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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

MARTIN ORTIZ, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

TARA MATERIALS, INC., a Georgia
corporation, and DOES 1 through 10, inclusive,

Defendants.

Case No. 37-2021-0001473-CU-OE-CTL

CLASS ACTION

[Assigned for all purposes to: Hon. Eddie
Sturgeon, Dept. C-67]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; and [Proposed] Order
Granting Plaintiff's Motion for Preliminary
Approval of Class Action Settlement]

PRELIMINARY APPROVAL HEARING

Date: January 30, 2023

Time: 8:30 a.m.

Dept: C-67

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Martin Ortiz (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant specializes in the manufacturing of printable canvas materials on which artists paint.

4. On January 13, 2021, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198);

(3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); and (7) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). On March 3, 2021, Defendant removed this action to the United States District Court, Southern District of California based on the assumption that the District Court maintained federal diversity jurisdiction over this matter. The case was subsequently remanded back to state court because federal subject matter jurisdiction did not exist. The Parties have stipulated to Plaintiff being afforded leave to file a First Amended Class and Representative Action Complaint, which will add causes of action for Defendant's failure to indemnify employees for expenditures (Cal. Lab. Code § 2802) and civil penalties under PAGA. Attached as **Exhibit 1** is Plaintiff's First Amended Class and Representative Action Complaint.

DISCOVERY AND INVESTIGATION

5. Following the remand back to state court, the Parties exchanged documents and information before mediating this action. Defendant produced timekeeping and pay records for a sampling of the putative class members. Defendant also provided documents of their wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses.

6. After reviewing documents regarding Defendant's wage and hour policies and practices, analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the Litigation. Class Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to mediation.

SETTLEMENT NEGOTIATIONS

7. On January 31, 2022, the Parties participated in private mediation with experienced class action mediator, Gig Kyriacou, Esq. The mediation was conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were

1 adversarial. The Parties went into the mediation willing to explore the potential for a settlement
2 of the dispute, but each side was also prepared to litigate their position through trial and appeal if
3 a settlement had not been reached.

4 8. After extensive negotiations and discussions regarding the strengths and
5 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a
6 resolution, the material terms of which are encompassed within the Settlement Agreement.
7 Attached as **Exhibit 2** is a true and correct copy of the Joint Stipulation and Settlement Agreement
8 of Class Action and PAGA Representative Claims ("Settlement" or "Settlement Agreement").

9 9. The Settlement includes \$5,000.00 allocated to Plaintiff's claims under PAGA, with
10 75% of which (\$3,750.00) being paid to the Labor and Workforce Development Agency
11 ("LWDA") and 25% (\$1,250.00) being paid to the PAGA Group Members. (Settlement, Section
12 1.27.) Class Counsel submitted the proposed Settlement to the LWDA before filing the Motion
13 for Preliminary Approval.

14 10. The Settlement provides that Defendant will not oppose a fee application of up to
15 33 1/3% (\$46,666.67) of the Total Settlement Amount, plus out-of-pocket costs not to exceed
16 \$15,000.00. (Settlement, Section 3.5.)

17 11. I requested several bids from experienced class action settlement administrators to
18 handle the responsibilities of the Settlement Administrator under this Settlement. The Parties
19 accepted the bid of Phoenix Settlement Administrators. Phoenix Settlement Administrators has
20 multiple years of experience in the field of Class Action Administration, particularly in the wage-
21 and-hour arena. In its bid, Phoenix Settlement Administrators agreed to cap its costs at \$6,500.00.
22 The bid also provides that class notice will be provided in English and Spanish. A true and correct
23 copy of the bid is attached hereto as **Exhibit 3**.

24 12. Plaintiff does not have any interest, financial or otherwise, in the third-party
25 administrator, Phoenix Settlement Administrators.

26 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
27 employed at the law firm) has any interest, financial or otherwise, in the third-party administrator,
28 Phoenix Settlement Administrators.

1 14. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
2 this case.

3 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

4 15. Class Counsel has conducted a thorough investigation into the facts of this case.
5 Based on the foregoing discovery and their own independent investigation and evaluation, Class
6 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
7 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
8 of significant delay, the defenses that could be asserted by Defendant both to certification and on
9 the merits, trial risk, and appellate risk.

10 16. Based on an analysis of the facts and legal contentions in this case, documents and
11 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the
12 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are
13 certified. After using the data Defendant provided, including class member timekeeping and
14 payroll records, as well as class member demographics (i.e., the number of class members,
15 workweeks, and average total compensation of the class), with the assistance of a statistics expert,
16 I created a damages model to evaluate the realistic range of potential recovery for the class. The
17 damages model is based on the following benchmarks:

18 Total Class Members: 59
19 Terminated Class Members during 3-year statute: 50
20 Total Workweeks: 5,869
21 PAGA Pay Periods: 2,089
22 Avg. Hourly Rate: \$16.28

23 17. Discovery and investigation revealed that Defendant failed to pay class members
24 for all hours worked, including overtime wages, failed to provide class members with compliant
25 meal and rest periods, and failed to indemnify employees for necessary business-related
26 expenditures.

27 18. Plaintiff alleges that Defendant failed to pay for all hours worked, including
28 minimum, straight time, and overtime wages. My expert and I analyzed Defendant's timekeeping

1 and payroll records and found instances where Defendant failed to pay employees for all hours
2 worked, particularly the time employees spent performing work-related duties during meal periods
3 and post-shift. A more conservative estimate was appropriate given the difficulty of proving an
4 off-the-clock work violation on a class-wide basis. Assuming that Defendant failed to pay
5 employees for 30 minutes of off-the-clock work per workweek, with 80% of that work being paid
6 at the overtime rate, potential liability for this claim is \$75,506.55. Because individualized issues
7 can be a significant obstacle to certifying and proving off-the-clock claims, I discounted this figure
8 by 80% to account for the difficulty of prevailing on a motion for class certification and a trial on
9 the merits, yielding a damage estimate of \$15,101.31.¹ Additionally, my expert investigated the
10 issue regarding Defendant's unlawful rounding scheme and found that Defendant's exposure for
11 this theory of liability to be at \$10,169.95. As such, a realistic damage estimate for Defendant's
12 failure to pay for all hours worked is **\$25,271.26**.

13 19. With respect to the meal period claim, Plaintiff alleges that Defendant required him
14 and similarly situated class members to work in lieu of taking meal periods. My expert analyzed
15 Defendant's timekeeping records and found that approximately 37.8% of all meal breaks had
16 violations of short, missed, or no meal periods. Potential liability for the meal period claim, which
17 includes shifts 5-6 hours long, shifts over six hours long, shifts over ten hours long, and shifts over
18 12 hours long, is \$189,215.95, including interest; however, I discounted this figure by 80% to
19 account for the difficulty of certifying and proving meal period claims, as well as Defendant's
20 contention that the claim lacks merit, yielding a realistic damage estimate of **\$37,843.19**.

21 20. With respect to the rest period claim, Plaintiff alleges that Defendant required him
22 and similarly situated class members to work in lieu of taking rest periods. Assuming a 50%
23 violation rate for the class period based on Plaintiff's and other class members' experience working
24 for Defendant, Defendant's potential liability for this claim is \$248,675.00; however, I discounted
25 this figure by 80% to account for the difficulty of certifying and proving rest period claims,

26
27 ¹ This discount for risk at certification and trial is reasonable because the Judicial Council of California found
28 that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification
motion. See Findings of the Study of California Class Action Litigation, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf>.

1 particularly because rest periods do not have to be recorded, and to account for the possibility of
2 class members voluntarily choosing to forego a rest period, yielding a realistic damage estimate of
3 **\$49,735.00.**

4 21. With respect to the claim for unreimbursed business expenses, Plaintiff alleges that
5 Defendant required him and similarly situated class members to use their personal cell phones and
6 vehicles for work-related purposes. My expert estimated the potential liability for this claim to be
7 worth \$69,685.35; however, I discounted this figure by 80% to account for the difficulty of
8 certifying and proving this claim, as well as Defendant's contention that the claim lacks merit,
9 yielding a realistic damage estimate of **\$13,937.07.**

10 22. In sum, Plaintiff's maximum recovery for the unpaid wages based on the failure to
11 pay for all hours worked (minimum, straight time, and overtime wages) and meal and rest period
12 violations, as well as Defendant's failure to indemnify its employees for necessary business
13 expenses, is \$593,252.80, but, **after factoring in the risk and uncertainty of prevailing at**
14 **certification and trial, Plaintiff's realistic estimated recovery for the non-penalty claims is**
15 **\$126,786.52.**

16 23. With respect to Plaintiff's derivative claims for statutory and civil penalties,
17 Plaintiff estimated that Defendant's realistic potential liability is **\$25,000.00.** While Defendant's
18 maximum potential liability for waiting time penalties is \$205,324.00 based on approximately 50
19 terminated class members during the 3-year statute, \$131,880.00 for inaccurate wage statements
20 based on approximately 33 class members who worked 2,089 pay periods within the 1-year statute,
21 and \$208,900.00 for PAGA violations based on the Court assessing a \$100 penalty for initial
22 violations for all 2,089 pay periods within the 1-year statute, I believe that it would be unrealistic
23 to expect the Court to award the full \$546,104.00 in penalties given Defendant's defenses, the
24 contested nature of Plaintiff's claims, and the discretionary nature of penalties. Considering that
25 the underlying claims are realistically estimated to be \$126,786.52, such a disproportionate award
26 would also raise due process concerns. Weighing these factors, and applying a discount to account
27 for the risk and uncertainty of prevailing at trial, I arrived at \$25,000.00 for statutory and civil
28 penalties.

1 24. Using these estimated figures, Plaintiff predicted that the realistic maximum
2 recovery for all claims, including penalties, would be \$151,786.52. This means that the
3 \$140,000.00 settlement figure represents 92.2% of the realistic maximum recovery
4 ($\$140,000.00 / \$151,786.52 = 92.2\%$). Considering the risk and uncertainty of prevailing at class
5 certification and at trial, this is an excellent result for the Class.² Indeed, because of the proposed
6 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
7 unfavorable judgment.

8 25. While Plaintiff is confident in the merits of his claims, a legitimate controversy
9 exists as to each cause of action. Plaintiff also recognizes that proving the amount of wages due
10 to each Class Member would be an expensive, time-consuming, and uncertain proposition.

11 26. This Settlement avoids the risks and the accompanying expense of further litigation.
12 Although the Parties had engaged in a significant amount of investigation, informal discovery and
13 class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff
14 intended to depose corporate officers and managers of Defendant. Moreover, preparation for class
15 certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a
16 disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the
17 Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties
18 would incur considerably more attorneys' fees and costs through trial.

19 27. The Net Settlement Fund available for Class Member settlement payments is
20 estimated to be \$64,333.33, for a class of 59 persons.³ **As a result, each Settlement Class**
21 **Member is eligible to receive an average net benefit of approximately \$1,090.40.**

22 28. The proposed Settlement of \$140,000.00 therefore represents a substantial recovery
23

24 ² See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21,
25 2019) (granting preliminary approval where the proposed allocation to settle class claims was between 9.53 percent
26 of plaintiffs' maximum recovery); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017)
 (finding that "a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re*
 Omnivision Techs., Inc., 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over
 9% of the maximum potential recovery asserted by either party.").

27 ³ The Net Settlement Fund is: \$140,000.00 minus \$46,666.67 for Class Counsel's attorneys' fees, minus
28 \$15,000.00 for Class Counsel's litigation expenses, minus \$6,500.00 in administration costs, minus \$3,750.00 for the
 PAGA portion sent to the LWDA, minus \$1,250.00 for payments to the PAGA Group Members, and minus \$2,500.00
 for the class representative service award.

1 when compared to Plaintiff's reasonably forecasted recovery. When considering the risks of
2 litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary
3 to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement
4 amount of \$140,000.00 is within the "ballpark" of reasonableness, and preliminary settlement
5 approval is appropriate.

6 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

7 29. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting
8 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
9 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's
10 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff
11 generated for all class members.

12 30. Throughout this Litigation, Plaintiff, who is a former employee of Defendant, has
13 cooperated immensely with my office and has taken many actions to protect the interests of the
14 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest
15 period claims. Plaintiff also informed my office of developments and information relevant to this
16 action, participated in decisions concerning this action and made himself available to answer
17 questions during the mediation. Before we filed this case, Plaintiff provided my office with
18 information regarding the claims alleged in this action. The information provided by Plaintiff was
19 instrumental in establishing the wage and hour violations alleged in this action, and the recovery
20 provided for in the Settlement Agreement would have been impossible to obtain without Plaintiff's
21 participation.

22 31. At the same time, Plaintiff faced many risks in adding himself as the class
23 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
24 himself on public record in an employment lawsuit could also very well affect his likelihood for
25 future employment. Furthermore, as part of this Settlement, Plaintiff is executing a general release
26 of all claims against Defendant.

27 32. In turn, class members will now have the opportunity to participate in a settlement,
28 reimbursing them for alleged wage violations they may have never known about on their own or

1 been willing to pursue on their own. If these class members would have each tried to pursue their
2 legal remedies on their own, that would have resulted in each having to expend a significant amount
3 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the
4 line on behalf of these other class members.

5 33. In the final analysis, this class action would not have been possible without the aid
6 of Plaintiff, who put his own time and effort into this Litigation, sacrificed the value of his own
7 individual claims, and placed himself at risk for the sake of the class members. The requested
8 enhancement award for Plaintiff for his service as the class representative and for his general
9 release of all individual claims is a relatively small amount of money when the time and effort put
10 into the Litigation are considered and in comparison to enhancements granted in other class actions.
11 The requested incentive award is therefore reasonable to compensate Plaintiff for his active
12 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation*, et al.,
13 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
14 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
15 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
16 class representative incentive award for each named plaintiff.

17 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

18 34. The Settlement provides for attorney's fees payable to Class Counsel in an amount
19 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$46,666.67,
20 plus actual costs and expenses not to exceed \$15,000.00. The proposed award of attorneys' fees
21 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
22 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
23 percentage method as many of the entries in the time records will have to be redacted to preserve
24 attorney-client and attorney work product privileges.

25 35. I am informed and believe that the fee and costs provision is reasonable. The fee
26 percentage requested is less than that charged by my office for most employment cases. My office
27 invested significant time and resources into the case, with payment deferred to the end of the case,
28 and then, of course, contingent on the outcome.

1 36. It is further estimated that my office will need to expend at least another 50 to 100
2 hours to monitor the process leading up to the final approval and payments made to the class. My
3 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

4 37. The risk to my office has been very significant, particularly if we would not be
5 successful in pursuing this class action. In that case, we would have been left with no compensation
6 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
7 that have resulted in thousands of attorney hours being expended and ultimately having
8 certification denied or the defendant company going bankrupt. The contingent risk in these types
9 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
10 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

11 38. Because most individuals cannot afford to pay for representation in litigation on an
12 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
13 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
14 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
15 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
16 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
17 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
18 that we recover more than our regular hourly rate when we win if we are to remain in practice so
19 as to be able to continue representing other individuals in civil rights employment disputes.

20 39. As of the drafting of Plaintiff's Motion for Preliminary Approval of Class Action
21 Settlement, my office has incurred less than \$10,000.00 in expenses litigating this action, and we
22 anticipate accruing additional costs up to Final Approval of the Settlement. These expenses were
23 reasonably necessary to the Litigation and were actually incurred by my office. They should be
24 reimbursed in full, up to the maximum amount allowed in the Settlement Agreement.

25 MY EXPERIENCE AND QUALIFICATIONS

26 40. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
27 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 55 attorneys and
28 over 300 employees. Wilshire Law Firm, PLC is actively and continuously practicing in

1 employment litigation, representing employees in both individual and class actions in both state
2 and federal courts throughout California.

3 41. Wilshire Law Firm, PLC is qualified to handle this Litigation because its attorneys
4 are experienced in litigating Labor Code violations in both individual, class action, and
5 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
6 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
7 and data privacy litigation.

8 42. I graduated from the University of California, Los Angeles's College Honors
9 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
10 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
11 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
12 2008.

13 43. My practice is focused on advocating for the rights of consumers and employees in
14 class action litigation and appellate litigation. I am currently the primary attorney in charge of
15 litigating several class action cases in state and federal courts across the United States.

16 44. I have received numerous awards for my legal work. From 2017 to 2020, Super
17 Lawyers selected me as a "Southern California Rising Star," and in 2022, I was selected as a
18 "Southern California Super Lawyer." I was selected as one of the "Best Lawyers in America" in
19 2023. In 2016 and 2017, the National Trial Lawyers selected me as a "Top 40 Under 40" attorney.
20 I am also rated 10.0 ("Superb") by Avvo.com.

21 45. I am on the California Employment Lawyers Association ("CELA")'s Wage and
22 Hour Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced
23 Wage & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
24 mentored young attorneys through CELA's mentorship program.

25 46. I am also a past member of the Consumer Attorneys of California ("CAOC"). In
26 2020, I was selected for a position on CAOC's Board of Directors. I am also a past member of
27 CAOC's Diversity Committee, and I helped assist the CAOC in defeating bills that harm
28 employees. Indeed, I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC,

1 in defeating AB 443, which proposed legislation that sought to limit the enforceability of California
2 Labor Code § 226.

3 47. As the attorney responsible for day-to-day management of this matter at the
4 Wilshire Law Firm, PLC, I have over thirteen years of experience with litigating wage and hour
5 class actions. Over the last thirteen years, I have managed and assisted with the litigation and
6 settlement of several wage and hour class actions. In those class actions, I performed similar tasks
7 as those performed in the course of prosecuting this action. My litigation experience includes:

- 8 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
9 million in gross recovery to class members for each year since 2020, including over
10 \$30 million in 2022.
- 11 b. I was part of the team of attorneys that prevailed in *Moore v. Centrelake Medical*
12 *Group, Inc.* (2022) 83 Cal.App.5th 515, the first California appellate decision in a
13 data breach class action holding that consumer plaintiffs adequately alleged injury
14 in fact under the benefit of the bargain theory and monitoring-costs theory.
- 15 c. In 2022, *Top Verdict* recognized Wilshire Law Firm, PLC and myself for having
16 one case in the Top 20 Labor & Employment Settlements (including number 19 for
17 the \$1.6 million settlement in *Moreno v. Pretium Packaging, L.L.C*) and four
18 additional cases in the Top 50 Labor & Employment Settlements (numbers 27, 30,
19 33, and 37).
- 20 d. To my knowledge, I am the only attorney to appear on each of the following *Top*
21 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
22 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 23 e. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
24 winning class certification on behalf of hundreds of thousands of consumers for
25 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
26 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 27 f. As lead counsel, I prevailed against Bank of America by: winning class certification
28 on behalf of thousands of employees for California Labor Code violations; defeating

1 appellate review of the court’s order certifying the class; defeating summary
2 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
3 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
4 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
5 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
6 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
7 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
8 3d Art. 8.

9 g. I was the primary author of the class certification and expert briefs in *ABM*
10 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
11 for over 40,000 class members for off-the-clock, meal period, split shift, and
12 reimbursement claims. *ABM Industries Overtime Cases* is the first published
13 California appellate authority to hold that an employer’s “auto-deduct policy for
14 meal breaks in light of the recordkeeping requirements for California employers is
15 also an issue amenable to classwide resolution.” (*Id.* at p. 310.)⁴ Notably, the Court
16 of Appeal also held that expert analysis of timekeeping records can also support the
17 predominance requirement for class certification. (*Id.* at p. 310-11.) In 2021, the
18 case settled for \$140 million, making it one of the largest ever wage and hour class
19 action settlements for hourly-paid employees in California.

20 h. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d
21 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims
22 under the PAGA cannot be used to calculate the amount in controversy under the
23 Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises
24 such as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class*
25 *Actions*. In October 2016, the U.S. Supreme Court denied review of a case that
26 primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who

27 ⁴ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law
28 regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb.
9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁵ Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

- i. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)
- j. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a reported decision permitting class-wide discovery even though the employer has a lawful policy because “[t]he fact that a company has a policy of not violating the law does not mean that the employees follow it, which is the issue here.” The court also ordered defendant to pay for the cost of *Belaire-West* notice.
- k. In 2013, I represented a whistleblower that reported that his former employer was defrauding the State of California with the help of bribes to public employees. The case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution of State of California employees by the California Attorney General’s Office.
- l. In 2013, I was part of a team of attorneys that obtained conditional certification for over 2,000,000 class members in a federal labor law case for misclassification of independent contractors that did crowdsourced work on the Internet, *Otey v. CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the following pro-plaintiff reported decisions:
 - 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and granting plaintiff’s motion to strike defendant’s affirmative defenses

⁵ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

based on *Twombly/Iqbal*).

2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order granting conditional collective certification).

3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the magistrate judge’s discovery ruling which held that “evidence of other sources of income is irrelevant to the question of whether a plaintiff is an employee within the meaning of the FLSA”).

4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting broad discovery because “an FLSA plaintiff is entitled to discovery from locations where he never worked if he can provide some evidence to indicate company-wide violations”).

j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification for over 60,000 class members for off-the-clock claims, *Linares v. Securitas Security Services USA, Inc.*, Los Angeles Superior Court, Case No. BC416555. We also successfully opposed subsequent appeals to the California Court of Appeal and California Supreme Court.

48. Benjamin H. Haber is a sixth-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central, Southern, Eastern, and Northern Districts of California. He graduated from the University of California, Los Angeles, with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of California, Hastings College of the Law in 2016. During law school, he was a member of the executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior Court, Small Claims Division. Since graduating law school, he has focused his legal work primarily on wage and hour class action litigation. His current contingent billing rate for this case is \$650 per hour, which is consistent with his level of experience in the wage and hour arena.

49. Arrash T. Fattahi is a second-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California and the Central and Southern Districts of California in January 2021. Arrash graduated from the University of California, Los Angeles,

1 with a Bachelor of Arts in Political Science, *summa cum laude*. He received his Juris Doctor from
2 The George Washington University Law School. During law school, he was a member of the
3 student editorial board for the *Federal Circuit Bar Journal*. Since January 2021, his practice has
4 mainly been focused on wage and hour class action litigation. His current contingent billing rate
5 for this case is \$450 per hour.

6 50. My current contingent billing rate of \$850 per hour is consistent with my practice
7 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
8 legal market and accepted hourly rates:

- 9 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
10 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
11 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
12 wage-and-hour class actions that I opposed when litigating wage-and-hour class
13 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
14 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
15 8th Year - \$455. I am a 12th year attorney and Senior Partner, with most of my
16 experience in class action litigation as a primary practice area. Having successfully
17 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
18 involving CAFA and PAGA, having experience certifying large class actions
19 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
20 having received numerous awards for my legal work, my hourly rate should be
21 adjusted upward.
- 22 b. On May 6, 2022, the Hon. Jay A. Garcia-Gregory of the United States District Court,
23 District of Puerto Rico, approved my \$850 hourly rate when he granted final
24 approval of the class action settlement in *Serrano v. Inmediata Corp.*, No. 3:19-cv-
25 01811-JAG, Dkt. 57 (U.S. Dist. Ct. P.R. May 6, 2022).
- 26 c. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
27 approved my \$800 hourly rate when he granted final approval of the class action
28 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-

01066522-CU-OE-CXC.

- d. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District Court granted final approval of the \$1,600,000 class action settlement in *Carlos Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the Court approved my then \$750 hourly rate after finding it was “reasonable, given the qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)
- e. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior Court approved my \$750 hourly rate when he granted final approval of the class action settlement in *Faye Zhang v. Richemont North America, Inc.*, Case No. 19STCV32396.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed on January 6, 2023, at Los Angeles, California.

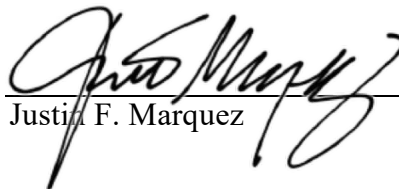

Justin F. Marquez

Exhibit 1

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Attorneys for Plaintiff

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

MARTIN ORTIZ, individually, on behalf of all
others similarly situated, and on behalf of the
State of California and other aggrieved persons,

Plaintiff,

v.

TARA MATERIALS, INC., a Georgia
corporation, and DOES 1 through 10, inclusive,

Defendants.

Case No. 37-2021-0001473-CU-OE-CTL

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

1. Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512);
4. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);
5. Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
6. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
7. Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802);
8. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and
9. Civil Penalties Under PAGA (Cal. Lab. Code § 2699, *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiff Martin Ortiz (“Plaintiff”), based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, alleges as follows:

INTRODUCTION & PRELIMINARY STATEMENT

1. Plaintiff brings this action against Defendant Tara Materials, Inc. and Does 1 through 10 (Tara Materials, Inc. and Does 1 through 10 are collectively referred to as “Defendants”) for California Labor Code violations and unfair business practices stemming from Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures.

2. Plaintiff brings the First through Eighth Causes of Action individually and as a class action on behalf of himself and certain current and former employees of Defendants (hereinafter collectively referred to as the “Class” or “Class Members,” and defined more fully below). The Class consists of Plaintiff and all other persons who have been employed by any Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here.

3. Plaintiff brings the Ninth Cause of Action as a representative action under the California Private Attorneys General Act (“PAGA”) to recover civil penalties that are owed to him, the State of California, and past and present non-exempt employees employed by Defendants in the State of California during the statute of limitations period for his PAGA claim (hereinafter referred to as the “Aggrieved Employees”).

4. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including San Diego County. As such, and based upon all the facts and circumstances incident to Defendants’ business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

///

1 5. Despite these requirements, throughout the statutory period Defendants
2 maintained a systematic, company-wide policy and practice of:

- 3 (a) Failing to pay employees for all hours worked, including all minimum
4 wages, straight time wages, and overtime wages in compliance with the
5 California Labor Code and IWC Wage Orders;
- 6 (b) Failing to provide employees with timely and duty-free meal periods in
7 compliance with the California Labor Code and IWC Wage Orders, failing
8 to maintain accurate records of all meal periods taken or missed, and
9 failing to pay an additional hour's pay for each workday a meal period
10 violation occurred;
- 11 (c) Failing to authorize and permit employees to take timely and duty-free rest
12 periods in compliance with the California Labor Code and IWC Wage
13 Orders, and failing to pay an additional hour's pay for each workday a rest
14 period violation occurred;
- 15 (d) Willfully failing to pay employees all minimum wages, straight time
16 wages, overtime wages, meal period premium wages, and rest period
17 premium wages due within the time period specified by California law
18 when employment terminates;
- 19 (e) Failing to provide employees with accurate, itemized wage statements
20 containing all the information required by the California Labor Code and
21 IWC Wage Orders; and
- 22 (f) Failing to indemnify employees for expenditures incurred in direct
23 discharge of duties of employment.

24 6. On information and belief, Defendants, and each of them were on actual and
25 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
26 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
27 willful and deliberate.

28 ///

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff, the Class, and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior.”

THE PARTIES

A. Plaintiff

8. Plaintiff Martin Ortiz is a resident of El Cajon, California who worked for Defendants in San Diego, California as a warehouse clerk and driver from approximately September 2000 to approximately April 2020.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Tara Materials, Inc. is, and at all times herein mentioned, was:

- (a) A Georgia corporation with its Principle Executive Office in San Diego, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in San Diego County; and
- (c) The former employer of Plaintiff, and the current and/or former employer of the putative Class and Aggrieved Employees because Defendant Tara Materials, Inc. suffered and permitted Plaintiff, the Class, and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sue said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by

1 Plaintiff, the Class, and the Aggrieved Employees as alleged herein. Plaintiff will amend this
2 complaint to set forth the true names and capacities of these Defendants when they have been
3 ascertained, together with appropriate charging allegations, as may be necessary.

4 12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
5 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
6 and/or injured a significant number of the Plaintiff, the Class, and the Aggrieved Employees in
7 the State of California.

8 13. Plaintiff is informed and believes and thereon alleges that at all relevant times
9 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
10 the other employees described in the class definitions below, and exercised control over their
11 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that,
12 at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer,
13 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
14 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
15 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
16 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
17 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted
18 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
19 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
20 abetted the conduct of all other Defendants.

21 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

22 14. Plaintiff worked for Defendants in California as a warehouse clerk and driver from
23 approximately September 2000 to approximately April 2020. During Plaintiff's employment for
24 Defendants, Defendants paid Plaintiff an hourly wage and classified Plaintiff as non-exempt from
25 overtime. Defendants typically scheduled Plaintiff to work at least 5 days in a workweek and at
26 least 8 hours per day, but Plaintiff often worked more than 8 hours in a workday and more than
27 40 hours in a workweek.

28 ///

1 15. Throughout Plaintiff's employment, Defendants failed to pay Plaintiff for all hours
2 worked (including minimum wage, straight time, and overtime wages), failed to provide Plaintiff
3 with meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely
4 pay all final wages to Plaintiff when Defendants terminated his employment, failed to furnish
5 accurate wage statements to Plaintiff, and failed to indemnify Plaintiff for expenditures. As
6 discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

7 16. Throughout the statutory period, Defendants maintained a policy and practice of
8 not paying Plaintiff, the Class, and the Aggrieved Employees for all hours worked, including
9 minimum wages, straight time wages, and overtime wages. Defendants regularly used a system
10 of time rounding in a manner that resulted, over a period of time, in failing to compensate
11 Plaintiff, the Class, and the Aggrieved Employees properly for all the time they have actually
12 worked, even though the realities of Defendants' operations are such that it is possible, practical,
13 and feasible to count and pay for work time to the minute. Accordingly, Defendants frequently
14 paid Plaintiff, the Class, and the Aggrieved Employees less than all their work time. Some of
15 this unpaid work also should have been paid at the overtime rate. In failing to pay for all hours
16 worked, Defendants also failed to maintain accurate records of the hours Plaintiff, the Class, and
17 the Aggrieved Employees worked.

18 17. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff,
19 the Class, and the Aggrieved Employees with legally compliant meal periods. Defendants
20 regularly, but not always, required Plaintiff, the Class, and the Aggrieved Employees to work in
21 excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-
22 free meal period for every five hours of work, or without compensating Plaintiff, the Class, and
23 the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
24 work or tenth hour of work. Instead, Defendants continued to assert control over Plaintiff, the
25 Class, and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform
26 work tasks which could not be completed without working in lieu of taking mandatory meal
27 periods, or by denying Plaintiff, the Class, and the Aggrieved Employees permission to take a
28 meal period. Accordingly, Defendants' policy and practice was not to provide meal periods to

1 Plaintiff, the Class, and the Aggrieved Employees in compliance with California law.

2 18. Throughout the statutory period, Defendants have wrongfully failed to authorize
3 and permit Plaintiff, the Class, and the Aggrieved Employees to take legally compliant rest
4 periods. Defendants regularly, but not always, required Plaintiff, the Class, and the Aggrieved
5 Employees to work in excess of four consecutive hours a day without Defendants authorizing and
6 permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of
7 work (or major fraction of four hours), or without compensating Plaintiff, the Class, and the
8 Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendants
9 continued to assert control over Plaintiff, the Class, and the Aggrieved Employees by requiring,
10 pressuring, or encouraging them to perform work tasks which could not be completed without
11 working in lieu of taking mandatory rest periods, or by denying Plaintiff, the Class, and the
12 Aggrieved Employees permission to take a rest period. Accordingly, Defendants' policy and
13 practice was to not authorize and permit Plaintiff, the Class, and the Aggrieved Employees to
14 take rest periods in compliance with California law.

15 19. Throughout the statutory period, Defendants willfully failed and refused to timely
16 pay Plaintiff, the Class, and the Aggrieved Employees all final wages due at their termination of
17 employment. In addition, Plaintiff's final paychecks did not include payment for all
18 expenditures, minimum wages, straight time wages, overtime wages, meal period premium
19 wages, and rest period premium wages owed to them by Defendants at the conclusion of his
20 employment. On information and belief, Defendants' failure to timely pay Plaintiff's final wages
21 when his employment terminated was not a single, isolated incident, but was instead consistent
22 with Defendants' policy and practice that applied to Plaintiff, the Class, and the Aggrieved
23 Employees.

24 20. Throughout the statutory period, Defendants failed to furnish Plaintiff, the Class,
25 and the Aggrieved Employees with accurate, itemized wage statements showing all applicable
26 hourly rates, and all gross and net wages earned (including correct hours worked, correct wages
27 for meal periods that were not provided in accordance with California law, and correct wages for
28 rest periods that were not authorized and permitted to take in accordance with California law).

As a result of these violations of California Labor Code § 226(a), the Plaintiff, the Class, and the Aggrieved Employees suffered injury because, among other things:

- (a) the violations led them to believe that they were not entitled to be paid minimum wages, straight time wages, overtime wages, meal period premium wages, and rest period premium wages, even though they were entitled;
- (b) the violations led them to believe that they had been paid the minimum, straight time, overtime, meal period premium, and rest period premium wages, even though they had not been;
- (c) the violations hindered them from determining the amounts of minimum, straight time, overtime, meal period premium, and rest period premium wages owed to them;
- (d) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;
- (e) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (f) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff, the Class, and the Aggrieved Employees were entitled, and Plaintiff, the Class, and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff, the Class, and the Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e).

21. Throughout the statutory period, Defendants have wrongfully required Plaintiff, the Class, and the Aggrieved Employees to pay expenses that they incurred in direct discharge of

1 their duties for Defendants. Plaintiff, the Class, and the Aggrieved Employees regularly paid
2 out-of-pocket for necessary employment-related expenses, including personal cell phone and
3 vehicle use.

4 22. Plaintiff, the Class, and the Aggrieved Employees incurred substantial expenses as
5 a direct result of performing their job duties for Defendants, but Defendants failed to indemnify
6 Plaintiff, the Class, and the Aggrieved Employees for these employment-related expenses.

7 **CLASS ACTION ALLEGATIONS**

8 23. Plaintiff brings certain claims individually, as well as on behalf of each and all
9 other persons similarly situated, and thus, seeks class certification under California Code of Civil
10 Procedure § 382.

11 24. All claims alleged herein arise under California law for which Plaintiff seeks relief
12 authorized by California law.

13 25. The proposed Class consists of and is defined as:

14 All persons who worked for any Defendant in California as an hourly-paid or
15 non-exempt employee at any time during the period beginning four years before
16 the filing of the initial complaint in this action and ending when notice to the
Class is sent.

17 26. At all material times, Plaintiff was a member of the Class.

18 27. Plaintiff undertakes this concerted activity to improve the wages and working
19 conditions of all Class Members.

20 28. There is a well-defined community of interest in the litigation and the Class and
21 Subclass are readily ascertainable:

22 (a) Numerosity: The members of the Class (and each subclass, if any) are so
23 numerous that joinder of all members would be unfeasible and impractical.
24 The membership of the entire Class is unknown to Plaintiff at this time;
25 however, the Class is estimated to be greater than 40 individuals and the
26 identity of such membership is readily ascertainable by inspection of
27 Defendants' records.

28 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect

the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are

also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

29. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (a) Failed to pay Class Members for all hours worked, including minimum, straight time, and overtime wages;
- (b) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (d) Failed to provide Class Members with timely final wages;
- (e) Failed to provide Class Members with accurate wage statements;
- (f) Failed to indemnify Class Members for expenditures;
- (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

30. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;

- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:
- 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and
- (g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

31. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff contemplates the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by

other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours Worked)

32. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

33. “Hours worked” is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

34. At all relevant times herein mentioned, Defendants knowingly failed to pay Plaintiff and the Class compensation for all hours they worked. By their failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of California Labor Code § 1194, and any additional applicable Wage Orders, which require such compensation to non-exempt employees.

35. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight time wages for all non-overtime hours worked for Defendants.

36. By and through the conduct described above, Plaintiff and the Class have been deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

37. By virtue of the Defendants’ unlawful failure to pay additional compensation to Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class and which will be ascertained according to proof at trial.

38. By failing to keep adequate time records required by California Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due Plaintiff and the Class.

39. Pursuant to California Labor Code § 1194.2, Plaintiff and the Class are entitled to recover liquidated damages (double damages) for Defendants’ failure to pay minimum wages.

40. California Labor Code § 204 requires employers to provide employees with all

wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due and failed to pay those wages twice a month.

41. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

42. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

43. California Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

44. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

45. At all times relevant hereto, Plaintiff and the Class have worked more than eight hours in a workday, as employees of Defendants.

46. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code §§ 510 and 1198.

47. By virtue of Defendants' unlawful failure to pay additional premium rate compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently

unknown to them but which exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

48. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and the Class.

49. Plaintiff and the Class also request recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other statutes.

50. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. The Wage Orders also provide that every employer shall pay to each employee, on the established payday for the period involved, overtime wages for all overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class with all compensation due, in violation of California Labor Code § 204.

THIRD CAUSE OF ACTION

(Against All Defendants for Failure to Provide Meal Periods)

51. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

52. Under California law, Defendants have an affirmative obligation to relieve the Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal periods no later than the start of the eleventh hour of work in the workday. California Labor Code § 512, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a violation of California Labor Code § 226.7 for an employer to require any employee to work during any meal period mandated under any Wage Order.

53. Despite these legal requirements, Defendants regularly failed to provide Plaintiff and the Class with both meal periods as required by California law. By their failure to permit

1 and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact
2 that Defendants made it impossible or impracticable to take these uninterrupted meal periods),
3 Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable
4 Wage Orders.

5 54. Under California law, Plaintiff and the Class are entitled to be paid one hour of
6 additional wages for each workday he or she was not provided with all required meal period(s),
7 plus interest thereon.

8 **FOURTH CAUSE OF ACTION**

9 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

10 55. Plaintiff incorporates by reference and re-alleges as if fully stated herein
11 paragraphs 1 through 22 in this Complaint.

12 56. Defendants are required by California law to authorize and permit breaks of 10
13 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
14 two hours). California Labor Code § 512, and the applicable Wage Orders require that the
15 employer permit and authorize all employees to take paid rest periods of 10 minutes each for
16 each 4-hour period worked. Thus, for example, if an employee's work time is 6 hours and ten
17 minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so
18 required is itself a violation of California's rest break laws. It is a violation of California Labor
19 Code § 226.7 for an employer to require any employee to work during any rest period mandated
20 under any Wage Order.

21 57. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
22 Class to take rest breaks, regardless of whether employees worked more than 4 hours in a
23 workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as
24 alleged above (or due to the fact that Defendants made it impossible or impracticable to take
25 these uninterrupted rest periods), Defendants willfully violated the provisions of California Labor
26 Code § 226.7 and the applicable Wage Orders.

27 ///

28 ///

58. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each workday he or she was not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

59. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

60. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

61. Within the applicable statute of limitations, the employment of many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

62. Defendants' failure to pay those Class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

63. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

64. The Class is entitled to recover from Defendants their additional accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to California Labor Code § 203.

65. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, the Class is also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

SIXTH CAUSE OF ACTION

(Against all Defendants for Failure to Provide and Maintain Accurate and Compliant Wage Records)

66. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

67. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

68. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list the true "total hours worked by the employee," and the failure to list the true net wages earned.

69. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

1 70. Specifically, Plaintiff and the members of the Class have been injured by
2 Defendants' intentional violation of California Labor Code § 226(a) because they were denied
3 both their legal right to receive, and their protected interest in receiving, accurate, itemized wage
4 statements under California Labor Code § 226(a).

5 71. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and
6 time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as
7 a result of having to bring this action to attempt to obtain correct wage information following
8 Defendants' refusal to comply with many of the mandates of California's Labor Code and related
9 laws and regulations.

10 72. Plaintiff and the Class are entitled to recover from Defendants the greater of their
11 actual damages caused by Defendants' failure to comply with California Labor Code § 226(a), or
12 an aggregate penalty not exceeding four thousand dollars per employee.

13 73. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of
14 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor
15 Code § 226(h).

16 **SEVENTH CAUSE OF ACTION**

17 **(Against all Defendants for Failure to Indemnify Employees for Expenditures)**

18 74. Plaintiff incorporates by reference and re-alleges as if fully stated herein
19 paragraphs 1 through 22 in this Complaint.

20 75. As set forth above, Plaintiff and the Class were required to incur substantial
21 necessary expenditures and losses in direct consequence of the discharge of their duties or of
22 their obedience to directions of Defendants.

23 76. Defendants violated California Labor Code § 2802, by failing to pay and
24 indemnify Plaintiff and the Class for necessary expenditures and losses incurred in direct
25 consequence of the discharge of their duties or of their obedience to directions of Defendants.

26 77. As a result, Plaintiff and the Class were damaged at least in the amounts of the
27 expenses they paid, or which were deducted by Defendants from their wages.

28 ///

1 78. Plaintiff and the Class are entitled to reasonable attorney’s fees, expenses, and
2 costs of suit pursuant to California Labor Code § 2802(c) and interest pursuant to California
3 Labor Code § 2802(b).

4 **EIGHTH CAUSE OF ACTION**

5 **(Against all Defendants for Violation of California Business & Professions Code §§ 17200,**
6 **et seq.)**

7 79. Plaintiff incorporates by reference and re-alleges as if fully stated herein
8 paragraphs 1 through 22 in this Complaint.

9 80. Defendants, and each of them, are “persons” as defined under California Business
10 & Professions Code § 17201.

11 81. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
12 unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff
13 seeks to enforce important rights affecting the public interest within the meaning of Code of Civil
14 Procedure § 1021.5.

15 82. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business & Professions
17 Code §§ 17200, *et seq.*

18 83. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
19 predicated on the violation of any state or federal law. All of the acts described herein as
20 violations of, among other things, the California Labor Code, are unlawful and in violation of
21 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
22 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
23 California Business & Professions Code §§ 17200, *et seq.*

24 **Failure to Pay Minimum and Straight Time Wages**

25 84. Defendants’ failure to pay minimum wages, straight time wages, and other
26 benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity
27 prohibited by California Business & Professions Code §§ 17200, *et seq.*

28 ///

Failure to Pay Minimum and Straight Time Wages

85. Defendants' failure to pay minimum wages, straight time wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Overtime Wages

86. Defendants' failure to pay overtime compensation and other benefits in violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Provide Meal Periods

87. Defendants' failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Authorize and Permit Rest Periods

88. Defendants' failure to authorize and permit rest periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Provide Accurate Itemized Wage Statements

89. Defendants' failure to provide accurate itemized wage statements in accordance with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Indemnify Business Expenses

90. Defendants' failure to reimburse expenses incurred in accordance with California Labor Code § 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

91. By and through their unfair, unlawful and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

1 92. Plaintiff and the Class Members suffered monetary injury as a direct result of
2 Defendants' wrongful conduct.

3 93. Plaintiff, individually, and on behalf of members of the putative Class, is entitled
4 to, and does, seek such relief as may be necessary to disgorge money and/or property which the
5 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
6 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
7 the Class are not obligated to establish individual knowledge of the wrongful practices of
8 Defendants in order to recover restitution.

9 94. Plaintiff, individually, and on behalf of members of the putative class, is further
10 entitled to and does seek a declaration that the above described business practices are unfair,
11 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
12 from engaging in any of the above-described unfair, unlawful and/or fraudulent business
13 practices in the future.

14 95. Plaintiff, individually, and on behalf of members of the putative class, has no
15 plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members
16 suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business
17 practices. As a result of the unfair, unlawful and/or fraudulent business practices described
18 above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and
19 will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained
20 from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

21 96. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
22 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
23 withholdings.

24 97. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff
25 and putative Class Members are entitled to restitution of the wages withheld and retained by
26 Defendants during a period that commences four years prior to the filing of this complaint; a
27 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
28 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §

1021.5 and other applicable laws; and an award of costs.

NINTH CAUSE OF ACTION

**(Against All Defendants for Civil Penalties Under the Private Attorneys General Act of
2004, Cal. Lab. Code § 2698, et seq.)**

98. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 22 in this Complaint.

99. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

100. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

101. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code § 2699.3. He gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee.

102. The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants’ Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

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103. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of himself, the State of California, and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

104. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action with respect to the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;
2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

4. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum and straight time wages due;
5. For unpaid wages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
7. For liquidated damages;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and
9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;

11. For unpaid wages at overtime wage rates as may be appropriate;

12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and

14. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

15. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16. For unpaid meal period premium wages as may be appropriate;

17. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

21. For unpaid rest period premium wages as may be appropriate;

22. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

24. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

25. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment;

26. For statutory wage penalties pursuant to California Labor Code § 203 for former employees who have left Defendants' employ;

27. For pre-judgment interest on any unpaid wages from the date such amounts were due;

28. For reasonable attorneys' fees and for costs of suit incurred herein; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

30. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual damages, according to proof;

32. For statutory penalties pursuant to California Labor Code § 226(e);

33. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);

34. For reasonable attorneys' fees and for costs of suit incurred herein; and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

36. That the Court declare, adjudge, and decree that Defendants violated California Labor Code § 2802 by willfully failing to indemnify employees for expenditures;

37. For unpaid wages or unreimbursed business expenses as may be appropriate;

38. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

39. For reasonable attorneys' fees and for costs of suit incurred herein; and

40. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

41. That the Court declare, adjudge, and decree that Defendants violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, and failing to indemnify employees for expenditures;

42. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

43. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

45. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and

46. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

47. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and overtime), failing to provide meal periods and pay the correct amount of meal period premium wages, failing to authorize and permit rest periods and pay the correct amount of rest period premium wages, failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to pay all final wages to terminated employees, failing to furnish accurate wage statements, and failing to indemnify employees for expenditures;

48. For all actual, consequential and incidental losses and damages, according to proof;

49. For all civil penalties pursuant to California Labor Code §§ 2699, *et seq.*, and all other applicable Labor Code provisions;

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1 50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Labor Code § 2699; and,

3 51. For such other and further relief as the Court may deem equitable and appropriate.

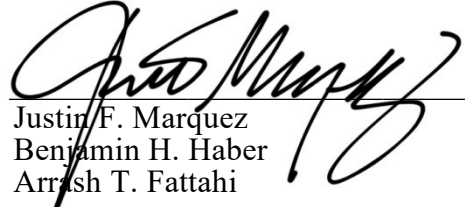
4 As to all Causes of Action

5 52. For any additional relief that the Court deems just and proper.

6
7 Respectfully submitted,

8 Dated: January 6, 2023

WILSHIRE LAW FIRM

9
10 By: 

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

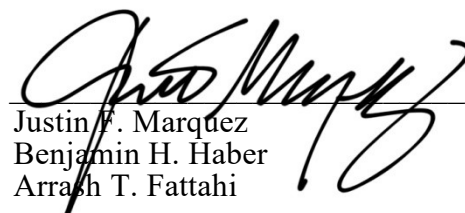
11
12 Attorneys for Plaintiff Martin Ortiz

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff demands a trial by jury as to all causes of action triable by jury.

15
16 Dated: January 6, 2023

WILSHIRE LAW FIRM

17
18 By: 

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

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20 Attorneys for Plaintiff Martin Ortiz
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Exhibit 2

1 Danielle Hultenius Moore (SBN 232480)
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15 Attorneys for Plaintiff

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 17 **FOR THE COUNTY OF SAN DIEGO**
 18

19 MARTIN ORTIZ, individually, and on
 behalf of all others similarly situated,

20 Plaintiff,

21 v.

22 TARA MATERIALS, INC., a Georgia
 23 corporation; and DOES 1 through 10,
 inclusive,

24 Defendants.

CASE NO.: 37-2021-00001473-CU-OE-CTL
[Unlimited Jurisdiction]

*Assigned for all purposes to the
 Honorable Eddie C. Sturgeon, Dept. C-67*

**JOINT STIPULATION AND
 SETTLEMENT AGREEMENT OF CLASS
 ACTION AND PAGA REPRESENTATIVE
 CLAIMS**

Complaint Filed: January 13, 2021
 Trial Date: Not Set

1 This Stipulation is made by the Class Representative on behalf of himself and each of the
2 other Class Members, on the one hand, and Defendant, on the other hand, in this Action, and is
3 subject to the approval of the Superior Court.

4 **1. DEFINED TERMS**

5 1.1 “Action” means the civil action being resolved by this settlement entitled *Martin*
6 *Ortiz v. Tara Materials, Inc.* (San Diego County Superior Court Case No. 37-2021-00001473-
7 CU-OE-CTL).

8 1.2 “Agreement,” “Settlement,” or “Stipulation” means this Joint Stipulation and
9 Settlement Agreement of Non-PAGA Class Claims and the PAGA Claim.

10 1.3 “Non-PAGA Class Claims” means any and all claims asserted in the Action, with
11 the exception of the PAGA claim, or any other claims that could have been asserted in the
12 Action based on the facts alleged. This includes, but is not limited to, any and all claims
13 concerning: meal and rest breaks; unpaid regular wages, minimum wages, overtime and double
14 time wages; wage statement violations; record keeping violations; expense reimbursement; and
15 separation pay violations.

16 1.4 “PAGA Claim” means all claims for civil penalties and attorneys’ costs and fees
17 available under the PAGA, only, for the PAGA Period, that were alleged in the letters submitted
18 to the Labor & Workforce Development Agency (“LWDA”) by Plaintiff, or reasonably could
19 have been alleged based on the facts and legal theories contained in the LWDA letter that Plaintiff
20 submitted, including, but not limited to, alleged violations of Labor Code Sections 201, 202, 203,
21 204, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1182.12, 1194.2, 1197, 1198 and 2802, and any
22 applicable Wage Orders.

23 1.5 “Class” or “Class Members” means the following class: All current and former
24 non-exempt employees who worked for Defendant within the State of California from January
25 13, 2017 to March 15, 2022.

26 1.6 “PAGA” means the Private Attorneys General Act of 2004, California Labor
27 Code §§ 2698, et seq.

28 1.7 “PAGA Group Members” means all current and/or former non-exempt

employees who worked for Defendant during the PAGA Period. A PAGA Group Member may not request exclusion from the PAGA Payment.

1.8 “Class Counsel” means Justin F. Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm.

1.9 “Class Period” means the period from January 13, 2017 to March 15, 2022.

1.10 “PAGA Period” means the period from January 19, 2020 to March 15, 2022.

1.11 “Class Notice” means the Court-approved Notice of Proposed Class Action Settlement, substantially in the form attached hereto as **Exhibit A** and incorporated by reference herein, which will notify Class Members of, among other things, the following: Preliminary Approval of the Settlement, the basic terms of the Settlement, the calculation of the Settlement Award, the procedures for disputing and objecting to the Settlement, and requesting exclusion from the Settlement Class, and the scheduling of the Final Approval Hearing. Following the Court’s Preliminary Approval of the Settlement, the Settlement Administrator shall mail the Class Notice to all Class Members.

1.12 “Class Representative” means plaintiff Martin Ortiz.

1.13 “Complaint” means the operative Complaint filed in the Action.

1.14 “Costs Award” means the amount of litigation expenses Class Counsel has incurred in prosecuting the Action and awarded by the Court.

1.15 “Court” means the Superior Court for the State of California, for the County of San Diego, which is the Court that the Parties will be submitting this Settlement to for purposes of obtaining court approval.

1.16 “Database Report” means a confidential list of Class Members that Defendant will diligently and in good faith compile from their records and provide to the Settlement Administrator only. The Database Report shall be in computer-readable format, and shall include each Class Member’s full name; dates of employment during which he or she worked in a class position for Defendant in California; last known home address; and Social Security number. Class Counsel shall receive a redacted Database Report that shall only disclose an identification number attributed to each Class Member and the number of workweeks each Class Member

1 worked during the Class Period.

2 1.17 “Defendant” means Tara Materials, Inc.

3 1.18 “Defendant’s Counsel” means Danielle Hultenius Moore, Esq., Bret Martin, Esq.,
4 and Benjamin P. Carney, Esq. of Fisher & Phillips, LLP.

5 1.19 “Effective Date” means the date by which all of the following events have
6 occurred (i) this Stipulation has been executed by all Parties and by Class Counsel and
7 Defendant’s Counsel; (ii) the Court has given and entered preliminary approval of the Settlement;
8 (iii) the Class Notice has been given to the Settlement Class, providing them with an opportunity
9 to object or to opt-out of the Settlement; (iv) the Court has held a Final Approval Hearing and
10 entered an order of Final Approval and a judgment certifying the Settlement Class and finally
11 approving this Stipulation and its terms; and (v) in the event there are written objections filed
12 prior to the Final Approval Hearing which are not later withdrawn, the later of the following
13 events: when the period for filing any appeal, writ or other appellate proceeding opposing the
14 Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed;
15 or any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed
16 finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ or
17 other appellate proceeding has upheld the Court’s final order with no right to pursue further
18 remedies or relief (no more appeals). In this regard, it is the intention of the Parties that the
19 Settlement shall not become Effective until the Court’s entry of an order approving the Settlement
20 as completely final, and there is no further recourse by a Class Member, an appellant or objector
21 who seeks to contest the Settlement.

22 1.20 “Fees and Costs Award” means the aggregate total of the Fees Award and the
23 Costs Award to Class Counsel approved by the Court.

24 1.21 “Fees Award” means the fee amount authorized by the Court to be paid to Class
25 Counsel for the services they have rendered in prosecuting the Action, in an amount not to exceed
26 one third of the Total Settlement Amount, i.e., the Fees Award shall not exceed Forty-Six
27 Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$46,666.67).

28 1.22 “Final Approval” and/or “Final Approval Order” means the Court’s order

1 granting final approval of the Settlement and “Final Approval Date” means the date that the Court
2 signs the Final Approval Order.

3 1.23 “Final Approval Hearing” means the hearing at which the Court considers
4 whether to issue an order granting final approval to the Settlement.

5 1.24 “Net Settlement Fund” means the funds available to pay the Settlement Awards
6 to all Participating Settlement Class Members. The Net Settlement Fund shall constitute the
7 Total Settlement Amount minus the sum of the (1) Fees and Cost Award, (2) the Service Award,
8 (3) the Settlement Administration Costs, and (4) the PAGA Payment made to the LWDA.

9 1.25 “Non-Participating Class Member” means a Class Member who submits a timely
10 and valid Request for Exclusion.

11 1.26 “Objection/Exclusion Deadline” means the date, no later than forty-five (45)
12 calendar days after the date the Notice is mailed (judged by the postmark date) by the Settlement
13 Administrator, prior to which a Class Member may validly submit a Notice of Objection, or a
14 Class Member may submit a Request for Exclusion.

15 1.27 “PAGA Payment” shall constitute Five Thousand Dollars and Zero Cents
16 (\$5,000.00) which, pursuant to Labor Code Section 2699(i), will be distributed as follows: 25%
17 to the applicable Participating Settlement Class Members and 75% to the LWDA. The 25%
18 portion of the PAGA Payment that shall be paid to the Participating Settlement Class Members
19 shall remain within the Net Settlement Fund so that it is available to be included within the
20 calculation of the Participating Settlement Class Members’ Settlement Awards. If it should later
21 be determined by the Court that an additional amount is needed to effectuate a full and complete
22 release of the PAGA Claim, that amount shall be deducted from the Total Settlement Amount.
23 PAGA Group Member may not request exclusion from the PAGA Payment and will receive their
24 share of the PAGA Payment regardless of opting out of the Settlement Class.

25 1.28 “Individual PAGA Share” means the pro rata amount payable from the \$1,250.00
26 amount, or other amount approved by the Court that is 25% of the PAGA Payment, to each
27 PAGA Group Member.

28 1.29 “Participating Settlement Class Member” means any Class Members who did not

1 submit a timely and valid Request for Exclusion.

2 1.30 “Parties” means Defendant and the Class Representative.

3 1.31 “Preliminary Approval Order” means the Order issued by the Court preliminarily
4 approving the terms of the Settlement set forth in this Stipulation, in a form to be agreed upon by
5 the Parties prior to the hearing on the Motion for Preliminary Approval and “Preliminary
6 Approval Date” means the date that the Court signs the Preliminary Approval Order.

7 1.32 “Qualifying Workweek” means a workweek where a Participating Settlement
8 Class Member worked at least one day during that work week and was not on a leave of absence
9 or vacation. The Qualifying Workweek will be calculated by using Defendant’s payroll data
10 during the Class Period. Workweeks of Non-Participating Class Members will be excluded from
11 the total number of Workweeks that are reported to the Settlement Administrator.

12 1.33 “Qualified Settlement Fund” or “QSF” means the account set up by the Settlement
13 Administrator and from which the individual Settlement Awards to Participating Settlement
14 Class Members shall be made. The QSF shall be an interest-bearing account within the meaning
15 of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section
16 1.468B-1, et seq., at a federally-insured bank that is mutually acceptable to the Parties and the
17 Settlement Administrator. The Settlement Administrator shall serve as a Trustee of the QSF and
18 shall act as a fiduciary with handling of all tax-related issues, reporting and payments. The
19 Settlement Administrator shall act in a manner necessary to qualify and maintain the QSF as a
20 Qualified Settlement Fund and the Parties shall cooperate to ensure such treatment and shall not
21 take a position in any filing or before any tax authority inconsistent with such treatment. The
22 Parties agree that the QSF shall be a non-reversionary fund and that under no circumstance will
23 there be any reversion to Defendant of any of the funds from the QSF or the Total Settlement
24 Amount.

25 1.34 “Released Non-PAGA Claims” means all claims asserted under any applicable
26 laws and/or regulations relating to any and all facts and claims asserted in the Action or any other
27 claims, with the exception of all claims under the California Labor Code Private Attorneys
28 General Act of 2004 (“PAGA”) (Labor Code Section 2698, et seq.), that could have been asserted

1 in the Action based on the facts alleged, including without limitation claims related to minimum
2 wages, overtime and double time wages (including, but not limited to, any claims for additional
3 wages owed due to “rounding” or “off the clock” work); meal and rest breaks; failure to maintain
4 accurate employment records; wage statement violations; separation pay violations; failure to
5 reimburse business expenses; and unfair business practices arising during the Class Period. As
6 of the Effective Date of Settlement, each Class Member who has not filed a valid Request for
7 Exclusion shall be deemed to have fully, finally, and forever released, relinquished, and
8 discharged all Released Non-PAGA Claims. This waiver and release of claims shall be binding
9 on the Class Representative and all members of the Class who have not timely submitted a valid
10 Request for Exclusion, including each of their respective attorneys, agents, spouses, executors,
11 representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit
12 of the Released Parties.

13 1.35 “Released PAGA Claim” means all claims for civil penalties and attorneys’ costs
14 and fees available under the PAGA, only, for the PAGA Period, that were alleged in the letters
15 submitted to the LWDA by Plaintiff, or reasonably could have been alleged based on the facts
16 and legal theories contained in the LWDA letter that Plaintiff submitted, including, but not
17 limited to, alleged violations of Labor Code Sections 201, 202, 203, 204, 226, 226.2, 226.7, 512,
18 1174, 1194, 1182.12, 1194.2, 1197, 1198 and 2802, and any applicable Wage Orders.

19 1.36 “Request for Exclusion” means a letter or written request to be excluded from the
20 Settlement Class submitted by a Class Member to the Settlement Administrator and postmarked
21 by the Objection/Request for Exclusion Deadline. In order to be valid, the Request for Exclusion
22 must include the Class Member’s name, address, telephone number, last four digits of the Social
23 Security number, years of his or her employment, and signature, and contain a statement to the
24 effect of: “I wish to be excluded from the Settlement Class.”

25 1.37 “Released Parties” means Defendant, and each of its former or present parents,
26 subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or
27 successors, and all agents, employees, officers, directors, shareholders, partners, members,
28 managers, holding companies, insurers, and attorneys thereof.

1 1.38 “Settlement Administrator” means Phoenix Settlement Administrators, or any
2 other provider that is mutually agreed to by the Parties and approved by the Court.

3 1.39 “Settlement Administration Costs” means the amount that will be paid to the
4 Settlement Administrator for actual and direct fees and expenses reasonably incurred by the
5 Settlement Administrator in administering the Settlement. Settlement Administration Costs will
6 include, but are not limited to, fees and costs payable to the Settlement Administrator for printing,
7 distributing (including with appropriate postage), and tracking documents for this Settlement,
8 any searches to locate any Class Members, calculating estimated amounts per Class Member, tax
9 reporting, distributing the individual Settlement Awards, the Class Representative’s Service
10 Award, Class Counsel Fees and Costs, payment to the LWDA, and providing necessary
11 certification of completion of notice, reports and declarations, establishing and administering a
12 QSF account, required tax reporting and withholding on the individual Settlement Awards, the
13 issuing of 1099 and W-2 IRS forms, as well as determining the validity of any disputes (and
14 communicating the determination of those disputes to the disputing Class Member, Class
15 Counsel and Defendant’s Counsel) and opt-outs, calculating all amounts to be paid from the Total
16 Settlement Amount, and such other responsibilities and duties as reasonably and customarily
17 performed by third-party settlement administrators or as requested by the Parties.

18 1.40 “Service Award” means the amount that the Court authorizes to be paid to the
19 Class Representative in the Action over and above his Settlement Award, in recognition of his
20 efforts in assisting with the prosecution of the Action on behalf of the Class Members. This
21 amount is not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

22 1.41 “Settlement Award” means the total portion of the Net Settlement Award payable
23 to each member of the Settlement Class after deduction of the employee’s portion of all state and
24 federal employment withholding taxes, FICA and FUTA contributions and any other applicable
25 payroll deductions required by law.

26 1.42 “Settlement Class” means the Class Members who have not submitted a timely
27 and valid Request for Exclusion and are therefore entitled to receive his or her individual portion
28 of the Settlement Award.

1.43 “Total Settlement Amount” means the total amount that Defendant will be required by this Stipulation to pay to: Participating Settlement Class Members (which includes the employee payroll taxes withheld from the Wage Component of each Participating Settlement Class Member’s Settlement Award); the Class Representative; Class Counsel; the Settlement Administrator; and the LWDA (i.e., the PAGA Payment). The Total Settlement Amount is One Hundred Forty Thousand Dollars and Zero Cents (\$140,000.00). The Total Settlement Amount is non-reversionary, meaning that, if the settlement is approved and becomes effective, no part of this amount shall be returned to Defendant.

2. BACKGROUND AND PRELIMINARY REPRESENTATIONS

2.1 Certification. This Court has not yet Certified the Class. The Parties intend for the Class to be certified through the preliminary approval process for settlement purposes only. If the Court should for any reason fail to approve the Settlement, this Agreement shall be considered null and void, the Class will not be certified, and Defendant shall retain all defenses to class certification. The Parties agree that Defendant has not waived the right to compel arbitration of any Class Members’ claims by entering into this Agreement.

2.2 Investigation. The Parties have conducted significant investigation of the facts and law. Such discovery and investigation included interviews with the Class Representative and other percipient witnesses as well as the review of documents and data necessary to calculate potential damages. Counsel for the Parties investigated the law as applied to the facts discovered regarding the alleged claims of the Class Members and potential defenses thereto, and the damages claimed by the Class Members.

2.3 Defendant’s Reasons for Settlement. Defendant concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time, energy and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by the Class Representative. Defendant has also taken into account the risks of further litigation in reaching their decision to enter into this Settlement. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Claims as set forth in the Action.

2.4 Defendant's Denials of Wrongdoing. Defendant has denied and continues to deny each of the claims and contentions alleged by Class Members in the Action. Defendant has repeatedly asserted, and continues to assert, defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Defendant also has denied and continues to deny, inter alia, the allegations that the Class Members have suffered damage; that Defendant violated any laws; that Defendant engaged in any wrongful conduct as alleged in the Action; or that Class Members were harmed by the conduct alleged in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is, may be construed as, or may be used as an admission, concession or indication by or against Defendant of any fault, wrongdoing or liability whatsoever.

2.5 Plaintiff's Claims. The Class Representative has claimed and continues to claim that the Released Claims have merit and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed claims, and Plaintiff's Agreement takes into account Defendant's defenses to liability. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the Class Representative or Class Counsel as to the merits or lack thereof of the claims asserted.

2.6 It is the desire of the Parties to fully, finally and forever settle, compromise and discharge all disputes and claims against the Released Parties arising from or related to this Action, and that this Settlement Agreement shall constitute a full and complete settlement and release of all the Released Parties from all of the claims asserted in this Action.

3. CLASS AND PAGA SETTLEMENT AGREEMENT

3.1 Settlement Components. The Settlement shall have six components: (1) the Participating Settlement Class Members' Settlement Awards; (2) the Class Representative's Service Award; (3) Class Counsel's Fees and Cost Award; (4) the Settlement Administration Costs; and (5) the PAGA Payment. All of these components are included in the Total Settlement Amount.

1 3.2 Creation of the Settlement Fund. Within thirty (30) calendar days after the
2 Effective Date, Defendant shall deliver the Total Settlement Amount to the Settlement
3 Administrator to create the Settlement Fund, including the employer-side payroll taxes on the
4 wage portion of the Settlement Awards. All payments that Defendant is required to make
5 pursuant to the Settlement Agreement shall be made from the Fund by the Settlement
6 Administrator. Defendant will retain exclusive authority over, and responsibility for, those funds
7 until required to deliver them to the Settlement Administrator in accordance with this paragraph.

8 3.3 Calculation of Participating Settlement Class Members' Settlement Awards. The
9 Settlement Administrator shall have the authority and obligation to calculate the amounts of
10 individual Settlement Awards in accordance with the methodology set forth in this Stipulation of
11 Settlement and any Orders of the Court. The Parties agree that the formula for the individual
12 Settlement Awards to Participating Settlement Class Members provided herein is reasonable and
13 that the payments provided herein are designed to provide a fair settlement to such persons, in
14 light of the uncertainties of the damages and penalties alleged to be owed to the Class and the
15 calculation of such amounts.

16 3.3.1 The Parties agree that Class Members will not have to submit a claim form in
17 order to participate in the Settlement. Each Class Member who does not submit a Request for
18 Exclusion will be mailed a check representing their individual Settlement Award. Therefore, the
19 individual Settlement Awards will be paid from the Net Settlement Fund to all Class Members
20 unless the Class Member submits a valid and timely written Request for Exclusion from the
21 Settlement Class. Note, any Class Member who worked during the PAGA Period will receive a
22 check representing their portion of the PAGA Payment regardless of whether they request
23 exclusion from the Class.

24 3.3.2 After deducting (i) the Court-approved Class Representative's Service Award,
25 (ii) the Court-approved Fees and Costs Award, (iii) the Settlement Administration Costs, and
26 (iv) the PAGA Payment to the LWDA, then the remainder of the Total Settlement Amount, or
27 the Net Settlement Fund, will be distributed to the Participating Settlement Class Members.
28 Relying on the Database Report, the Settlement Administrator will calculate the number of

1 Qualifying Workweeks for each Participating Settlement Class Member of the Class. Each
2 Participating Settlement Class Member shall be entitled to receive a pro-rata portion based upon
3 their respective number of Qualifying Workweeks in the Class and PAGA Periods. Thus, each
4 Class Member that does not request exclusion from the Settlement shall be entitled to a pro-rata
5 share of the Net Settlement Fund based on the ratio of the number of Qualifying Workweeks that
6 he or she worked to the total number of Qualifying Workweeks that all Participating Settlement
7 Class Members worked during the Class Period.

8 3.3.3 Class Members will have the opportunity, should they disagree with Defendant's
9 records regarding the number of Qualifying Workweeks as presented on the Notice, to provide
10 documentation and/or an explanation to show contrary employment dates. Class Members must
11 notify the Settlement Administrator of the dispute and submit documentation to support their
12 dispute (such as, without limitation, offer letters, payroll or time keeping records, paycheck stubs)
13 prior to the Objection/Exclusion Deadline. Moreover, an individual can only dispute his/her
14 number of Qualifying Workweeks if he/she does not exclude himself/herself from the Settlement
15 Class. Absent evidence rebutting Defendant's records, Defendant's records will be presumed
16 determinative. However, if there are no corresponding records, or the Class Member produces
17 evidence contrary to Defendant's records, the Settlement Administrator will evaluate the
18 evidence and will make the final decision as to the number of eligible Qualifying Workweeks
19 that should be applied.

20 3.3.4 Each Participating Settlement Class Member will have one hundred eighty (180)
21 calendar days from the date of the mailing of the individual Settlement Award check to cash the
22 check sent to the Participating Settlement Class Member. Upon the 180-day deadline, the checks
23 will automatically be cancelled by the Settlement Administrator if not deposited, cashed, or
24 otherwise negotiated by the Class Member beforehand. Funds associated with such cancelled
25 checks will be remitted to the Controller of the State of California pursuant to the Unclaimed
26 Property Law, California Civil Code § 1500, et seq., to be held in trust for those Settlement Class
27 Members who did not timely cash their checks, until such time as they claim their property.

28 3.3.5 The checks will state they are void if not cashed within 180 calendar days of

1 mailing.

2 3.3.6 The Parties recognize that the individual Settlement Awards to be paid to
3 Participating Settlement Class Members reflect in part a settlement of a dispute over claimed
4 wages, interest, and penalties. The individual Settlement Awards to Participating Settlement
5 Class Members shall be allocated as follows: Twenty percent (20%) of each Participating
6 Settlement Class Member's Settlement Award shall be considered wages ("Wage Component")
7 and eighty percent (80%) shall be considered penalties and interest (the "Non-Wage
8 Component"). The Wage Component shall be reported on a W-2 Form and will be provided to
9 each Participating Settlement Class Member. From each Class Member's Wage Component, the
10 employee's portion of employment taxes shall be made, including payroll deductions for state
11 and federal withholding taxes, and any other applicable payroll deductions, owed by the
12 Participating Settlement Class Member as a result of the payment, resulting in a "Net Wage
13 Component." No withholding shall be made on the Non-Wage Component of the settlement.
14 The Non-Wage Component shall be reported on a 1099 Form and will be provided to each
15 Participating Settlement Class Member. The Net Wage Component shall be added to the Non-
16 Wage Component resulting in each Participating Settlement Class Member's Settlement Award.

17 3.4 Class Representative's Service Award. Subject to Court approval and the
18 execution of the general release by the Class Representative, the Parties agree to a payment from
19 the Total Settlement Amount to the Class Representative for the Class Representative's Service
20 Award in an amount not to exceed two thousand five hundred dollars (\$2,500.00). The Parties
21 agree that a decision by the Court to award the Class Representative an amount less than two
22 thousand five hundred dollars (\$2,500.00) each shall not be a basis for the Class Representative
23 or Class Counsel to void this Stipulation. Defendant agrees not to oppose the Class
24 Representative's Service Award request if consistent with this Agreement. Defendant, via the
25 Administrator, shall issue the Class Representative a Form 1099 for their Service Award. The
26 Class Representative shall be solely and legally responsible to pay his applicable taxes on this
27 payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or
28 interest owed by the Class Representative as a result of this payment. The Service Award shall

1 be in addition to the Class Representative's individual Settlement Awards. If the Court approves
2 Service Award to the Class Representative that is less than the amount sought, the remainder will
3 be retained in the Net Settlement Fund for distribution to Participating Settlement Class
4 Members.

5 3.4.1 Class Representative's Service Award is for the Class Representative's services
6 and assistance to the Class and additionally, in recognition for his willingness to provide a full
7 and separate general release individually of any and all claims against Defendant regardless of
8 whether such claims have been alleged against Defendant, including without limitation known
9 or unknown claims, whether for economic damages, non-economic damages, punitive damages,
10 restitution, tort, contract, penalties, injunctive or declaratory relief, attorney's fees, costs, or other
11 monies or remedies. This release by the Class Representative includes all federal and state
12 statutory claims, and federal and state common law claims (including but not limited to those for
13 contract, tort, and equity), including, without limitation, the Americans with Disabilities Act,
14 Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended),
15 42 U.S.C. §1981, 42 U.S.C. § 1983, the Fair Labor Standards Act, the Employee Retirement
16 Security Income Act of 1974, the California Constitution, the California Fair Employment and
17 Housing Act, the California Unfair Competition Act (California Business and Professions Code
18 section 17200 et seq.), the California Labor Code, and claims for additional compensation
19 relating to stock options.

20 3.4.2 General Release by Class Representative Only. In addition to the releases made
21 by the Participating Settlement Class Members set forth in 4.1 below and in consideration for the
22 Service Award, the Class Representative, as of the Effective Date, in his individual capacity for
23 himself, his heirs, executors, administrators, successors and assigns and with respect to his
24 individual claims only, agrees to release the Released Parties from all claims, demands, rights,
25 liabilities and causes of action of every nature and description whatsoever, known or unknown,
26 asserted or that might have been asserted, whether in tort, contract, or for violation of any state
27 or federal statute, rule or regulation arising out of, relating to, or in connection with their
28 employment by and termination from Released Parties and any act or omission by or on the part

1 of any of the Released Parties committed or omitted prior to the Effective Date of this Agreement
2 (the “General Release”). This total release includes, but is not limited to, all claims arising
3 directly or indirectly from Class Representative’s employment with Released Parties and the
4 termination of that employment; claims or demands related to wages, bonuses, vacation pay,
5 benefits and expense reimbursements pursuant to any federal, state or local law or cause of action,
6 including, but not limited to, breach of contract, breach of the implied covenant of good faith and
7 fair dealing, infliction of emotional harm, wrongful discharge, violation of public policy,
8 defamation and impairment of economic opportunity; violation of the California Fair
9 Employment and Housing Act, the California Labor Code, the California Constitution; and any
10 claims for violation of the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964,
11 the Americans With Disabilities Act of 1990 and any action under the California Business &
12 Professions Code §17200.

13 3.4.3 The General Release includes any unknown claims that the Class Representative
14 does not know or suspect to exist in his favor at the time of the General Release, which, if known
15 by him, might have affected his settlement with, and release of, the Released Parties or might
16 have affected his decision not to object to this Settlement or the General Release. With respect
17 to the General Release, the Class Representative stipulates and agrees that, upon the Effective
18 Date, he shall be deemed to have, and by operation of the Court’s Final Approval Order, shall
19 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
20 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision
21 under federal or state law, which provides:

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

26 3.4.4 The Class Representative may hereafter discover facts in addition to or different
27 from those they now know or believe to be true with respect to the subject matter of the General
28 Release, but upon the Effective Date, shall be deemed to have, and by operation of the Court’s

1 Final Approval Order, shall have, fully, finally, and forever settled and released any and all of
2 the claims released pursuant to the General Release whether known or unknown, suspected or
3 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any
4 theory of law or equity now existing or coming into existence in the future, including, but not
5 limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty,
6 law or rule, without regard to the subsequent discovery or existence of such different or additional
7 facts.

8 3.4.5 Notwithstanding the above, the scope of the General Release provided to the
9 Released Parties by the Class Representative does not include any claims for state disability
10 benefits, workers compensation benefits, or unemployment benefits, or any claims that cannot
11 be released as a matter of law.

12 3.5 Class Counsel's Fees and Costs Award. Defendant agrees not to oppose or
13 impede any application or motion by Class Counsel for attorneys' fees not to exceed one third of
14 the Total Settlement Amount (i.e., \$46,666.67) and actual litigation costs not to exceed fifteen
15 thousand dollars and zero cents (\$15,000.00). The Parties agree that a decision by the Court to
16 award Class Counsel an amount less than \$46,666.67 shall not be a basis for the Class
17 Representative or Class Counsel to void this Agreement. The aggregate attorneys' fees and costs
18 awarded by the Court shall be the "Fees and Costs Award." Class Counsel shall be solely and
19 legally responsible to pay their applicable taxes on the payment made pursuant to this Paragraph.
20 Class Counsel further agrees that Class Counsel shall be solely responsible for any allocation of
21 the Fees and Costs Award as between or among attorneys who have claims for such fees. Forms
22 1099 shall be provided to Class Counsel for the payments made pursuant to this Paragraph. If
23 the amount awarded to Class Counsel for attorneys' fees is less than the amount sought, the
24 remainder will be retained in the Net Settlement Fund for distribution to Participating Settlement
25 Class Members.

26 3.6 Settlement Administration Costs. The Settlement Administrator shall be paid for
27 the costs of administration of the settlement from the Settlement Fund. The costs of
28 administration for the disbursement of the Total Settlement Amount shall not exceed the amount

1 quoted (and ultimately billed), approximately \$10,000.00, by the Settlement Administrator. The
2 Settlement Administration Costs include all tasks required of the Settlement Administrator by
3 this Agreement including performing a skip trace as well as basic searches on the National
4 Change of Address Database in order to obtain the best possible address for Class Members prior
5 to mailing the Class Notice to Class Members, the issuance of the Notice, the required tax
6 reporting on the settlement amounts, the issuance of checks, including the issuing of W2 and
7 1099 forms (if any), the handling of Class Member questions and disputes, as well as calculation
8 of employee withholding taxes and the employer payroll taxes for Defendant to be remitted to
9 the tax authorities. At least fourteen (14) calendar days prior to the Final Approval Hearing, the
10 Settlement Administrator shall provide the Court and all counsel for the Parties with a statement
11 detailing the due diligence the Settlement Administrator has undertaken with regard to the
12 mailing of the Class Notice, including any attempts to obtain valid mailing addresses for and re-
13 mailing of any returned Class Notices, the final costs of administration, and reporting on the
14 number of objections and exclusions submitted by Non-Participating Class Members, as well as
15 any disputes (and explain the status of the disputes).

16 3.7 Payment to the LWDA. Subject to Court approval, Five Thousand Dollars
17 (\$5,000.00) will be allocated to cover any and all claims for civil penalties associated with the
18 Released Claims that were, or could have been, brought in the Action under PAGA; 75% of
19 which is Three Thousand Seven Hundred and Fifty Dollars (\$3,750.00) that will be paid directly
20 to the LWDA, and the remaining 25% of which is One Thousand Two Hundred and Fifty Dollars
21 (\$1,250.00), which will be retained in the Net Settlement Fund for distribution to the PAGA
22 Group as penalties.

23 3.8 Tax Liability. Defendant makes no representations as to the tax treatment or legal
24 effect of the payments called for hereunder, and the Class Representative is not relying on any
25 statement or representation by Defendant in this regard. The Class Representative understands
26 and agrees that Participating Settlement Class Members will be solely responsible for the
27 payment of employee taxes and penalties predicated on the payments described herein. The Class
28 Representative shall hold harmless Released Parties from and against any claims resulting from

1 treatment of such payments as non-taxable damages, including the treatment of such payment as
2 not subject to withholding or deduction for payroll and employment taxes.

3 3.9 Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
4 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
5 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
6 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
7 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
8 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
9 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
10 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX
11 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
12 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
13 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL
14 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION
15 WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED
16 UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
17 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
18 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
19 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
20 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
21 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
22 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
23 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
24 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
25 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
26 AGREEMENT.

27 **4. RELEASE BY THE CLASS MEMBERS**

28 4.1 Release as To All Participating Settlement Class Members. As of the Effective

1 Date, all Participating Settlement Class Members, including the Class Representative, release the
2 Released Parties from the Released Non-PAGA Claims. The Participating Settlement Class
3 Members agree not to make, participate, encourage or support any action asserting or alleging
4 any of the Released Claims against any of the Released Parties.

5 4.2 PAGA Group Members' Release of Claims. As of the Effective Date, and only
6 after Defendant has fully funded the Settlement, in exchange for the consideration set forth in
7 this Agreement, each PAGA Group Member shall release the Released Parties from the PAGA
8 Claim, only, for the PAGA Period. Other than for Plaintiff, claims of Class Members, if any, for
9 vested benefits, wrongful termination, unemployment insurance, disability benefits, social
10 security, workers' compensation, claims while classified as exempt, and claims outside of the
11 PAGA Period are not encompassed within the definition of "Released PAGA Claim."

12 **5. PRELIMINARY APPROVAL**

13 5.1 As part of this Settlement, the Parties agree to the following procedures for
14 obtaining preliminary Superior Court approval of the Settlement, notifying Class Members,
15 obtaining final Superior Court approval of the Settlement, and processing the Settlement Awards:

16 5.1.1 Preliminary Settlement Hearing. The Class Representative shall seek preliminary
17 approval of the Settlement before the Superior Court and to request the entry of the Preliminary
18 Approval Order. In conjunction with this hearing, the Class Representative will submit this
19 Agreement, which sets forth the terms of this Settlement, and will include the proposed Class
20 Notice.

21 5.1.2 Order Granting Preliminary Approval of Proposed Settlement. Simultaneous with
22 the filing of the Stipulation of Settlement and solely for purposes of this Settlement, the Class
23 Representative will request that the Court enter an order preliminarily approving the proposed
24 Settlement and setting a date for a Final Approval Hearing. The Order shall be in a form to be
25 agreed upon by the Parties prior to the hearing on the Motion for Preliminary Approval and
26 provide for Notice of the Settlement to be sent to Class Members as specified herein.

27 5.1.3 Statement of Non-Opposition: The Defendant may file a statement of non-
28 opposition to the motion for preliminary approval.

1 **6. NOTICE PROCESS**

2 6.1 Notice Process. Notice of the Settlement shall be provided to Class Members,
3 and Class Members shall submit objections to the Settlement and/or requests for exclusion from
4 the Settlement Class, using the following procedures:

5 6.1.1 The Defendant shall provide the Settlement Administrator and Class Counsel with
6 the Database Report within fourteen (14) calendar days after receipt of the Preliminary Approval
7 Order.

8 6.1.2 Within fourteen (14) calendar days of receiving the Database Report, the
9 Settlement Administrator shall mail a copy of the Notice to each Class Member via First Class
10 regular U.S. mail.

11 6.1.3 Prior to mailing, the Settlement Administrator shall check all addresses on the
12 Database Report against the National Change of Address (NCOA) database. Additionally, the
13 Settlement Administrator shall undertake reasonable address verification using Accurint, or a
14 substantially similar skip tracing to ascertain the accuracy of the last known addresses and to
15 obtain the best possible address for the Class Members before mailing the notices. To the extent
16 these processes yield an updated or better address, that updated address shall replace the last
17 known address and be treated as the new last known address for purposes of this Settlement
18 Agreement.

19 6.1.4 Procedure for Undeliverable Notices. Any Notices returned to the Settlement
20 Administrator as non-delivered shall be promptly re-sent to the forwarding address affixed
21 thereto. If no forwarding address is provided, then the Settlement Administrator shall promptly
22 attempt to determine a correct address using a single skip-trace, computer or other search using
23 the name, address and/or Social Security number of the individual involved and shall then
24 perform a single re-mailing. The deadline for Class Members who receive a re-mailed Notice to
25 object to the Class Action Settlement or request an Exclusion from the Settlement Class is ten
26 (10) calendar days from the date of re-mailing if that date is beyond the original deadline. When
27 re-mailing any Notices, the Settlement Administrator should include a brief letter stating that the
28 recipient of the Class Notice has until the original deadline set forth on the Notice or ten (10)

1 calendar days after the date of re-mailing of the Class Notice (whichever is later) to object or
2 submit a Request for Exclusion. In the event the procedures in this Paragraph are followed and
3 the intended recipient of a Notice still does not receive the Notice, the intended recipient shall be
4 a Participating Settlement Class Member and will be bound by all terms of the Settlement and
5 any Final Approval Order entered by the Superior Court if the Settlement is approved by the
6 Superior Court. If any Class Notice is returned from any mailing and/or re-mailed, the Settlement
7 Administrator will note for its own records and notify the Parties' Counsel of the date of such re-
8 mailings as part of a weekly status report provided to the Parties.

9 6.1.5 The Notice shall provide that Class Members who wish to exclude themselves
10 from the Settlement Class must submit a Request for Exclusion postmarked by the
11 Objection/Exclusion Deadline. The Objection/Exclusion Deadline is forty-five (45) calendar
12 days following the initial mailing of the Notice. Any Class Member who properly requests
13 exclusion using this procedure will not receive any payment from the Settlement and will not be
14 bound by the Stipulation of Settlement or have any right to object, appeal or comment thereon.
15 Class Members who do not submit a valid and timely Request for Exclusion shall be bound by
16 all terms of the Stipulation of Settlement and any judgment entered in the Action once the
17 Settlement is approved by the Court. Class Members shall have no right to opt-out of the PAGA
18 Settlement.

19 6.1.6 Procedure for Objecting. The Notice shall provide that Class Members who wish
20 to object to the settlement must mail a written statement of objection ("Notice of Objection") to
21 the Settlement Administrator no later than the Objection/Exclusion Deadline Date. Only Class
22 Members (i.e., not Non-Participating Class Members) may submit objections and have the
23 objections heard. The postmark date of the mailing shall be deemed the exclusive means for
24 determining that a Notice of Objection is timely. The Notice of Objection must state the basis
25 for the objection. Class Members who fail to make objections in the manner specified above
26 shall be deemed to have waived any objections and shall be foreclosed from making any
27 objection (whether by appeal or otherwise) to the Settlement Agreement and/or from appealing
28 any order by the Court approving the Settlement. No later than fourteen (14) calendar days before

1 the Final Approval Hearing, the Settlement Administrator shall provide counsel for the Parties
2 with complete copies of all objections received, including the postmark dates for each objection.
3 Class Members who submit a timely Notice of Objection will have a right to appear at the Final
4 Approval Hearing in order to have their objections heard by the Court. At no time shall any of
5 the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit
6 written objections to the settlement or to appeal from any order of the Court approving the
7 settlement. Class Counsel shall not represent any Class Member with respect to any such
8 objection.

9 6.1.7 Procedure for Requesting Exclusion. The Notice shall provide that Class
10 Members who wish to exclude themselves from the Settlement Class and, in so doing, become a
11 Non-Participating Class Member, must submit a written request to be excluded from the
12 Settlement Class on or before the Objection/Exclusion Deadline Date. Such request for
13 exclusion: (1) must contain the name, address, telephone number, the last four digits of the Social
14 Security number of the person requesting exclusion, the location and years of his or her
15 employment by Defendant, signature, and contain a statement to the effect of: "I wish to be
16 excluded from the Settlement Class."; (2) must be returned by mail to the Settlement
17 Administrator at the specified address; (3) and must be postmarked on or before the
18 Objection/Exclusion Deadline Date. The date of the postmark shall be the exclusive means used
19 to determine whether a request for exclusion has been timely submitted. Any Class Member who
20 requests an exclusion from the Settlement Class will not be entitled to submit objections to the
21 Settlement, will not be entitled to any recovery under the Settlement, and will not be bound by
22 the Settlement or have any right to object, appeal or comment thereon. Class Members who fail
23 to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline
24 Date shall be Participating Settlement Class Members and shall be bound by all terms of the
25 Settlement, if the Settlement is approved by the Court. No Class Member that excludes
26 themselves from the Settlement shall be permitted to oppose the Settlement. No later than
27 fourteen (14) calendar days before the Final Approval Hearing, the Settlement Administrator
28 shall provide counsel for the Parties with a complete list of all Non-Participating Class Members

1 who have timely requested exclusion from the Settlement. At no time shall any of the Parties or
2 their counsel seek to solicit or otherwise encourage Class Members to submit requests for
3 exclusion from the Settlement Class. The Class Representative may not exclude himself from
4 the Settlement.

5 6.1.8 Claims Deemed Waived. Any Class Member who does not request exclusion as
6 set forth above is deemed to have released all Released Claims against Released Parties as set
7 forth herein.

8 **7. SETTLEMENT ADMINISTRATION**

9 7.1 The Parties agree to cooperate in the settlement administration process and to
10 make all reasonable efforts to control and minimize the costs and expenses incurred in
11 administration of the Settlement.

12 7.2 The Settlement Administrator shall be responsible for: printing and mailing the
13 Notices to the Class Members as directed by the Superior Court; receiving and reporting the
14 requests for exclusion submitted by Non-Participating Class Members; issuing and mailing
15 Settlement Awards to Class Members; remitting all amounts due to the appropriate federal, state,
16 and local tax authorities, and other tasks as the Parties mutually agree or the Superior Court orders
17 the Settlement Administrator to perform. The Settlement Administrator shall keep Defendant's
18 Counsel and Class Counsel timely apprised of the performance of all Settlement Administrator
19 responsibilities. The Settlement Administrator shall provide the Parties' Counsel with a weekly
20 report showing: (1) the number of Class Notices mailed to Class Members; (2) the number of
21 Class Notices returned as undeliverable; (3) the number of re-mailed Class Notices; (4) the
22 number of Non-Participating Class Members who have submitted Requests for Exclusion; (5) the
23 number of Class Members who have submitted objections; and (6) the number of Class Members
24 who have disputed the number of Qualifying Workweeks being credited to that Class Member.
25 Additionally, the Settlement Administrator shall provide to the Parties' Counsel any updated
26 reports regarding the administration of the Settlement as needed or requested.

27 7.3 The Settlement Administrator, on Defendant's and Class Counsel's collective
28 behalf, shall have the authority and obligation to calculate the amounts of the Settlement Awards,

1 make payments, credits and disbursements, including payments and credits in the manner set
2 forth herein, to Class Members calculated in accordance with the methodology set out in this
3 Agreement and orders of the Court.

4 7.4 No person shall have any claim against Defendant, Defendant's Counsel, the
5 Class Representative of the Class, Class Counsel, or the Settlement Administrator based on any
6 errors or omissions in the distributions and payments that are required to be made in accordance
7 with the terms of this Agreement.

8 7.5 Any tax return filing required by this Agreement shall be made by the Settlement
9 Administrator. Any expenses incurred in connection with such filing shall be a cost of
10 administration of the Settlement.

11 **8. PROCEDURE FOR FUNDING OF SETTLEMENT**

12 8.1 Defendant shall fund the Settlement via one lump sum payment equaling the Total
13 Settlement Amount (i.e., the payment shall be \$140,000.00) plus an amount to cover the
14 employer-side payroll taxes on the wage portion of the Settlement Awards as calculated by the
15 Settlement Administrator, within thirty (30) calendar days of the Effective Date.

16 8.2 The Total Settlement Amount was calculated with, and is premised on, the
17 understanding that there are approximately 5,869 workweeks for the period of January 13, 2017
18 to January 31, 2022. If the final accounting of the number of weeks worked during the Class
19 Period increases by more than ten percent (10%) due to a reason other than the passage of time,
20 Defendant will increase the Total Settlement Amount by a proportional amount over the 10%
21 grace amount. For example, if the total number of workweeks in the Class Period increases by
22 eleven percent (11%) at the time of preliminary approval for a reason other than due to the
23 passage of time, then Defendant agrees to increase the Total Settlement Amount by one percent
24 (1%).

25 **9. PROCEDURE FOR PAYMENT OF SETTLEMENT AWARDS**

26 9.1 Distributions of funds and Settlement Payments to Participating Settlement Class
27 Members shall occur no later than fifteen (15) calendar days after the funding, as follows: 100%
28 of the Fees and Costs Award; 100% of the Service Award; 100% of the Settlement

Administration Costs; 100% of the portion of the PAGA Payment to be paid to the LWDA; 100% of the PAGA Payment to be paid to the PAGA Group; and the remainder of the funds to be distributed pro rata in the amount of 100% to the Settlement Payments to Participating Settlement Class Members.

9.2 To ensure that they receive their Settlement Payment checks for each distribution, Class Members must notify the Settlement Administrator if they change their mailing address.

9.3 Except for Non-Participating Class Members, all Class Members will become eligible to receive Settlement Payments from Defendant, distributed through the Settlement Administrator. PAGA Group members may not request exclusion from the PAGA Payment and will receive their share of the PAGA Payment regardless of opting out of the Settlement Class.

9.4 Should any question arise regarding the determination of eligibility for, or the amounts of, any Settlement Payments under the terms of this Agreement, Class Counsel and Defendant's Counsel shall meet and confer in an attempt to reach agreement. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if there are no corresponding records, or the Class Member produces evidence contrary to Defendant's records, the Settlement Administrator will evaluate the evidence and will make the final decision as to the eligibility for, or the amounts of, any Settlement Payments under the terms of this Agreement.

9.5 Certification by Settlement Administrator. Upon completion of administration of the distributions, the Settlement Administrator shall provide written certification of such completion to the Court and counsel for all Parties.

10. FINAL SETTLEMENT APPROVAL HEARING

10.1 Upon expiration of the Objection/Exclusion Deadline Date, with the Court's permission, a Final Approval Hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for (i) reasonable attorneys' fees and costs, (ii) the Class Representative's Service Award, (iii) the PAGA Payment to the LWDA; and (iv) cost of administration. The Final Approval Hearing shall not be held earlier than thirty (30) calendar days after the Objection/Exclusion Deadline Date. After entry of an order finally

1 approving the settlement, the Court shall have continuing jurisdiction for purposes of addressing:
2 (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration
3 matters and (iii) such other matters as may be appropriate under court rules or as set forth in this
4 Agreement.

5 **11. VOIDING THE SETTLEMENT**

6 11.1 Defendant's Option to Terminate Settlement. If the number of Class Members
7 who have submitted timely requests for exclusion from the Settlement Class exceeds ten percent
8 of the Class Members or more of the Class under this Settlement, then Defendant shall have, in
9 its sole discretion, the option to terminate this Settlement within five (5) court days prior to Final
10 Approval, provided the Settlement Administrator has provided Defendant the number and
11 percentage of valid and timely Requests for Exclusion. In the event that Defendant terminates
12 the agreement pursuant to this provision, then Defendant shall be solely responsible for payment
13 of all costs incurred by the Settlement Administrator through the date that Defendant notifies the
14 Settlement Administrator in writing (with a copy to Class Counsel) that they are exercising this
15 Option.

16 11.2 Nullification of Settlement Agreement. In the event: (i) the Court does not enter
17 the Order specified herein; (ii) the Court does not issue an order finally approving the Settlement,
18 as provided herein, or said order does not become final as a result of the occurrence of the
19 Effective Date; (iii) Defendant or the Class Representative elect to terminate the Settlement as
20 set forth herein; or (iv) the Settlement does not become final for any other reason, this Settlement
21 Agreement shall be null and void and any order entered by the Court in furtherance of this
22 Settlement shall be treated as void from the beginning. In such a case, the Parties shall be
23 returned to their respective statuses as of the date and time immediately prior to the execution of
24 this Agreement. In the event appellate review is sought prior to the Effective Date, administration
25 of the Settlement shall be stayed pending final resolution of the appeal.

26 **12. NO EFFECT ON EMPLOYEE BENEFITS**

27 12.1 The Settlement Awards paid to the Class Representative or other Participating
28 Settlement Class Members shall not have any effect on the eligibility for, or calculation of, any

1 of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Class
2 Representative or Participating Settlement Class Members. The Parties agree that any Settlement
3 Awards to Participating Settlement Class Members under the terms of this Agreement do not
4 represent any modification of Participating Settlement Class Members' previously credited hours
5 of service or other eligibility criteria under any employee pension benefit plan or employee
6 welfare benefit plan sponsored by Defendant. Further, any Settlement Awards or Service Award
7 hereunder shall not be considered "compensation" in any year for purposes of determining
8 eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare
9 benefit plan, or incentive compensation plan sponsored by Defendant.

10 **13. PUBLICITY**

11 13.1 The Class Representative and Class Counsel agree that they have not and will not
12 publish the resolution of this case. In response to any inquiries, Class Representative and Class
13 Counsel will state that "the case was resolved and any court documents can be accessed through
14 the Court's website." Class Counsel shall not report the resolution of this case in any medium or
15 in any publication, shall not post or report anything regarding the claims of Class Representative
16 or the Class Members or the resolution of this case on their website, and shall not contact any
17 reporters or media regarding the resolution of this case. However, Class Counsel are authorized
18 to make a limited disclosure to the Court and the LWDA for the purposes of obtaining the
19 approval of the settlement and may discuss the settlement with the Class Members. This
20 disclosure is limited to court filings and neither Class Representative nor their counsel or
21 representatives are permitted to disseminate, publish, or distribute the information provided to
22 the Court in those filings outside the filings themselves and any hearing held on those filings,
23 unless ordered otherwise by the Court.

24 **14. EXHIBIT(S) AND HEADINGS**

25 14.1 The terms of this Agreement include the terms set forth in any attached Exhibit(s),
26 which are incorporated by this reference as though fully set forth herein. Any Exhibit(s) to this
27 Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or
28 sections of this Agreement are inserted for convenience of reference only and do not constitute a

1 part of this Agreement.

2 **15. INTERIM STAY OF PROCEEDINGS**

3 15.1 The Parties agree to hold all proceedings and deadlines in the Action, except such
4 proceedings necessary to implement and complete the Settlement, in abeyance pending the
5 Preliminary and Final Approval Hearings to be conducted by the Superior Court. Said stay shall
6 terminate if and when (1) the Court permanently denies approval (preliminary or final) of the
7 Settlement or, (2) the Court issues an Order terminating the stay.

8 **16. AMENDMENT OR MODIFICATION**

9 16.1 This Agreement may be amended or modified only by a written instrument signed
10 by counsel for all Parties or their successors-in-interest.

11 **17. ENTIRE AGREEMENT**

12 17.1 This Agreement and any attached Exhibit(s) constitute the entire agreement
13 among these Parties, and no oral or written representations, warranties or inducements have been
14 made to any Party concerning this Agreement or its Exhibit(s) other than the representations,
15 warranties and covenants contained and memorialized in such documents.

16 **18. AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT**

17 18.1 Counsel for all Parties warrant and represent they are expressly authorized by the
18 Parties whom they represent to negotiate this Agreement and to take all appropriate action
19 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
20 terms, and to execute any other documents required to effectuate the terms of this Agreement.
21 The Parties and their counsel will cooperate with each other and use their best efforts to effect
22 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
23 the form or content of any document needed to implement the Settlement, or on any supplemental
24 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may
25 seek the assistance of the Superior Court to resolve such disagreement. The persons signing this
26 Agreement on behalf of Defendant warrant that they are authorized to sign this
27 Agreement on behalf of Defendant.
28

1 **19. BINDING ON SUCCESSORS AND ASSIGNS**

2 19.1 This Agreement shall be binding upon, and inure to the benefit of, the successors
3 or assigns of the Parties hereto, as previously defined.

4 **20. CALIFORNIA LAW GOVERNS**

5 20.1 All terms of this Agreement and the Exhibit(s) hereto shall be governed by and
6 interpreted according to the laws of the State of California.

7 **21. COUNTERPARTS**

8 21.1 This Agreement may be executed in one or more counterparts. All executed
9 counterparts and each of them shall be deemed to be one and the same instrument provided that
10 counsel for the Parties to this Agreement shall exchange among themselves original signed
11 counterparts.

12 **22. THIS SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

13 22.1 The Parties believe this Settlement is a fair, adequate and reasonable settlement
14 of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking
15 into account all relevant factors, present and potential.

16 **23. JURISDICTION OF THE COURT**

17 23.1 The Court shall retain jurisdiction with respect to the interpretation,
18 implementation and enforcement of the terms of this Agreement and all orders entered in
19 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the
20 Court for purposes of interpreting, implementing and enforcing the settlement embodied in this
21 Agreement and all orders entered in connection therewith.

22 **24. COOPERATION AND DRAFTING**

23 24.1 Each of the Parties has cooperated in the drafting and preparation of this
24 Agreement. Hence, in any construction made to this Agreement, the same shall not be construed
25 against any of the Parties. The Parties agree to take all necessary measures to effectuate this
26 Agreement according to its terms and scope.

27 **25. INVALIDITY OF ANY PROVISION**

28 25.1 Before declaring any provision of this Agreement invalid, the Court shall first

attempt to construe the provisions valid to the fullest extent possibly consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

26. CLASS REPRESENTATIVE'S WAIVER OF RIGHT TO BE EXCLUDED AND OBJECT

26.1 The Class Representative agrees to sign this Agreement and by signing this Agreement is bound by the terms herein stated and further agrees not to request to be excluded from the Settlement Class and agrees not to object to any of the terms of this Agreement. Non-compliance by the Class Representative with this Paragraph shall be void and of no force or effect. Any such requests for exclusion or objections shall therefore be void and of no force or effect.

27. FAX/ELECTRONIC SIGNATURES

27.1 A fax or electronic signature, such as DocuSign, on this Agreement shall be as valid as an original signature.

DATE: 8/14/2022

DocuSigned by:

 0D88888870888888...

Plaintiff
 Martin Ortiz

DATE: _____

Defendant
 Tara Materials, Inc.

By: _____

Its: _____

APPROVED AS TO FORM:

DATE: August __, 2022

FISHER & PHILLIPS LLP

By: _____
 Danielle Hultenius Moore
 Bret Martin
 Benjamin P. Carney

attempt to construe the provisions valid to the fullest extent possibly consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

26. CLASS REPRESENTATIVE'S WAIVER OF RIGHT TO BE EXCLUDED AND OBJECT

26.1 The Class Representative agrees to sign this Agreement and by signing this Agreement is bound by the terms herein stated and further agrees not to request to be excluded from the Settlement Class and agrees not to object to any of the terms of this Agreement. Non-compliance by the Class Representative with this Paragraph shall be void and of no force or effect. Any such requests for exclusion or objections shall therefore be void and of no force or effect.

27. FAX/ELECTRONIC SIGNATURES

27.1 A fax or electronic signature, such as DocuSign, on this Agreement shall be as valid as an original signature.

DATE: _____

Plaintiff
Martin Ortiz

DATE: 8/05/2022

J. Michael Benator
Defendant
Tara Materials, Inc.

By: J. MICHAEL BENATOR

Its: CEO

APPROVED AS TO FORM:

DATE: August 9, 2022

FISHER & PHILLIPS LLP

By: Bret Martin
Danielle Hultenius Moore
Bret Martin
Benjamin P. Carney

Attorneys for Tara Materials, Inc.

DATE: August 14, 2022

WILSHIRE LAW FIRM

By: _____

Justin F. Marquez

Benjamin H. Haber

Arrash T. Fattahi

Attorney for Plaintiff Martin Ortiz

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
Martin Ortiz v. Tara Materials, Inc.
Case No. 37-2021-00001473-CU-OE-CTL

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

**TARA MATERIALS, INC. WILL NOT RETALIATE AGAINST YOU FOR PARTICIPATING
IN THIS SETTLEMENT.**

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class action (“the Action”) filed in the San Diego County Superior Court has been reached by Tara Materials, Inc. (“Tara Materials”) and Martin Ortiz (“Plaintiff”), an individual, on behalf of himself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The San Diego County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class Member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

- Tara Materials has agreed to settle a lawsuit brought on behalf of all persons who worked for Tara Materials in California as an hourly-paid or non-exempt employee during the period from January 13, 2017 through March 15, 2022 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of Tara Materials: minimum wage, straight time wage, overtime and/or double time wage, failure to pay for all hours worked, meal and rest breaks and any premiums thereon, wage statement violations, waiting time penalties, failure to indemnify for expenditures, and other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and penalties under California’s Private Attorneys General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of Tara Materials. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases Tara Materials from liability for these claims.
- The Parties in the lawsuit disagree on whether Tara Materials is liable for the allegations raised in this case and how much money could have been won if the employees won at trial.
- **Your legal rights may be affected. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Get a Payment	If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you do not exclude yourself, you will receive a payment and will give up certain rights as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself	Get no payment. Send a letter to the Settlement Administrator as provided below. This is the only option that allows you to bring your own claim against Tara Materials about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion. Note that even if you exclude yourself, if the Court approves the Settlement, you will still release your claims under the PAGA only and will receive a settlement payment as to the PAGA only.
Object	Write to the Court about why you do not like the settlement. Directions are provided below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of a class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit in San Diego County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid all minimum, straight time, and overtime wages, were not paid for or properly provided meal and rest breaks, were not paid all wages due at termination and/or resignation, were not issued accurate wage statements, were not provided reimbursements for all necessary business-related expenses, and were subjected to unfair competition. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

Tara Materials denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. Tara Materials contends, among other things, that they complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. Tara Materials further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiff or Tara Materials. Plaintiff thinks he would have prevailed on his claims at a trial. Tara Materials does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the

costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all persons who worked for Tara Materials in California as an hourly-paid or non-exempt employee during the Settlement Period.

C. What does the Settlement provide?

1. Settlement Amount.

Tara Materials will pay a total of One Hundred and Forty Thousand Dollars and Zero Cents (\$140,000.00) (the "Settlement Amount") to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (inclusive of all employment taxes and all other legally required withholdings that would otherwise be due from the individual class members) to the Settlement Class, Attorneys' Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$46,666.67), Litigation Expenses not to exceed \$15,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$10,000.00, the PAGA Settlement Payment in the amount of \$5,000.00, and an enhancement payment to the Named Plaintiff not to exceed \$2,500.00. Any and all Employer Taxes which Tara Materials normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by Tara Materials separate and apart from the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys' Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement Payment at the same time and manner as the Net Settlement Payments to the Settlement Class Members.

2. Net Settlement Amount.

"Net Settlement Amount" means the Settlement Amount minus the Attorneys' Fees, Litigation Expenses, Settlement Administrative Costs, the portion of the PAGA Settlement payment payable to the Labor & Workforce Development Agency ("LWDA"), and the enhancement payment to the Named Plaintiff.

3. Your Individual Payment Amount.

The Claims Administrator will calculate the total number of workweeks for all Class Members who were employed by Defendant Tara Materials during the Settlement Period ("Total Workweeks"). The value of each Workweek shall be determined by the Claims Administrator by dividing the Net Settlement Amount by the total number of Workweeks available to the Class Members who do not "opt out" (as defined on page 5 below) during the Settlement Period ("Workweek Point Value").

An "Individual Settlement Payment" for each Class Member will then be determined by multiplying a Class Member's workweeks ("Eligible Workweeks") by the Workweek Point Value. The Individual Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

In addition, all persons who worked for Tara Materials in California as an hourly-paid or non-exempt employee (“PAGA Group Member”) during the period of January 19, 2020 to March 15, 2022 (“PAGA Period”) will be paid a pro-rata share of the \$1,250.00 allocated for the PAGA Group Members’ share of the PAGA penalties. If you are a PAGA Group Member and the Court approves the Settlement, then you will receive a payment for your pro-rata share of the PAGA settlement regardless of whether you choose to exclude yourself from the Settlement.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class Members reflecting the payments each Settlement Class Member receives under the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 20% as wages and 80% as penalties and interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

As of the Effective Date (as that term is defined in Section 1.19 of the Settlement Agreement), all members of the Settlement Class (excluding those who have timely submitted a valid Request for Exclusion), including each of their respective attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs, successors, and assigns, and the Named Plaintiff, release Tara Materials and each of its former or present parents, subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or successors, and all agents, employees, officers, directors, shareholders, partners, members, managers, holding companies, insurers, and attorneys thereof (the “Released Parties”) from all claims asserted under any applicable laws and/or regulations relating to any and all facts and claims asserted in the Action or any other claims, with the exception of all claims under the PAGA, that could have been asserted in the Action based on the facts alleged, including without limitation claims related to minimum wages, overtime and double time wages (including, but not limited to, any claims for additional wages owed due to “rounding” or “off the clock” work); meal and rest breaks; failure to maintain accurate employment records; wage statement violations; separation pay violations; failure to reimburse business expenses; and unfair business practices arising during the Settlement Period.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on [REDACTED], 2023, at 330 West Broadway, San Diego, California 92101, in Department C-67 of the San Diego County Superior Court. The Court will determine: (i) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (ii) whether the Settlement Class Members should be bound by the terms of the settlement; (iii) the amount of the attorneys’ fees and costs to Plaintiff’s counsel; and (iv) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You are permitted to provide an objection at the Final Approval Hearing, in the first instance, even if you did not provide a written objection beforehand. You have a right to attend this hearing, but you are not required to do so.

You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiff's counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – GET A PAYMENT**

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.

The amount of the Settlement Payment paid to each Settlement Class Member is based upon the number of workweeks you worked between January 13, 2017 through March 15, 2022.

The average potential recovery for each proposed Settlement Class Member is \$ [REDACTED].

The estimated amount of your Settlement Payment is \$ [REDACTED]. The estimated number of workweeks you worked for Tara Materials during the Settlement Period is: [REDACTED]. If you believe that the number of workweeks stated is incorrect, you must notify the Settlement Administrator by [45 days after mailing] of the dispute and submit documentation to support such dispute. You can only dispute your number of workweeks if you do not exclude yourself from the Settlement Class. If you believe that the number of workweeks stated is correct, you do not have to do anything.

In addition, all persons who worked for Tara Materials in California as a PAGA Group Member during the PAGA Period will be paid a pro-rata share of the Weekly PAGA Amount. The estimated number of workweeks you worked for Tara Materials during the PAGA Period is: [REDACTED]. Your Estimated Weekly PAGA Amount is \$ [REDACTED]. Class Members who are PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the Settlement.

The Settlement Payment you will receive will be a full and final settlement of your released claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against Tara Materials, subject to time limits called Statute of Limitations and other potential defenses that Tara Materials may assert, and to pursue your own claims in a separate suit.

In order to exclude yourself from the Settlement Class, you must submit a Request for Exclusion no later than [REDACTED] [45 days after mailing]. A Request for Exclusion is a letter or written request to be

excluded from the Settlement Class submitted by you to the Settlement Administrator, Phoenix Settlement Administrators [insert address]. In order to be valid, the Request for Exclusion must include the your name, address, telephone number, last four digits of the Social Security number, years of employment, and signature, and contain a statement to the effect of: "I wish to be excluded from the Settlement Class."

Note that even if you exclude yourself, if the Court approves the Settlement, you will still release your claims under the PAGA only and will receive a settlement payment as to the PAGA only.

• **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing to object, regardless of whether you provided a written objection beforehand, either in person or through an attorney at your own expense.

Any written objection may be mailed to the Settlement Administrator at [redacted] (Address) by [redacted] [45 days after mailing].

The contact information for Plaintiff's counsel and Defendant's counsel is provided below solely for your informational purposes. Written objections should only be sent to the Settlement Administrator at the address provided above, not to Plaintiff's counsel or Defendant's counsel.

PLAINTIFF'S/CLASS COUNSEL

Justin F. Marquez
justin@wilshirelawfirm.com
Benjamin H. Haber
benjamin@wilshirelawfirm.com
Arrash T. Fattahi
afattahi@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

TARA MATERIALS, INC.'S COUNSEL

Danielle Hultenius Moore
dmoore@fisherphillips.com
Bret Martin
bmartin@fisherphillips.com
Benjamin P. Carney
bcarney@fisherphillips.com
FISHER & PHILLIPS LLP
4747 Executive Drive, Suite 1000
San Diego, California 92121
Telephone: (858) 597-9600
Facsimile: (858) 597-9601

CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Settlement Award or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator at:

Phoenix Settlement Administrators
[Insert address]

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Joint Stipulation of Class Action and PAGA Representative Claims” which is available for viewing online, along with other court records regarding this case, on the following website:

URL: [Insert website provided by Settlement Administrator]

The pleadings and other records in the lawsuit are also available on the website.

Alternatively, you may also obtain a copy of the Settlement Agreement and related documents online through the San Diego County Superior Court’s website, by going to the following webpage: <https://roa.sdcourt.ca.gov/roa/> and entering “37-2021-00001473-CU-OE-CTL” for the case number.

ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF’S COUNSEL LISTED ABOVE OR TO THE SETTLEMENT ADMINISTRATOR, Phoenix Settlement Administrators, [insert contact information]. Please refer to the *Martin Ortiz v. Tara Materials, Inc.* Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS

Exhibit 3



CASE ASSUMPTIONS

Class Members	75
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	74
Subtotal Admin Only	\$6,500.00

Not-to-Exceed Total \$6,500.00

For 75 Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

January 5, 2023

Case: Ortiz v. Tara Materials Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez

Firm: Wilshire Law Firm, PLC

Contact Number: (213) 381-9988, Ext. 345

Email: justin@wilshirelawfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on **75** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable

additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$107.39	1	\$107.39
Call Center & Long Distance	\$2.00	16	\$32.00
NCOA (USPS)	\$25.00	1	\$25.00
Total			\$564.39

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.50	75	\$37.50
Notice Packet & Opt-Out Form	\$2.00	75	\$150.00
Estimated Postage (up to 2 oz.)*	\$0.84	75	\$63.00
Static Website	\$200.00	1	\$200.00
Language Translation	\$1,000.00	1	\$1,000.00
Total			\$1,700.50

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	2	\$110.00
Skip Tracing Undeliverables	\$2.00	15	\$30.00
Remail Notice Packets	\$2.00	15	\$30.00
Estimated Postage	\$0.84	15	\$12.60
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$232.60

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$135.00	2	\$270.00
Non Opt-Out Processing	\$100.00	1	\$100.00
Case Associate	\$55.00	2	\$110.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	3	\$30.00
Case Manager	\$85.00	2	\$170.00
Total			\$680.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	2	\$270.00
Disbursement Review	\$135.00	2	\$270.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$100.00	2	\$200.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks *	\$1.75	74	\$129.94
Estimated Postage	\$0.61	74	\$45.29
Total			\$1,355.23

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	3	\$300.00
Remail Undeliverable Checks (Postage Included)	\$1.50	15	\$22.28
Case Associate	\$50.00	2	\$100.00
Reconcile Uncashed Checks	\$75.00	2	\$150.00
Conclusion Reports	\$125.00	1	\$125.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$125.00	2	\$250.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$650.00	1	\$650.00
Check to Cy-Pres	\$150.00	1	Included
Uncashed Checks to the State of California Controllers Office	\$200.00	1	\$200.00
Estimated N/A Total Class Members			
Total			\$1,967.28

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$6,500.00



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

Ortiz v. Tara Materials, Inc., et al.
37-2021-00001473-CU-OE-CTL

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is anarinyans@wilshirelawfirm.com.

On January 6, 2023, I served the foregoing **DECLARATION OF JUSTIN F. MARQUEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Danielle Hultenius Moore (SBN 232480)
dmoore@fisherphillips.com
 Bret Martin (SBN 304658)
bmartin@fisherphillips.com
 Benjamin P. Carney (SBN 317206)
bcarney@fisherphillips.com
FISHER & PHILLIPS LLP
 4747 Executive Drive, Suite 1000
 San Diego, California 92121
 Telephone: (858) 597-9600
 Facsimile: (858) 597-9601

Attorneys for Defendant

- (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.
- (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.
- (X) **BY MAIL:** I enclosed the above documents in a sealed envelope with postage thereon fully prepaid and placed for collection and mailing on the above date in accordance with ordinary business practices. I am readily familiar with this firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service the same day in the ordinary course of business pursuant to Cal. Code Civ. Proc. § 1013(a).

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on **January 6, 2023**, at Los Angeles, California.

Ashley Narinyans
Type or Print Name


Signature