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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

JANELE ALDANA, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

DAL-TILE SERVICES, INC., a Delaware
corporation; MOHAWK INDUSTRIES, INC., a
Delaware corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. RG20071668

[Hon. Evelio Grillo, Department 21]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: February 21, 2023
Time: 10:00 a.m.
Department: 21

Reservation ID: 602110108426

Complaint Filed: August 25, 2020

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am counsel of record for Plaintiff. I make this declaration on the basis of my
4 own personal knowledge, except as to those matters stated on information and belief and, as to those
5 matters, I believe them to be true. If called as a witness, I could testify competently as to the facts stated
6 in this declaration.

7 2. On August 25, 2020, Plaintiff initiated this class and private attorney general action that
8 seeks to remedy Defendants' alleged failure to furnish lawful wage statements. Upon the filing of the
9 Action, Plaintiff and Defendants met and conferred about the alleged claims. On November 16, 2020,
10 Plaintiff served initial written discovery on Defendants. On December 21, 2020, Defendants served
11 initial written discovery on Plaintiff. On January 13, 2021, Defendants served responses to Plaintiff's
12 discovery. On February 15, 2021, Plaintiff served responses to Defendants' discovery. The Parties
13 continued engaging in informal discovery, and Defendants provided Plaintiff with additional
14 information about various wage statement formats at issue.

15 3. On or about May 10, 2022, Plaintiff filed the operative first amended complaint to allege
16 additional theories for Defendants' wage statement failures. *First*, the operative complaint alleges that
17 whenever employees were paid, Defendants issued wage statements that failed to show the start date for
18 the period being paid. *Second*, the operative complaint alleges that whenever non-exempt employees
19 earned certain wages, like overtime or missed meal premiums, Defendants issued wage statements that
20 inaccurately stated the total hours worked. *Third*, the operative complaint alleges that whenever non-
21 exempt employees earned overtime wages, Defendants issued wage statements that did not identify the
22 overtime rate as 1.5 times the regular rate of pay.

23 4. Class Counsel continued investigating the alleged claims and also analyzed any defenses
24 raised by Defendants. The Parties supplemented formal discovery by continuing to exchange
25 information and documentation pursuant to informal methods to assist them in exploring the possibility
26 of a mediated resolution. Defendants' willingness to supplement formal discovery with informal
27 discovery enabled Plaintiff to evaluate the full scope of Defendants' potential liability. For example,
28 Defendants provided the relevant numbers of individuals and wage statements, among other things—

1 enabling Plaintiff to assess the full value of Class Members' claims and further enabling negotiations to
2 take place between the Parties. Ultimately, the Parties agreed to schedule a mediation.

3 5. On November 29, 2022, the Parties attended a mediation with Gig Kyriacou, an
4 experienced mediator knowledgeable of both the wage and hour laws and class and representative action
5 claims at issue in the Action. With the mediator's assistance and based on a mediator's proposal, the
6 Parties were able to negotiate the settlement terms in the Joint Stipulation of Class Action Settlement
7 (the "Agreement"), a true and correct copy of which is attached as **Exhibit 1**.

8 6. The Agreement requires Defendants to pay \$1,575,000.00—or approximately \$46.90, on
9 average, per relevant wage statement. As discussed below, this amounts to approximately 14.70% of
10 Defendants' potential liability and is an excellent result for Class Members. Plaintiff contended that
11 class claims under Section 226(e) result in a \$50 penalty for the first non-compliant wage statement to
12 each Class Member and a \$100 penalty for each additional non-compliant wage statement to the Class
13 Member, up to a maximum of \$4,000 per class member.¹ Plaintiff also contended that PAGA penalties
14 under Section 226.3 also result in up to \$250 per non-compliant wage statement.

15 7. Defendants contested the merits and denied it was liable at all. Moreover, even if Plaintiff
16 prevailed on the merits, Defendants contested the extent of liability. For example, Defendants contended
17 that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries
18 resulting from knowing and intentional violations. Likewise, Defendants contended that PAGA penalties
19 would amount to only \$100 per non-compliant wage statement under Section 2699(f). Defendants also
20 contended that PAGA penalties in any event would be subject to discretionary reductions.

21 8. While the Parties disagree on the law and its application to the facts, each Party
22 recognized in negotiations that, if taken to trial, the other Party would at least have reasonable
23 arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was
24 reasonable. Ultimately, Plaintiff argued that the potential total recovery amounted to \$10,711,750.00—
25 which included \$2,316,000.00 in penalties under Section 226(e)² and \$8,395,750.00 in penalties under
26

27
28 ¹ Except as otherwise noted, all "Section" references are to the Labor Code.

² The statutory cap of \$4,000.00 for each of 579 Class Members = \$2,316,000.00.

1 Section 226.3.³ Plaintiff contends that the Gross Settlement Amount of \$1,575,000.00—approximately
2 14.70% of the potential total recovery of \$10,711,750.00—is an excellent result. It is expected that each
3 Class Member, on average, will be allocated **\$1,533.68** (*after* all requested payments from the Gross
4 Settlement Amount).⁴

5 9. Although I am confident that litigation of the claims would result in a classwide judgment
6 against Defendants, I recognize the inherent risks in litigation, including the specific risks that class
7 certification could be denied, liability could not be established at trial, or the applicable law could
8 change. I recognize that the settlement resulting from extensive arm’s length negotiations between the
9 Parties is fair, reasonable, and adequate for each Class Member, given the inherent risks of litigation, as
10 well as the potential for appeals and the costs of pursuing litigation.

11 10. I am one of the primary attorneys on this matter. My qualifications are as follows: After
12 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
13 2004 with concentrations in Management and Human Resources, I continued studying labor and
14 employment issues by enrolling in post-graduate education at the School of Labor and Employment
15 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
16 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
17 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
18 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

19 11. Upon graduating from law school in 2008, I practiced labor and employment law at
20 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
21 practice focused on wage and hour class, collective, and representative actions, with a particular
22 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
23 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
24 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*

25
26 ³ \$250.00 for each of 35,583 wage statements = \$8,395,750.00.

27 ⁴ The amount paid on average to each Class Member may increase, depending on how many Class
28 Members opt out of the class action settlement. The amount actually paid to any Class Member may
increase or decrease depending on his or her number of relevant wage statements during the Class
Period.

1 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on
2 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
3 not more than six hours), and *Ruelas v. Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal.
4 Sept. 8, 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was
5 also able to obtain experience litigating representative claims or wage and hour matters through trial and
6 appeal. *E.g.*, *Velazquez v. Costco Wholesale Corporation*, 603 Fed. App'x 584 (9th Cir. Mar. 25, 2015)
7 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
8 pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014)
9 (affirming bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in
10 collective action with involving deductions from final paychecks). I also litigated class certification on
11 numerous matters. *E.g.*, *Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326
12 (denial of class certification on behalf of retail employees alleging off-the-clock work).

13 12. Based on my experience in wage and hour class, collective, and representative actions, I
14 have been interviewed and quoted in articles published in the Northern California Record about
15 legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and
16 hour class and representative action litigation, including for example articles on California kin care
17 requirements in *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of
18 California employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break
19 laws in *California Transportation News*, a publication of the California Construction Trucking
20 Association.

21 13. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C.,
22 which also focuses primarily on employment law. I have handled a number of wage and hour class and
23 representative actions and continue litigating such matters in numerous Superior Courts and District
24 Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully
25 mediated the resolution of dozens of wage and hour class, collective, and representative actions. I have
26 obtained class certification and been appointed class counsel. No court has ever found me to be
27 inadequate class counsel.

14. My co-counsel and I will adequately represent the Class Members in this action. We have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.

15. Along with the filing of the motion for preliminary approval of the settlement in this matter, my regular practice would be to direct my office staff to similarly upload a copy of the motion papers to the Labor and Workforce Development Agency (“LWDA”) in compliance with Section 2699(1)(2) and (4). Similarly, upon approval of a settlement in this matter, my regular practice would be to direct my office staff to similarly upload a copy of the Court’s judgment, papers, or other orders awarding civil penalties under PAGA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of January 2023, at Pasadena, California.


Simon L. Yang

EXHIBIT 1

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Attorneys for Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

JANELE ALDANA, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

DAL-TILE SERVICES, INC., a Delaware
corporation; MOHAWK INDUSTRIES, INC., a
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inclusive,

Defendants.

Case No. RG20071668

[Hon. Evelio Grillo, Department 21]

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: August 25, 2020
FAC Filed: May 10, 2022

Trial Date: None Set

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff, Janele Aldana, on the one hand, and Defendants Dal-Tile Services, Inc. and Mohawk Industries, Inc., on the other hand.

1. Definitions

As used in this Agreement, the following terms shall have the following meanings:

1.1. Action. "Action" means the civil lawsuit originally entitled *Janele Aldana v. Dal-Tile Services, Inc. et al.* filed on or about August 25, 2020, in the Superior Court of the State of California for the County of Alameda designated as Case No. RG20071668.

1.2. Administrator. "Administrator" means the third-party settlement administrator approved by the Court to administer the settlement.

1.3. Agreement. "Agreement" means this Joint Stipulation of Class Action Settlement.

1.4. Class Counsel. "Class Counsel" means Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group.

1.5. Class Member. "Class Member" and "Aggrieved Employee" mean (i) any current or former exempt employee of Defendants in the State of California who at any time during the Class Period received wage statements that did not include the pay period start date and (ii) any current or former non-exempt employee of Defendants in the State of California who at any time during the Class Period received wage statements that either did not include the pay period start date or showed overtime or meal period premiums hours that resulted in an inaccurate total hours worked. Defendants represent that there are approximately 579 Class Members who received approximately 33,583 relevant wage statements.

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

1.7. Class Period. "Class Period" and "PAGA Period" mean April 6, 2019, through November 29, 2022.

1.8. Court. "Court" means the Superior Court of California for the County of Alameda.

1.9. Defendants. "Defendants" means Dal-Tile Services, Inc. and Mohawk Industries, Inc.

1 **1.10. Defendants' Counsel.** "Defendants' Counsel" means Ian A. Wright of Alston & Bird
2 LLP.

3 **1.11. Effective Date.** "Effective Date" means the date by which this Agreement is finally
4 approved by the Court as provided herein and when the Court's final judgment becomes binding. For
5 purposes of this Agreement, the final judgment becomes binding upon the latter of: (i) the day after the
6 last day by which a notice of appeal to the California Court of Appeal of the final judgment may be
7 timely filed, and none is filed; (ii) if an appeal is filed, and the appeal is finally disposed of by ruling,
8 dismissal, denial or otherwise, the day after the last date for filing a request for further review of the
9 Court of Appeal's decision passes, and no further review is requested; (iii) if an appeal is filed and
10 there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further
11 review of the Court of Appeal's decision is requested, the day after the request for review is denied
12 with prejudice and/or no further review of the judgment can be requested, or (iv) if review is accepted,
13 the day the California Supreme Court affirms the Settlement.

14 **1.12. Final Approval Order.** "Final Approval Order" means an order granting final approval
15 of a settlement pursuant to this Agreement.

16 **1.13. Gross Settlement Amount.** "Gross Settlement Amount" means the maximum potential
17 settlement amount—inclusive of any Administration Costs, Attorneys' Fees and Costs Award, Class
18 Representative Award, PAGA Penalty Fund, and Individual Settlement Payments—that Defendants
19 may be required to pay in connection with a Final Approval Order.

20 **1.13.1. Administration Costs.** "Administration Costs" means a Court approved
21 payment from the Gross Settlement Amount to the Administrator for administering the settlement,
22 which includes but is not limited to printing, distributing, or tracking Class Notices, processing any
23 required tax payments or reporting, providing any required tax forms, distributing payments pursuant to
24 a Final Approval Order, and providing necessary reports or declarations, as requested by the Court or
25 Class Counsel and Defendants' Counsel.

26 **1.13.2. Attorneys' Fees and Costs Award.** "Attorneys' Fees and Costs Award" means
27 a Court approved payment from the Gross Settlement Amount for Class Counsel's attorneys' fees and
28

costs associated with the litigation and resolution of the Action (excluding third-party Administration Costs separately addressed above).

1.13.3. Class Representative Award. “Class Representative Award” means a Court approved payment from the Gross Settlement Amount to Plaintiff in recognition of her efforts and work in prosecuting the Action on behalf of Class Members and in consideration of Plaintiff’s additional general release of claims inapplicable to Settlement Class Members.

1.14. Individual Settlement Payment. “Individual Settlement Payment” means a Class Member’s payment from the Net Settlement Amount and PAGA Penalty Fund.

1.14.1. Individual Class Payment. “Individual Class Payment” means a Settlement Class Member’s payment from the Net Settlement Amount for settlement of class action claims.

1.14.2. Individual PAGA Payment. “Individual PAGA Payment” means an Aggrieved Employee’s payment from the PAGA Penalty Fund for settlement of PAGA claims.

1.15. Net Settlement Amount. “Net Settlement Amount” means the remainder of the Gross Settlement Amount after Court approved deductions for the PAGA Penalty Fund, Attorneys’ Fees and Costs Award, Class Representative Award, and Administration Costs.

1.16. PAGA Penalty Fund & LWDA Payment. “PAGA Penalty Fund” means the portion of the settlement allocated to PAGA penalties. “LWDA Payment” means a payment of 75% of the PAGA Penalty Fund to the Labor & Workforce Development Agency (“LWDA”).

1.17. Parties. “Parties” means Plaintiff and Defendants.

1.18. Plaintiff. “Plaintiff” means Janele Aldana.

1.19. Preliminary Approval Order. “Preliminary Approval Order” means an order granting preliminary approval of a settlement pursuant to this Agreement.

1.20. Released Party. “Released Party” means Defendants and their present and former parent companies, subsidiaries, affiliates, and joint ventures, and each of their respective present and former officers, directors, controlling stockholders, agents, affiliates, employees, insurers, co-insurers, reinsurers, attorneys, including legal counsel herein, accountants, auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, general and

1 limited partners, predecessors, successors and assigns, and the spouse of each of the foregoing who is a
2 natural person.

3 **1.21. Settlement Class Members.** “Settlement Class Members” means Class Members who
4 do not exclude themselves from the class action settlement by complying with the procedures set forth
5 in the Class Notice to opt out of the class action settlement.

6 **2. Recitals**

7 **2.1. Initiation of Action.** On or about August 25, 2020, Plaintiff filed the original complaint
8 pursuing class action claims on behalf of a putative class of current and former employees of
9 Defendants in the State of California. Plaintiff alleged Defendants failed to furnish employees with
10 lawful wage statements in violation of California Labor Code section 226. As a proxy for the State of
11 California, Plaintiff also pursued Labor Code Private Attorneys General Act of 2004 (“PAGA”) claims
12 for the same Labor Code violations.

13 **2.2. Plaintiff’s Allegations.** On or about May 10, 2022, Plaintiff filed the operative first
14 amended complaint to allege additional theories for Defendants’ wage statement failures. First, Plaintiff
15 alleged that whenever employees were paid, Defendants issued wage statements that failed to show the
16 start date for the period being paid. Second, Plaintiff alleged that whenever non-exempt employees
17 earned certain wages, like overtime or missed meal premiums, Defendants issued wage statements that
18 inaccurately stated the total hours worked. Third, Plaintiff alleged that whenever non-exempt
19 employees earned overtime wages, Defendants issued wage statements that did not identify the
20 overtime rate as 1.5 times the regular rate of pay.

21 **2.3. Class Counsel’s Investigation.** On numerous dates, Plaintiff and Defendants met and
22 conferred about the alleged claims. On November 16, 2020, Plaintiff served initial written discovery on
23 Defendants. On December 21, 2020, Defendants served initial written discovery on Plaintiff. On
24 January 13, 2021, Defendants served responses to Plaintiff’s discovery. On February 15, 2021, Plaintiff
25 served responses to Defendants’ discovery. The Parties continued engaging in informal discovery, and
26 Defendants provided Plaintiff with additional information about various wage statement formats at
27 issue. Class Counsel continued investigating the alleged claims and also analyzed any defenses raised
28 by Defendants.

1 **2.4. Mediation and Settlement.** On November 29, 2022, the Parties attended a mediation
2 with Gig Kyriacou, an experienced mediator knowledgeable of both the wage and hour laws and class
3 and representative action claims at issue in the Action. With the mediator's assistance and based upon a
4 mediator's proposal, the Parties were able to agree to settlement terms. The settlement was achieved
5 after extensive arm's length negotiations in light of all known facts and circumstances—including the
6 uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate
7 issues.

8 **2.5. No Admission of Liability.** Defendants denied and continue to deny all of the
9 allegations made by Plaintiff in the Action. Although Defendants denied and continue to deny all of the
10 allegations made by Plaintiff in the Action, Defendants—without admitting or conceding any liability
11 or wrongdoing whatsoever—have agreed to settle the Action on the terms and conditions set forth in
12 this Agreement for the sole purpose of avoiding the burden, expense, and uncertainty of continuing the
13 Action. This Agreement is not a concession or admission and shall not be used against Defendants or
14 any Released Party as an admission or indication with respect to any claim of any fault, concession or
15 omission by Defendants or any Released Party. Whether or not the settlement is finally approved,
16 neither the Agreement, nor any document, statement, proceeding or conduct related to this Agreement,
17 nor any reports or accounts thereof, shall in any event be: (i) construed as, offered or admitted in
18 evidence as, received as, or deemed to be evidence for any purpose adverse to the Released Party,
19 including, but not limited to, evidence of a presumption, concession, indication or admission by any
20 Released Party of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed,
21 referred to or offered or received in evidence against any Released Party, in any further proceeding in
22 the Action, or any other civil, criminal or administrative action or proceeding except for purposes of
23 enforcing this Agreement. However, Defendants or a Released Party may file the Final Approval
24 Order, Agreement, or any other papers and records on file in the Action as evidence to support a
25 defense of res judicata, collateral estoppel, release, waiver or other theory of claim preclusion or issue
26 preclusion or similar defense as to the claims released by way of this settlement, and/or in defense of
27 any future claim in this or any other proceeding.
28

1 **2.6. Class Counsel's Evaluation.** Based on Class Counsel's ongoing investigation and
2 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair,
3 reasonable, adequate, and in the best interests of Class Members.

4 **2.7. Certification of Settlement Class.** This Agreement is contingent upon the approval and
5 certification by the Court of a class for purposes of settlement. The Parties agree to cooperate and take
6 all steps necessary and appropriate to effectuate all aspects of this Agreement and to obtain a
7 Preliminary Approval Order and then a Final Approval Order.

8 **3. Notice to Class Members**

9 **3.1. Administrator.** Plaintiff and Class Counsel shall request that the Court appoint Phoenix
10 Settlement Administrators as the Administrator for purposes of sending notice of the settlement to
11 Class Members. The Parties agree that Administration Costs should not exceed \$12,000.00.

12 **3.2. Class Data for Administrator.** Within 14 calendar days of entry of the Preliminary
13 Approval Order, Defendants shall provide to the Administrator each Class Member's last known
14 mailing address, as well as data sufficient for the Administrator to perform all necessary responsibilities
15 pursuant to this Agreement.

16 **3.3. Class Notice of Settlement.** The Administrator shall send Class Notice to Class
17 Members to provide notice of settlement within 21 calendar days of entry of the Preliminary Approval
18 Order, pursuant to the procedures below. This shall be the sole means of notice to Class Members.

19 **3.4. Mailing of Notice.** The Administrator shall send Class Notice to each Class Member via
20 First Class U.S. Mail, using the last known mailing address for each Class Member, based on class data
21 provided by Defendants. Any Class Notice returned to the Administrator as undeliverable shall be sent
22 promptly via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address
23 is provided, the Administrator shall promptly attempt to determine the correct address using a single
24 skip-trace search and shall then promptly send a single re-mailing.

25 **3.5. Proof of Mailing.** The Administrator shall provide Class Counsel and Defendants'
26 Counsel a declaration of due diligence and proof of mailing with regard to the mailing of the Class
27 Notice.
28

1 **4. Class Members' Response Options**

2 **4.1. Consideration Period.** Class Members shall be provided 45 calendar days after the
3 postmark date of the initial mailing of Class Notice to exercise any rights to opt out of the class action
4 settlement. Except as provided herein, no Class Member responses that are postmarked more than 45
5 calendar days after the initial mailing of Class Notice shall be considered. The Parties shall do nothing
6 to encourage or solicit Class Members to opt out of or object to the class action settlement.

7 **4.2. Objection Right and Effect.** Settlement Class Members shall be given the opportunity
8 to object to the terms of the class action settlement. Settlement Class Members may object to the class
9 action settlement by mailing to the Administrator an objection within 45 calendar days after the
10 postmark date of the initial mailing of Class Notice, which describes the objection and states any
11 intention to appear at the final approval hearing. Alternatively, Settlement Class Members may appear
12 at the final approval hearing to object to the class action settlement. Absent good cause as determined
13 by the Court, any Settlement Class Member who does not comply with the objection procedures in the
14 Class Notice shall be deemed to have waived any objections and shall be foreclosed from making any
15 objection, whether by appeal or otherwise, to the class action settlement. Settlement Class Members
16 who object to the class action settlement pursuant to the terms of the Class Notice shall remain subject
17 to being bound by the release provisions in this Agreement pursuant to a Final Approval Order and
18 shall remain eligible to receive an Individual Class Payment.

19 **4.3. Opt-Out Right and Effect.** Class Members shall be given the opportunity to opt out of
20 the class action settlement. Class Members may opt out of the class action settlement by mailing to the
21 Administrator a Request for Exclusion within 45 calendar days after the postmark date of the initial
22 mailing of Class Notice. Any Request for Exclusion that does not comply with the procedures in the
23 Class Notice shall be deemed void and ineffective. Class Members who opt out of the class action
24 settlement pursuant to the terms of the Class Notice shall not receive any Individual Class Payments,
25 shall not be bound by the class action release provisions in this Agreement pursuant to a Final Approval
26 Order, and shall not be permitted to object to the settlement or appeal. If a Class Member submits both
27 a Request for Exclusion and an objection, the Administrator shall attempt to determine whether the
28 Class Member would like to withdraw either the Request for Exclusion or the objection. If the Class

1 Member does not withdraw a Request for Exclusion, or if the Administrator cannot contact the Class
2 Member who submits both a Request for Exclusion and an objection, the Request for Exclusion shall
3 be deemed valid and shall be deemed to invalidate the objection.

4 **4.4. Objection Response.** The Administrator must provide a copy of any objection received
5 to Class Counsel and Defendants' Counsel upon receipt. Either of the Parties may file a response to any
6 written objection no later than five court days before the final approval hearing.

7 **4.5. Defendants' Right to Terminate.** If more than 5% of Class Members opt out of the
8 class action settlement, then Defendants shall have the right to terminate the Agreement by notifying
9 Plaintiff's Counsel in writing within seven calendar days of notification that more than 5% of Class
10 Members have opted out of the class. If Defendants exercise the right to terminate the Agreement,
11 Defendants shall be responsible for any Administration Costs incurred to date.

12 **4.6. Proof of Class Members' Responses.** As soon as practicable after the end of the
13 consideration period, the Administrator shall provide a declaration attesting to (by number of relevant
14 individuals), its mailing of Class Notice, its inability to deliver Class Notice due to invalid addresses,
15 and its receipt of valid Requests for Exclusion or objections. The Administrator shall prepare any
16 supplemental declarations regarding the administration of the settlement, as necessary or as jointly
17 requested by the Parties or the Court.

18 **5. Settlement Proceeds**

19 **5.1. Gross Settlement Amount.** Defendants agree to pay a non-reversionary Gross
20 Settlement Amount of \$1,575,000.00. The Gross Settlement Amount was negotiated based on
21 Defendants' representation that there are 33,583 relevant wage statements during the Class Period. If
22 the number of relevant wage statements during the Class Period exceeds 33,583 by more than 5.0%
23 (i.e., 35,263 or more), the Gross Settlement Amount shall increase on a pro rata basis equal to the
24 percentage increase exceeding 5.0% (e.g., if the actual number were 9.5% greater than 33,583, then the
25 Gross Settlement Amount would be increased by 4.5%). Under no other circumstance will Defendants'
26 payment exceed the Gross Settlement Amount.

27 **5.1.1. Attorneys' Fees and Costs.** Class Counsel intends to request—and Defendants
28 agree not to oppose—that the Court approve an Attorneys' Fees and Costs Award in the amount of (a)

1 33⅓% of the Gross Settlement Amount (or \$525,000.00) and (b) litigation costs of up to \$20,000.00.
2 Except as stated in this Agreement, the Parties are to be responsible for their own attorneys' fees and
3 costs.

4 **5.1.2. Class Representative Award.** Class Counsel intends to request—and
5 Defendants agree not to oppose—that the Court approve a Class Representative Award of \$10,000.
6 Any Class Representative Award would be supplemental to Plaintiff's Individual Settlement Payment.

7 **5.1.3. Administration Costs.** Class Counsel intends to request—and Defendants agree
8 not to oppose—that the Court approve Administration Costs of up to \$12,000.00. The Parties agree to
9 cooperate in the settlement administration process and to make all reasonable efforts to control and
10 minimize Administration Costs.

11 **5.1.4. PAGA Penalty Fund and LWDA Payment.** The Parties intend to request that
12 the Court approve a PAGA Penalty Fund of \$160,000.00. The PAGA Penalty Fund shall be distributed
13 pursuant to statute with 75% of the PAGA Penalty Fund payable as an LWDA Payment. The remaining
14 25% of the PAGA Penalty Fund is to be distributed to Aggrieved Employees on a pro rata basis, based
15 on the number of relevant wage statements they received during the Class Period as reflected in
16 Defendants' records.

17 **5.1.5. Differences in Requested and Approved Payments.** If the Court does not
18 approve the requested amounts for the Attorneys' Fees and Costs Award, Class Representative Award,
19 Administration Costs, or PAGA Penalty Fund, any differences in the requested and approved amount
20 shall be allocated either to the Net Settlement Amount or from the Gross Settlement Amount.

21 **5.2. Net Settlement Amount and Individual Settlement Payments.** After deducting the
22 approved Attorneys' Fees and Costs Award, Class Representative Award, Administration Costs, and
23 PAGA Penalty Fund from the Gross Settlement Amount, Individual Settlement Payments shall be
24 distributed to Settlement Class Members, without the need to submit a claim form on a pro rata basis,
25 based on the number of relevant wage statements they received during the Class Period as reflected in
26 Defendants' records.

27 **5.3. Funding and Distribution.** By 14 calendar days after the Effective Date, Defendants
28 shall deposit the Gross Settlement Amount with the Administrator. By seven calendar days after the

1 deposit of the Gross Settlement Amount with the Administrator, the Administrator shall distribute all
2 amounts to be paid pursuant to the Final Approval Order. Upon completion of administration of the
3 settlement, the Administrator shall provide written certification of such completion to Class Counsel
4 and Defendants' Counsel.

5 **5.4. Undeliverable or Uncashed Checks.** All uncashed or undeliverable settlement checks
6 will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of
7 all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for
8 any expired checks in accordance with the Final Approval Order. The Parties shall request that the
9 Court order that the principal for any expired checks escheat to the State of California's Unclaimed
10 Property Fund in the name of the Settlement Class Member.

11 **5.5. No Tax Advice or Liability.** All payments from the Net Settlement Amount shall be
12 classified for tax reporting purposes as penalties. The Administrator shall issue an IRS Form 1099 to
13 Plaintiff for any Class Representative Award, to Class Counsel for any Attorneys' Fees and Costs
14 Award, to the LWDA for any LWDA Payment, and to the Administrator for any Administration Costs.
15 The Parties have had an opportunity to consult with independent tax counsel. The Parties are not giving
16 any tax advice in connection with the settlement or any payments to be made pursuant to the
17 Agreement. The Parties do not intend anything contained in this Agreement to constitute legal advice
18 regarding the taxability of any amount paid hereunder, nor shall anything in this Agreement be relied
19 upon as such. By participating in the settlement, each Settlement Class Member shall agree to be solely
20 and legally responsible for paying any applicable taxes on their respective Individual Settlement
21 Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes,
22 penalties, or interest arising as a result of the payments.

23 **6. Releases**

24 **6.1. Releases by Settlement Class Members.** By operation of the entry of the Final
25 Approval Order, and except as to such rights or claims as may be created by this Agreement, all
26 Settlement Class Members fully release Defendants and each Released Party from any and all claims
27 arising during the Class Period that were alleged in any operative complaint or that could have been
28 alleged based on the factual allegations in any operative complaint, including but not limited to

1 improper or inaccurate wage statements under Labor Code section 226, as well as any civil penalties
2 claims predicated on the allegations that were made or reasonably could have been made in the
3 operative complaint under the PAGA.

4 **6.2. Releases by LWDA.** By operation of the entry of the Final Approval Order, and except
5 as to such rights or claims as may be created by this Agreement, the LWDA and Plaintiff as a proxy for
6 the State fully release Defendants and each Released Party from any and all claims for civil penalties
7 for violations of Labor Code sections 226(a) and 226.3 during the PAGA Period that were alleged in
8 the Action or that reasonably could have been alleged based on the facts alleged in the Action.

9 **6.3. Additional Release by Plaintiff.** In addition to the above releases applicable to Plaintiff
10 as a Settlement Class Member and Aggrieved Employee, Plaintiff also irrevocably and unconditionally
11 releases Defendants and each Released Party from any and all charges, complaints, claims, causes of
12 action, debts, sums of money, controversies, agreements, promises, damages and liabilities of any kind
13 or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising
14 from conduct occurring on or before the date that Plaintiff signs this Agreement. This provision is
15 intended by the Parties to be all encompassing and to act as a full and total release of any claim,
16 whether specifically enumerated herein or not, that Plaintiff might have or have had, that exists or ever
17 has existed on or to the date that Plaintiff signs this Agreement. The words "claim" or "claims"
18 includes without limitation all actions, claims and grievances, whether actual or potential, known or
19 unknown, related, incidental to or arising out of any act or omission committed or omitted by
20 Defendants or any Released Party through the date that Plaintiff signs this Agreement and/or arising out
21 of Plaintiff's employment relationship with Defendants and/or the cessation thereof. By agreeing to
22 this release, Plaintiff also expressly waives all rights provided by Civil Code section 1542 that Plaintiff
23 may have against Defendants and each Released Party. Civil Code section 1542 states:

24 **A general release does not extend to claims that the creditor or releasing party does**
25 **not know or suspect to exist in his or her favor at the time of executing the release**
26 **and that, if known by him or her, would have materially affected his or her**
27 **settlement with the debtor or released party.**

27 Plaintiff acknowledges that she has read the entirety of the Agreement, including the above language
28 from the Civil Code, and that she fully understands both the Agreement and Civil Code section 1542.

1 By executing this Agreement, Plaintiff expressly waives any benefits and rights granted pursuant to
2 Civil Code section 1542 or any statute, rule, or principle of common law or equity, in any jurisdiction,
3 that is similar to Civil Code section 1542. Plaintiff acknowledges and agrees that this knowing and
4 voluntary waiver of the provisions of Civil Code section 1542 is an essential and material term of this
5 Agreement and that the Agreement would not have been entered without such waiver from Plaintiff.

6 **7. Court Approval**

7 **7.1. Preliminary Approval.** Plaintiff shall submit a motion seeking a Preliminary Approval
8 Order, which would, among other things: (i) preliminarily approve the proposed settlement according
9 to the terms of this Agreement; (ii) set a date for a final approval hearing; and (iii) provide for Class
10 Notice to be sent to Class Members as specified herein.

11 **7.2. Final Approval.** Not later than 16 court days before the date set by the Court for a final
12 approval hearing, or such other time as the Court requires, Plaintiff shall submit a motion seeking a
13 Final Approval Order, which would, among other things: (i) approve the settlement, (ii) deem the terms
14 to be fair, reasonable, and adequate, (iii) approve the releases, (iv) direct that the settlement's terms and
15 provisions be carried out; (v) enter final judgment; and (vi) retain jurisdiction to oversee administration
16 and enforcement of the terms of this Agreement and the Court's orders.

17 **7.3. Effect of Failure to Obtain Final Approval.** In the event the Court effects a material
18 change or fails to enter a Final Approval Order in accordance with this Agreement, or such Final
19 Approval Order is vacated, then this entire Agreement shall be void and unenforceable, the Action shall
20 proceed as if no settlement has been attempted, and the costs of administration shall be split equally
21 between the Parties, subject to the Parties' agreement to the contrary. In such event, except as otherwise
22 stated in this Agreement, this Agreement and any documents in furtherance of this Agreement shall be
23 inadmissible in any future proceedings in this Action or any other action.

24 **8. Miscellaneous**

25 **8.1. Entire Agreement.** This Agreement constitutes the entire agreement between the
26 Parties with regard to the subject matter contained herein, and all prior and contemporaneous
27 negotiations and understandings between the Parties shall be deemed merged into this Agreement. The
28

signatories represent that they are fully authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein.

8.1.1. Counterparts and Signatures. This Agreement may be executed in counterparts, and when all signatories have signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one signed Agreement, which shall be binding upon and effective as to all Parties. Any party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via e-mail to counsel for the other party. Any signature via DocuSign or other electronic means or transmitted via e-mail shall be deemed an original signature and shall be binding upon the party who transmits the signature page.

8.1.2. Waivers, Modifications, Etc. to Be in Writing. No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

8.1.3. Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship. The captions of paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

8.1.4. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so as to render all provisions of this Agreement valid and enforceable.

1 **8.2. Further Acts and Cooperation Between the Parties.** The Parties shall cooperate and
2 use their best efforts to obtain the Court's approval of this Agreement and its terms. Each of the Parties,
3 upon the request of another, agrees to perform such further acts and to execute and deliver such other
4 documents as are reasonably necessary to carry out the provisions of this Agreement.

5 **8.3. No Press Releases.** The Parties and their counsel agree that they will not issue any
6 press releases, engage in any communications, or take any other action that would directly or indirectly
7 provide the press or other media or any litigation reporting service with information about the litigation
8 or this Agreement or would otherwise enable or allow the press or other media or any litigation
9 reporting service to learn or obtain such information; except that Defendants retain the right and
10 discretion to disclose the Agreement as may be required under federal or state laws or generally
11 accepted accounting principles. Notwithstanding this paragraph, the filing of papers in court in this
12 Action in support of the Parties seeking approval of the settlement or other court papers filed in this
13 case shall not be considered a violation of this paragraph under any circumstances. Plaintiff and Class
14 Counsel further agree that if contacted regarding the Action, they will state only that the case has been
15 resolved.

16 **8.4. Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of
17 this Agreement as well as any and all matters arising out of, or related to, the implementation of this
18 Agreement and of the settlement contemplated thereby.

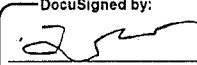
19 **8.5. Disputes.** If the Parties have a dispute with regard to the language of this Agreement,
20 they agree to engage mediator Gig Kyriacou to mediate any such dispute. The Parties will split the
21 costs of the mediator, and the Parties will bear their own fees and costs.

22 **8.6. Governing Law and Enforcement Actions.** All terms of this Agreement shall be
23 governed by and interpreted according to the laws of the State of California.

24 **[SIGNATURES ON FOLLOWING PAGE]**
25
26
27
28

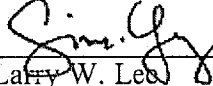
PLAINTIFF

Dated: January 23, 2023

DocuSigned by:

Janelle Aldana

COUNSEL FOR PLAINTIFF AND CLASS

Dated: January 23, 2023


Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.

DEFENDANTS

Dated: January __, 2023

Mark Rogers, Deputy General Counsel
for Dal-Tile Services, Inc. and Mohawk Industries, Inc.

COUNSEL FOR DEFENDANTS

Dated: January __, 2023

Ian A. Wright
ALSTON & BIRD, LLP

1 **PLAINTIFF**

2 Dated: January __, 2023

3 _____
Janele Aldana

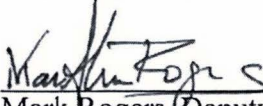
4 **COUNSEL FOR PLAINTIFF AND CLASS**

5 Dated: January __, 2023

6 _____
Larry W. Lee
Simon L. Yang
7 DIVERSITY LAW GROUP, P.C.

8 **DEFENDANTS**

9
10 Dated: January 24, 2023

11 _____

Mark Rogers, Deputy General Counsel
for Dal-Tile Services, Inc. and Mohawk Industries, Inc.

12 **COUNSEL FOR DEFENDANTS**

13 Dated: January 24, 2023

14 _____

Ian A. Wright
ALSTON & BIRD, LLP

EXHIBIT A

This notice is being sent pursuant to court order. This is not a solicitation from a lawyer.

NOTICE OF CLASS ACTION SETTLEMENT

Janele Aldana v. Dal-Tile Services, Inc.,

Superior Court of the State of California for the County of Alameda, Case No. RG20071668

If you were a current or former employee of Dal-Tile Services, Inc. or Mohawk Industries, Inc. in the State of California at any time from April 6, 2019, through November 29, 2022, as (i) an employee who received wage statements that did not include the pay period start date or (ii) a non-exempt employee who received wage statements that showed overtime or meal period premium hours that resulted in an inaccurate total hours worked, you could receive a payment from a class action settlement (hereinafter, “Settlement”).

Read this notice carefully, as your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of Alameda (the “Court”) has preliminarily approved a Settlement that could affect your rights. The proposed Settlement resolves a class action and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action filed by Plaintiff, Janele Aldana, against Defendants Dal-Tile Services, Inc. and Mohawk Industries, Inc. (“Defendants”), which has been designated Case No. RG20071668 (the “Action”).

- The Action alleges Defendants failed to provide lawful wage statements. First, it alleges that whenever employees were paid, Defendants issued wage statements that failed to show the start date for the period being paid. Second, it alleges that whenever non-exempt employees earned certain wages, like overtime or missed meal premiums, Defendants issued wage statements that inaccurately stated the total hours worked. Third, it alleges that whenever non-exempt employees earned overtime wages, Defendants issued wage statements that did not identify the overtime rate as 1.5 times the regular rate of pay. On these theories, the Action pursues class action and PAGA claims.
- The Court has not decided that Defendants did anything wrong. Defendants deny Plaintiff’s allegations and maintain they have fully complied with the law. By agreeing to the Settlement, Defendants in no way admit any violation of law or any liability whatsoever to Plaintiff or others and expressly deny all such liability. Both Plaintiff and Defendants have agreed to the Settlement in light of all known facts and circumstances—including the uncertainty associated with litigation.
- If the Court grants final approval of the settlement, it would provide a cash fund for members of the Class to split based on the number of relevant wage statements that they received during the relevant period.
- Based on Defendants’ records, you received **XXX** relevant wage statements as a Class Member from April 6, 2019, through November 29, 2022. An *estimate* of the amount that could be allocated to you is **\$XXX**. Whether you receive a payment depends on whether the Court grants final approval of the class action settlement, and the amount you ultimately receive depends on the terms the Court finally approves and whether you opt out of the class action settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION SETTLEMENT:

DO NOTHING	You do not have to do anything in response to this notice. If you do nothing and the Court grants final approval of the class action settlement, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the Settlement.
OPT OUT	You may opt out of the class action settlement by submitting a Request for Exclusion. If you opt out, you may not object to the class action settlement, will not be eligible to receive an Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION SETTLEMENT:**OBJECT**

You may object to the class action settlement by submitting a written objection. If you object and the Court grants final approval of the class action settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the settlement.

If the Court approves the PAGA settlement, you will receive an Individual PAGA Payment and will be bound by the PAGA release provisions of the Settlement, regardless of whether you opt out of the class action settlement.

**THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION FROM THE COURT
AS TO THE MERITS OF THE CLAIMS.****1. Why Did I Receive This Notice?**

You are receiving this Notice of Class Action Settlement (the “Notice”) because Defendants’ records show that you were either (i) a current or former employee of Defendants in the State of California who at any time from April 6, 2019, through November 29, 2022 (the “Class Period”) received wage statements that did not include the pay period start date or (ii) a current or former non-exempt employee of Defendants in the State of California who at any time during the Class Period received wage statements that showed overtime or meal period premium hours that resulted in an inaccurate total hours worked. Class Members are also “Aggrieved Employees” and may be entitled to share in the funds to be made available for the PAGA settlement.

Because the Settlement preliminarily approved by the Court would affect Settlement Class Members’ legal rights, the Court ordered that this Notice be sent to you. This Notice provides a brief description of the Action, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the Settlement. If the Court finally approves the Settlement, the Settlement will fully resolve the Action, and your legal rights may be affected by the Settlement.

The Court has preliminary approved Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel. Based on their investigation and evaluation, they are of the opinion that the terms of Settlement are fair, reasonable, adequate, and in the best interests of Class Members. The terms of the Settlement are set forth in detail in the Joint Stipulation of Class Action Settlement (“Agreement”). You may obtain a copy of the Agreement from Phoenix Settlement Administrators, a neutral third-party appointed by the Court to administer the settlement (the “Administrator”).

2. What Is the Action About?

On August 25, 2020, Plaintiff filed a complaint in Court that alleged Defendants fail to furnish lawful wage statements. First, Plaintiff alleged that whenever employees were paid, Defendants issued wage statements that failed to show the start date for the period being paid. Second, Plaintiff alleged that whenever non-exempt employees earned certain wages, like overtime or missed meal premiums, Defendants issued wage statements that inaccurately stated the total hours worked. Third, Plaintiff alleged that whenever non-exempt employees earned overtime wages, Defendants issued wage statements that did not identify the overtime rate as 1.5 times the regular rate of pay.

Defendants denied and continue to deny (i) all of the allegations made by Plaintiff, (ii) that they violated any applicable laws, or (iii) that they are liable or owe damages, penalties, or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Action. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever, Defendants have agreed to settle the Action, to avoid the burden, expense, and uncertainty of continuing the Action.

3. What Are the Payments Under the Settlement?

Defendants agrees to pay a Gross Settlement Amount of \$1,575,000.00, which is inclusive of any Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award, LWDA Payment, and Individual Class

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.

Payments & Individual PAGA Payments awarded by the Court. The Court may approve payment of (i) Administration Costs to the Administrator for administering the settlement (printing, distributing, or tracking Notices, distributing payments, etc.); (ii) an Attorneys' Fees and Costs Award to Class Counsel for litigation and resolution of the Action; (iii) a Class Representative Award to Plaintiff both for her efforts in prosecuting the Action for Class Members and for Plaintiff's additional general release of claims inapplicable to Class Members; and (iv) a PAGA Penalty Fund.

PAGA Penalty Fund: The Settlement requests that the Court approve a PAGA Penalty Fund of \$160,000.00. Pursuant to Labor Code requirements, 75% of the PAGA Penalty Fund, or \$120,000.00, will be allocated to the LWDA as an LWDA Payment. The remainder of the PAGA Penalty Fund, or \$40,000.00, will be allocated and entirely payable to PAGA Employees as described below.

Individual Class Payments and Individual PAGA Payments: Individual Class Payments shall be distributed to Settlement Class Members and Individual PAGA Payments shall be distributed to Aggrieved Employees, respectively, without the need to submit a claim form. Allocations for amounts payable to Settlement Class Members and Aggrieved Employees will be based on the number of relevant wage statements they received as reflected in Defendants' records.

All payments to Class Members shall be classified for tax reporting purposes as penalties. Through this settlement, each Settlement Class Member and Aggrieved Employee shall agree to be solely and legally responsible for paying all other applicable taxes on their respective Individual Class Payments and Individual PAGA Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

All uncashed or undeliverable settlement checks will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court order that the principal for any expired checks escheat to the State of California's Unclaimed Property Fund in the name of the Settlement Class Member or Aggrieved Employee.

Attorneys' Fees and Costs Award: You do not need to individually pay any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs will be determined by the Court. Class Counsel intends to request that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) 33⅓% of the Gross Settlement Amount (or \$525,000.00) and (b) litigation costs of up to \$20,000.00.

Class Representative Award: Any Class Representative Award is to be determined by the Court and would be supplemental to Plaintiff's Individual Settlement Payments. Class Counsel intends to request that the Court approve a Class Representative Award of \$10,000.00 for Plaintiff's efforts in prosecuting the Action for Class Members and for Plaintiff's additional general release of claims inapplicable to Class Members.

Administration Costs: Class Counsel intends to request that the Court approve Administration Costs of up to \$12,000.00, payable to the Administrator for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, providing any required tax forms, processing any required tax payments, or reporting, and calculating and distributing all payments under the Settlement.

All Payments Subject to Court Approval: The above payments will be made if and only if the Court concludes the settlement is reasonable, fair, and adequate for the Class. The Court may adjust the amounts of certain payments.

4. What Do I Release Under the Settlement?

If the Court grants final approval of the class action settlement and concludes it is reasonable, fair, and adequate for Class Members, Settlement Class Members would release Defendants and their present and former parent companies, subsidiaries, affiliates, and joint ventures, and each of their respective present and former officers, directors, controlling stockholders, agents, affiliates, employees, insurers, co-insurers, reinsurers, attorneys, including legal counsel herein, accountants, auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, general and limited partners, predecessors, successors and assigns, and the spouse of each of the foregoing who is a natural person ("Released Parties") from any and all claims arising during the Class Period that were alleged in any operative complaint or that could have been

alleged based on the factual allegations in any operative complaint, including but not limited to improper or inaccurate wage statements under Labor Code section 226. This means that, if you do not timely and formally exclude yourself from the class action settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you. The right to obtain PAGA penalties arising during the Settlement Class Period shall be released regardless of whether the Class Member opts out of the settlement. This release excludes the release of claims not permitted by law.

Upon approval, the LWDA fully releases Defendants and each Released Party from any and all claims for civil penalties for violations of Labor Code sections 226(a) and 226.3 during the PAGA Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action.

5. How Do I Object to the Class Action Settlement?

If you want to participate in the Settlement, you do not have to do anything and do not have to appear at the final approval hearing before the Court. You will automatically receive your Individual Class Payment and Individual PAGA Payment if the Court grants final approval of the class action settlement and approves the PAGA settlement.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so. To object to the proposed settlement in writing, you must take the steps below:

- (1) You must mail a written statement to the Administrator listed below.
- (2) The written statement must include: your name, signature, address, last four digits of your Social Security number, and the basis for your objection.
- (3) If you object, you may but are not required to appear at the final approval hearing either in person or through counsel, paid for at your own expense.
- (4) The written statement must be postmarked by [45 days after the initial mailing of Notice].

If you object, you will remain bound by the class action settlement if finally approved and bound by the PAGA settlement if approved. If you do not want to be bound by the class action settlement if finally approved, you must opt out of the class action settlement. Regardless of whether you object to the class action settlement, you will be bound by the PAGA settlement if approved.

6. How Do I Opt Out of the Class Action Settlement?

If you do not want to participate in the class action settlement, you may opt out of the class action settlement. If you opt out of the class action settlement, you may not object to the class action settlement, will not receive any Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.

In order to opt out, you MUST express your desire to be excluded from the class action settlement by mailing to the Administrator a "Request for Exclusion," which must state "Request for Exclusion" and include your name, signature, address, and last four digits of your Social Security number. Any such Request for Exclusion must be postmarked by [45 days after the initial mailing of Notice].

Any Request for Exclusion that does not include all required information or that is not submitted on a timely basis will be deemed null, void, and ineffective. A Request for Exclusion shall be deemed to be submitted as of the postmarked date. If you submit both a Request for Exclusion and an objection, your Request for Exclusion will be valid and be deemed to invalidate the objection.

7. When Will the Settlement Be Finalized?

A hearing will be held before the Alameda County Superior Court on [Date of Final Approval Hearing] at X:X0 a.m. in Department 21 of the Superior Court of California, County of Alameda, at the Administration Building

located at 1221 Oak Street, Oakland, California 94612 to determine whether the settlement is fair, adequate and reasonable and should be final approved by the Court. The final approval hearing may be adjourned by the Court from time to time as the Court may determine without further notice.

8. Where Can I Get Additional Information?

This Notice summarizes the Settlement. For more information, you may contact the Administrator. Contact information for the Administrator and Class Counsel are as follows:

Administrator: xxx xxx xxx, California xxx Telephone: (xxx) xxx-xxxx	Class Counsel: DIVERSITY LAW GROUP, P.C. Larry W. Lee (lwlee@diversitylaw.com) Simon L. Yang (sly@diversitylaw.com) 515 S. Figueroa St., Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555	POLARIS LAW GROUP William L. Marder (bill@polarislawgroup.com) 501 San Benito Street, Suite 200 Hollister, California 95023 Telephone: (831) 531-4214
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If the Court grants final approval, final judgment will be posted on the Administrator's website at xxx.

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANTS' COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.