

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("Settlement Agreement") is reached by and between Plaintiff Stephen Fiant ("Plaintiff" or "Class Representative"), as an individual and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Ernie Ball, Inc. ("Defendant"), on the other hand. Plaintiff and Defendant are referred to herein collectively as the "Parties." Plaintiff and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC (collectively, "Class Counsel"). Defendant is represented by Kathryn M. Eppright and Michaela R. Cotton of Andre, Morris & Buttery, APC.

On January 14, 2021, Plaintiff filed a class action complaint against Defendant in San Luis Obispo County Superior Court, titled *Stephen Fiant v. Ernie Ball, Inc.*, Case No. 21CV-0016 (the "Action"). On March 22, 2021, Plaintiff filed the operative First Amended Complaint ("FAC"), alleging that Defendant: (i) failed to pay all overtime wages; (ii) failed to authorize and permit all lawful rest periods; (iii) failed to issue accurate itemized wage statements; (iv) failed to timely pay all final wages due upon separation from employment; (v) failed to comply with California's Unfair Competition laws; and (vi) is liable for civil penalties under the Private Attorneys General Act, Labor Code § 2968 *et seq.* ("PAGA").

As a material term of this Settlement, the Parties agree to the filing of a Second Amended Complaint ("SAC") removing Plaintiff's rest period cause of action and all allegations of an allegedly defective alternative workweek schedule or unlawful rest break policy, as well as claims for any alleged unpaid wages, overtime, premium or other payments or penalties arising from those two theories of liability. Plaintiff agrees to file simultaneously a Request for Dismissal Without Prejudice of the Second Cause of Action in the FAC and a Joint Stipulation to File the SAC within five (5) days after the full execution of this Settlement Agreement. Further, Plaintiff agrees to file the SAC within fourteen (14) days of the court's entry of an order on the Parties' joint stipulation to file the SAC.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, the Parties agree as follows:

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

All current and former non-exempt employees who worked for Defendant in California and received both an attendance bonus during the COVID-19 pandemic and overtime wages in the same pay period during at least one pay period between January 14, 2017 and October 1, 2021 (the "Class Period").

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

2. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out) will fully release and discharge Defendant and any of its former or present parents, subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or successors, clients, and all agents, employees, officers, directors, members, managers, holding companies, insurers, and attorneys thereof, (collectively, the "Released Parties"), as follows:

- A. All Settlement Class members who have not opted out will release and discharge the Released Parties from liability for all claims arising from Defendant's alleged Labor Code violations for its failure to include the value of non-discretionary bonus payments in the regular rate of pay when calculating employee overtime wages, including claims for unpaid overtime wages, wage statement violations, waiting time penalties, and PAGA civil penalties, that arose during the Class Period ("Released Claims").
- B. In light of Plaintiff's Class Representative Enhancement Payment, Plaintiff agrees to release, as individuals and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against Defendant. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers' compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding.

The Settlement shall become effective on the date upon which the Court signs an order granting final approval of the Settlement Agreement ("Effective Date").

3. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Maximum Settlement Amount" of \$145,000.00 in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.
- B. The Maximum Settlement Amount will be paid by Defendant to the Claims Administrator no later than 30 calendar days after the Effective Date.

C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class members;
- (2) All costs of the Settlement Administrator which are anticipated to be no greater than \$7,500.00;
- (3) Up to \$5,000.00 for Plaintiff's Class Representative Enhancement Payment in recognition for Plaintiff's contributions to the Action and service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;
- (4) Up to one-third (33.33%) of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$48,333.33), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$12,500. In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding; and
- (5) \$10,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$7,500.00, will be payable to the California Labor & Workforce Development Agency ("LWDA"), and the remaining 25%, or \$2,500.00, will be payable to the Settlement Class members as the "PAGA Amount," as described below.

D. Defendants will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.

E. **Escalator Clause.** Defendant represents that there are an estimated 207 total Settlement Class members. If, at the time of preliminary approval, the actual number of Settlement Class members exceeds this figure by more than 10% (i.e., if there are 228 or more total Settlement Class members), Defendant shall increase the Maximum Settlement Amount on a proportional basis (i.e., if there was a 12% increase in the number of Settlement Class Members, Defendant shall increase the Maximum Settlement Amount by 12%).

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Settlement Award") from the Settlement. Settlement Awards will be determined and paid as follows:

A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees,

Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."

- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula:
- i. Wage Statement/PAGA Amount: Forty percent (40%) of the Net Settlement Amount plus the \$2,500.00 payable to the Settlement Class members as the PAGA Amount shall be designated as the "Wage Statement/PAGA Amount." Each participating Settlement Class member who was employed by Defendant at any time between January 14, 2020 and the end of the Class Period, shall receive a portion of the Wage Statement/PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
 - ii. Waiting Time Amount: Forty percent (40%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time between January 14, 2018 and the end of the Class Period.
 - iii. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- C. Within 10 business days after the Maximum Settlement Amount has been fully funded with the Settlement Administrator, the Settlement Administrator will calculate each participating Settlement Class member's Settlement Award, and will prepare and mail Settlement Awards to the participating Settlement Class members, less applicable taxes and withholdings.
- D. Each Settlement Award shall be allocated as 100% penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form 1099.
- E. Defendant shall fully discharge its obligations to the participating Settlement Class members through the mailing of a Settlement Award, regardless of whether such checks are actually received and/or negotiated by the recipients. Each member of the Settlement Class who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any check that is not

negotiated within one hundred eighty (180) days of mailing to a Settlement Class member shall be transferred to Community Action Partnership of San Luis Obispo, the Parties' agreed-upon *cy pres* designee.

- F. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$48,333.33. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$12,500 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the fee award approved by the Court.

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

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$7,500.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for depositing into an account and holding the payment from Defendant comprising the Maximum Settlement Amount, sending Notice Packets in English and Spanish to the Settlement Class members, calculating Settlement Awards and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Settlement Awards have been mailed to all participating Settlement Class members.

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

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Alma V. Montenegro of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Stephen Fiant as Class Representative for the Settlement Class;

- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Award), and directing the mailing of the same; and
- G. Scheduling a Final Approval hearing.

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

- A. Within 15 calendar days of the court signing an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, positions held, and workweek data for all Settlement Class members for the Settlement Administrator to use to determine the number of workweeks worked by each Settlement Class member during the Class Period.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Award. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.

- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.
- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing.
- F. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was used to calculate the Settlement Award. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including

any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.

- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

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

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

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

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

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

if to Plaintiff:	Fletcher W. Schmidt of Haines Law Group, APC 2155 Campus Drive, Suite 180, El Segundo, CA 90245 fschmidt@haineslawgroup.com
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if to Defendant: Kathryn M. Eppright of Andre, Morris & Buttery, APC
1102 Laurel Lane, P.O. Box 730, San Luis Obispo, CA 93406-0730
kepwright@amblaw.com

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

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

IN WITNESS THEREOF, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

Dated: Nov 30, 2021

STEPHEN FIANT

Stephen W. Fiant

Stephen W. Fiant (Nov 30, 2021 17:33 PST)

Stephen Fiant, Plaintiff

Dated: Dec 2, 2021

ERNIE BALL, INC.

B. Ball

By: Ernie Ball

Its: CEO

APPROVED AS TO FORM:

Dated: Nov 30, 2021

HAINES LAW GROUP, APC

By: F. H. A.

Paul K. Haines

Fletcher W. Schmidt

Attorneys for Plaintiff

Dated: 12-3-2021

ANDRE, MORRIS & BUTTERY
A Professional Law Corporation

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Kathryn M. Eppright

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