 1999 and remained employed until approximately March 2020 as a non-exempt “Foreman” and/or “Forklift Driver” (or similarly titled positions). Mr. Vides seeks to represent and recover civil penalties on behalf of himself and other non-exempt “aggrieved employees” who were subject to the Labor Code violations alleged herein. The “aggrieved employees” whom Mr. Vides seeks to represent are all current and former non-exempt employees of Defendants who performed work for Defendants in the State of California during the one year immediately preceding the date of this letter through the present.

During Mr. Vides’ employment with Defendants, Defendants utilized a timekeeping system that failed to compensate Mr. Vides and other aggrieved employees for all hours actually worked, whether by rounding and/or truncating of hours. Specifically, Defendants required Mr. Vides and other aggrieved employees to clock in and out of shifts through a smartphone application. Defendants’ timekeeping policies/practices regularly, systematically, and impermissibly rounded the hours worked by Mr. Vides and other aggrieved employees in Defendants’ favor resulting, over a period of time, in a failure to properly compensate Mr. Vides and other non-exempt employees for all hours worked, including on occasions where they worked over 8.0 hours in a workday and/or 40.0 hours in a workweek. As a result of Defendants’ timekeeping policies/practices, Mr. Vides and other aggrieved employees were not compensated for all minimum and overtime wages earned.

Defendants failed to ensure that Mr. Vides and other aggrieved employees were compensated with required meal period premiums in the event that they did not receive compliant meal periods. Specifically, Defendants failed to record the beginning and end of employee's meal periods and instead automatically deducted thirty minutes of time from their daily recorded hours worked. As a result, Defendants failed to pay Mr. Vides and other aggrieved employees the required meal period premiums in the event that an employee did not receive a timely, 30-minute meal period. Furthermore, Defendants' failure to record the beginning and end of meal periods is not excused by Section 6(A)(1) of Wage Order 16, because Defendants failed to cease operations during meal periods. Additionally, when Mr. Vides and other aggrieved employees worked shifts in excess of 10.0 hours, they were not provided a second meal period due to Defendants' meal period policies/practices which do not provide a second meal period for shifts in excess of 10.0 hours.

Despite failing to provide Mr. Vides and other aggrieved employees with lawful meal periods, Defendants did not provide an hour of premium pay for each workday in which a meal period violation occurred, as required by Labor Code section 226.7.

Defendants also required Mr. Vides and other aggrieved employees to use their personal cellular phones for work-related purposes, including but not limited to, clocking in and out of their shifts through a smartphone application, and for other work-related tasks, including navigation while driving company vehicles, and communicating with supervisors. Although Defendants required Mr. Vides and other aggrieved employees to use their personal cell phones for work-related purposes, Defendants failed to reimburse them for these work-related expenses.

As a result of Defendants' failure to pay all overtime and minimum wages and meal period premiums, Defendants maintained inaccurate payroll records, issued inaccurate wage statements to Mr. Vides and other aggrieved employees, and failed to pay Mr. Vides and other aggrieved employees all wages owed at the time of their respective separations of employment with Defendants.

Furthermore, Defendants are governed by Labor Code section 226(a)(8), which requires Defendants' wage statements to include the name and address of the legal entity of the employer. Defendants have failed to include the complete address of the legal entity that is the employer. As a result, Defendants' wage statements are facially deficient in violation of Labor Code Section 226.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 16 ("Wage Order 16"):

Overtime Wage Violations

Defendants was required to pay Mr. Vides and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty

hours per workweek. *See* Labor Code §§ 1194(a) and 1198; Wage Order 16, § 3. According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” As alleged above, Defendants regularly and systematically, as a policy and practice, did not pay Mr. Vides and other aggrieved employees for all overtime hours worked as a result of Defendants’ timekeeping policies/practices. As a result of these policies/practices, Mr. Vides and other aggrieved employees were not compensated for all overtime wages.

Minimum Wage Violations

Defendants was required to pay Mr. Vides and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 16, § 4. As alleged above, Defendants failed to conform its pay practices to the requirements of the law. This unlawful conduct included but was not limited to Defendants’ uniform and unlawful timekeeping policies/practices, which resulted in these individuals not being paid for all hours actually worked. As a result, Mr. Vides and other aggrieved employees were deprived of all required minimum wages.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Vides and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 10. As a result, Mr. Vides and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Failure to Reimburse Employees for Necessary Business Expenditures

Defendants failed to reimburse Mr. Vides and other aggrieved employees for necessary work expenses, including the use of their personal cellular phones for business purposes. Defendants’ policy of not providing reimbursement for necessary work-related expenses violates Wage Order 16, § 8, and Labor Code §§ 2802 and 2804 (“An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer.”) Mr. Vides and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Wage Statement Violations

Defendants was required to furnish Mr. Vides and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 16, § 6. As a result of Defendants' failure to pay all meal period premiums, and minimum and overtime wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Vides and other aggrieved employees in violation of Labor Code § 226. Furthermore, Defendants failed to comply with Labor Code §§ 226(a)(8), which requires Defendants' wage statements to include the name and address of the legal entity that is the employer. Defendants' failure to comply with its wage statement obligations was knowing and intentional, and Mr. Vides and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separations of employment. Defendants failed to timely pay Mr. Vides and other aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid overtime and minimum wages, and meal period premium wages. Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to Mr. Vides and other aggrieved employees was willful and, consequently, entitles Mr. Vides and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separations, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Vides will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Vides' own investigation, and on information and belief, Defendants committed and continues to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Vides and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Vides and other aggrieved employees the statutory minimum wage for all hours worked;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Vides and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

- d. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Vides and other aggrieved employees for all necessary expenditures incurred;
- e. Defendants violated Labor Code § 226 by failing to furnish Mr. Vides and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Mr. Vides and other aggrieved employees;
- g. Defendants violated Labor Code § 204 by failing to pay Mr. Vides and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Vides and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: Celoseal Roofing, Inc. (via certified mail)

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Wednesday, July 22, 2020 3:48:25 PM

7/22/2020

LWDA Case No. LWDA-CM-799562-20
Law Firm : Haines Law Group, APC
Plaintiff Name : Adrian Vides
Employer: Celoseal Roofing, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 4