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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

STEPHEN FIANT, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ERNIE BALL, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No. 21CV-0016

*[Assigned for all purposes to the Hon. Tana L.
Coates, Dept. 9]*

**DECLARATION OF MATTHEW K. MOEN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: May 4, 2022
Time: 9:00 a.m.
Dept.: 9

Action Filed: January 14, 2021
Trial Date: None Set

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I, MATTHEW K. MOEN, declare as follows:

1. I am an associate with Haines Law Group, APC, and counsel for the named Plaintiff Stephen Fiant (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I received a Bachelor of Arts degree from UCLA in 2011, and a Juris Doctor from Loyola Law School, Los Angeles, in 2015. Both before and during law school, I worked for the law firm of Prindle, Amaro, Goetz, Hillyard, Barnes & Reinholtz LLP (now known as Prindle, Goetz, Barnes & Reinholtz LLP), located in Long Beach, California. Both before and during law school, I also worked for Jill McBride Baxter, Certified Sports Agent and Sports Law Attorney.

3. From January 2016 to December 2017, I worked as an associate at Baltodano & Baltodano LLP, a law firm dedicated exclusively to the practice of Plaintiff-side employment law located in San Luis Obispo, California. After the co-founder and lead litigation attorney at Baltodano & Baltodano LLP, the Honorable Hernaldo J. Baltodano, was appointed to the California judiciary in December 2017, the firm dissolved on December 31, 2017. Since January 1, 2018, I have worked as an associate at my current firm, Haines Law Group, APC.

4. During my time with both Baltodano & Baltodano LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side employment related cases in both state and federal court, including wage and hour class actions arising under the California Labor Code and the Fair Labor Standards Act. I am currently staffed on over fifty (50) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

5. The following is a non-exhaustive list of the recent wage and hour class actions (that have been granted final approval) in which I have been named as Class Counsel: *Morales v. Ball Horticultural Co.*, Case No. 16CV-0488, San Luis Obispo County Superior Court,

1 Honorable Linda D. Hurst, presiding (approving an hourly rate of \$375 for work performed in
2 2017 and 2018); *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-
3 CU-OE-CXC, Orange County Superior Court, Honorable William D. Claster, presiding;
4 *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-
5 00883282-CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman,
6 presiding; *Willie Daniel Myers, Jr. v. Jerome's Furniture Warehouse*, Case No. CIVDS
7 1715069, San Bernardino County Superior Court, Honorable Janet M. Frangie, presiding
8 (approving an hourly rate of \$375 for work performed in 2018 and 2019); *Tina Arellano v.*
9 *Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court,
10 Honorable Daniel J. Buckley, presiding (approving an hourly rate of \$375 for work performed
11 in 2018 and 2019); *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los
12 Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
13 rate of \$375 for work performed in 2018 and 2019); *Arturo Delgado v. Spears Manufacturing*
14 *Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson,
15 presiding (approving an hourly rate of \$400 for work performed in 2018, 2019, and 2020);
16 *Abbygail Hernandez v. WirelessPCS CA, LLC*, Case No. BC721326, Los Angeles County
17 Superior Court, Honorable Carolyn B. Kuhl, presiding; *Lucia Kang, et al., v. Extra Space*
18 *Management, Inc.*, Case No. 30-2018-00997364-CU-OE-CXC, Orange County Superior Court,
19 Honorable William Claster, presiding (approving an hourly rate of \$400 for work performed in
20 2018, 2019, and 2020); *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San
21 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate
22 of \$400 for work performed in 2019 and 2020); *Francisco Garcia v. Searing Industries, Inc.*,
23 Case No. CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn,
24 presiding (approving an hourly rate of \$400 for work performed in 2019 and 2020); *David*
25 *Hasler, et al. v. Anheuser-Busch, LLC*, Case No. 19STCV00802, Los Angeles County Superior
26 Court, Honorable Daniel J. Buckley, presiding; *Angel Ochoa v. Fonseca Construction, Inc.*,
27 Case No. CIVDS1928625, San Bernardino County Superior Court, Honorable David Cohn,
28 presiding (approving an hourly rate of \$400 for work performed in 2019 to 2021); *William*

1 *Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los Angeles County
2 Superior Court, Honorable Amy D. Hogue, presiding (approving an hourly rate of \$400 for
3 work performed in 2018 to 2021); and *David Alvarado, et al. v. J.G. Boswell Company*, Case
4 No. 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley,
5 presiding (approving an hourly rate of \$400 for work performed in 2019 to 2021).

6 6. I have also moved to certify, and have received an order certifying, a class action
7 as Class Counsel in the following case: *Staublein v. Wells Fargo Bank, National Association*,
8 Case No. CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn, presiding
9 (certifying a wage statement class).

10 7. In 2020-2022, Thomson Reuters and Los Angeles Magazine recognized me as a
11 Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers.
12 This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the
13 age of forty in Southern California each year.

14 8. As counsel for Plaintiff, I have been closely involved in all aspects of this
15 litigation since its inception and believe that the proposed Settlement is a fair and reasonable
16 result for the Class Members.

17 9. Defendant Ernie Ball, Inc. (“Defendant” or “Ernie Ball”) manufactures guitar
18 accessories and electric guitar, acoustic guitar, and bass strings for commercial sale. Plaintiff
19 worked for Defendant as a non-exempt employee from approximately September 16, 2016
20 until approximately July 27, 2020, at Defendant’s San Luis Obispo, California location.
21 Plaintiff’s duties included metalworking, machine operation, and the assembly and fabrication
22 of various tools. Like all Settlement Class members, Plaintiff was subject to Defendant’s wage
23 and hour policies and practices.

24 10. On January 14, 2021, Plaintiff filed the initial Complaint in this action, alleging
25 Defendant failed to: (i) pay all overtime wages owed; (ii) authorize and permit all lawful rest
26 periods; (iii) issue accurate and itemized wage statements; (vi) timely pay all final wages upon
27 separation; and (vii) comply with California’s Unfair Competition laws. On March 22, 2021,
28 Plaintiff filed his First Amended Complaint (“FAC”), adding a cause of action for civil

1 penalties under PAGA, premised on the underlying Labor Code violations. On December 9,
2 2021, the Court issued an Order granting Plaintiff's request for dismissal of his second cause of
3 action for rest period violations and granting Plaintiff leave to file the operative Second
4 Amended Complaint ("SAC") in this action, further removing all allegations of an allegedly
5 defective alternative workweek schedule or unlawful rest break policy, as well as claims for
6 any alleged unpaid wages, overtime, premium or other payments or penalties arising from
7 those two theories of liability. Accordingly, on December 9, 2021, Plaintiff filed the operative
8 SAC, alleging Defendant: (i) failed to pay all overtime wages owed; (ii) failed to issue accurate
9 and itemized wage statements; (iii) failed to timely pay all final wages upon separation; (iv)
10 failed to comply with California's Unfair Competition laws; and (v) is liable for civil penalties
11 under PAGA.

12 11. Plaintiff asserts that, as a result of Defendant's uniform practices, Defendant
13 failed to accurately pay Settlement Class members all overtime wages owed throughout the
14 Class Period. Specifically, Plaintiff alleges that Defendant paid Plaintiff and Settlement Class
15 members non-discretionary attendance bonuses between April and June of 2020 as an incentive
16 for employees to work during the initial months of the COVID-19 pandemic. However,
17 Plaintiff asserts that Defendant failed to include the value of these COVID-19 attendance
18 bonuses when calculating employees' respective regular rates of pay, thereby causing Plaintiff
19 and other non-exempt employees to be underpaid for all required overtime wages.

20 12. In response, Defendant maintains it has properly paid all overtime wages for all
21 hours worked by the Settlement Class members. Defendant argues it compensated all affected
22 current and former employees for all unpaid overtime wages resulting from its alleged regular
23 rate miscalculation after Plaintiff filed the action. As such, Defendant contends that Plaintiff's
24 claim would fail on the merits. Further, Defendant asserts that this claim is unmanageable, as it
25 requires individualized inquiries into exactly how much money each employee was purportedly
26 owed as a result of Defendant's alleged regular rate violation, how much money each
27 employee received as a true up payment from Defendant, and finally, whether or not any
28 overtime wage underpayment remained, resulting in an unmanageable series of mini-trials.

1 13. As a result of Defendant’s failure to pay all overtime wages, Plaintiff asserts
2 that Defendant also failed to issue accurate and itemized wage statements and failed to timely
3 pay all final wages at the time of separation. As a result of these alleged Labor Code violations,
4 Plaintiff also seeks PAGA civil penalties on behalf of all aggrieved employees.

5 14. In response, Defendant argues that Plaintiff’s underlying claims will fail and, as
6 a result, the wholly derivative wage statement, waiting time, and PAGA claims will also fail.
7 Defendant also maintains that Plaintiff cannot show that the wage statement violations were
8 “knowing and intentional,” or that the putative class members “suffer[ed] injury” as a result of
9 the alleged violations, as required by Labor Code § 226(e) for the imposition of wage
10 statement penalties. Further, Defendant argues that the wage statements always accurately
11 reflected hours worked and amounts actually paid to employees, and thus Defendant could not
12 be found liable for wage statement penalties. Moreover, Defendant maintains that their good
13 faith defenses to Plaintiff’s underlying claims would preclude the recovery of waiting time
14 penalties, which are only available for the “willful” failure to pay wages, and that this Court
15 would exercise its discretion to substantially reduce any PAGA penalties awarded.

16 15. In connection with mediation, Defendant provided Plaintiff with electronic
17 timekeeping and payroll records for approximately 25% of the Settlement Class members
18 spanning the entire Class Period, as well as an anonymized list identifying all Settlement Class
19 members and their dates of employment, and other key data points. Plaintiff and his counsel
20 then conducted a comprehensive analysis of the produced data to create a detailed, class-wide
21 exposure model for the claims at issue. On September 2, 2021, the Parties participated in a
22 mediation session with Henry J. Bongiovi, Esq., during which the Parties exchanged divergent
23 views on Defendant’s liability and exposure valuations, their legal positions, and the likelihood
24 of certification of Plaintiff’s claims. With the help of Mr. Bongiovi, the Parties ultimately
25 reached the proposed Settlement now before the Court for preliminary approval.

26 16. Attached hereto as **Exhibit A** is a true and correct copy of the Parties’
27 Stipulation of Settlement. Attached hereto as **Exhibit B** are true and correct copies of the
28

1 Notice of Class Action Settlement (“Class Notice”) and Notice of Settlement Award
2 (collectively, “Notice Packet”).

3 17. If the Court preliminarily approves this settlement, Defendant will pay a
4 Maximum Settlement Amount (“MSA”) of \$145,000.00. Settlement Class members can be
5 easily identified using Defendant’s employment and payroll records. Defendant’s records
6 indicate that there are approximately 207 Settlement Class members, whom worked
7 approximately 824 total eligible pay periods during the Class Period. Based on the estimated
8 Net Settlement Amount, average Settlement Awards are projected to be approximately \$309.98.

9 18. At the time of seeking final settlement approval, Plaintiff will apply for an
10 enhancement payment in the amount of \$5,000.00 for his service to the Settlement Class and
11 his general release of all claims. Plaintiff’s requested enhancement payment is intended to
12 recognize the significant time and effort that he expended on behalf of the Settlement Class,
13 including searching through voluminous employment records and providing all potentially
14 relevant documents to his attorneys, discussing the facts, legal theories at issue in the lawsuit,
15 and Defendant’s policies/practices with his attorneys, discussing the case and proposed
16 settlement with his attorneys on multiple occasions, assisting his attorneys in preparing for
17 mediation, the significant risks Plaintiff undertook by serving as the named plaintiff, and the
18 fact that he agreed to a general release of all claims subject to a waiver of Civil Code § 1542.

19 19. My firm will also apply for an attorneys’ fee award of up to one third of the
20 MSA (currently estimated at \$48,333.33), and up to \$12,500 in reimbursement for actual
21 litigation costs. Plaintiff submits that the requested fee is fair compensation for undertaking
22 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. My
23 firm has incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing
24 Plaintiff’s claims, conducting legal research and analysis, reviewing class documents and data
25 produced by Defendant, extensively reviewing and evaluating the produced timekeeping and
26 payroll records to build a comprehensive damages model, preparing for and attending
27 mediation, negotiating and drafting the Memorandum of Understanding, long-form Settlement
28 Agreement, and Notice Packet documents, preparing this motion for preliminary approval, and

1 otherwise litigating the case. My firm will also expend future attorney time attending the
2 hearing on this Motion, overseeing the Notice process, drafting the Final Approval Motion and
3 supporting documents, attending the Final Approval hearing, and completing other tasks, such
4 as fielding questions from Settlement Class members.

5 20. My firm carefully vetted the claims at issue, reviewed a representative sampling
6 of Settlement Class member data and all relevant policy documents, and created a
7 comprehensive damages model for Defendant's liability. Although the Parties engaged in
8 substantial informal discovery and information exchange prior to mediation, the Parties had
9 agreed to refrain from engaging in formal written and deposition discovery until after
10 exhausting their settlement efforts at mediation. Absent settlement, the Parties will be required
11 to expend substantial time and resources conducting extensive formal written and deposition
12 discovery. Moreover, Plaintiff has not yet filed for class certification, and thus, absent
13 settlement, the Parties would face the prospect of appeals in the wake of a disputed class
14 certification ruling and/or an adverse summary judgment ruling. Even if Plaintiff succeeded in
15 certifying one or more classes, the Parties would incur considerably more attorneys' fees and
16 costs through a possible decertification motion, trial, and possible appeal.

17 21. At the time of the proposed Settlement, Plaintiff had not filed his motion for
18 class certification. Had the Court certified any claims, Plaintiff anticipated that Defendant
19 would seek decertification. There was also a risk that Defendants would engage in a *Pick-up-*
20 *Stix* campaign pursuant to *Chindarah v. Pick Up Stix, Inc.*, (2009) 171 Cal.App.4th 796, to
21 significantly reduce the size of the putative class for a fraction of what Settlement Class
22 members are receiving through this Settlement. Therefore, absent the Settlement, there was a
23 serious risk that Plaintiff would be unable to move forward on a class-wide basis, or that a
24 significantly smaller class would exist than that which is currently before this Court for
25 approval.

26 22. Plaintiff alleges that Defendant failed to pay all overtime wages owed due to its
27 failure to properly include the value of non-discretionary attendance bonus payments when
28 calculating the regular rate of pay for overtime purposes. Plaintiff's data analysis determined

1 that Defendant underpaid the putative Settlement Class members by a total of approximately
2 \$1,519.60 during the Class Period as a result of Defendants' failure to accurately calculate the
3 employees' respective regular rates of pay. However, Defendant contends that after Plaintiff
4 filed this action, Defendant reviewed its regular rate calculations and issued a total of
5 \$7,423.93 in overtime true up payments to the putative Settlement Class members. As such,
6 Defendant maintains that it would have no liability for any alleged unpaid overtime wages.
7 Plaintiff therefore attributed nominal value to this claim.

8 23. According to the key data points provided by Defendant, approximately 207
9 Settlement Class members are eligible for wage statement penalties, and a total of 824 wage
10 statements were issued during the relevant one-year statute of limitations applicable to this
11 claim. Plaintiff calculated Defendant's maximum possible wage statement exposure as
12 approximately \$72,050 ((207 initial violations * \$50 per pay period) + (617 subsequent pay
13 periods * \$100 per pay period)). However, Defendant raises numerous defenses, including that
14 the alleged violations, if any, were not "knowing and intentional," and that Plaintiff could not
15 show that the Settlement Class members "suffer[ed] injury" as a result of any alleged
16 violations. Therefore, Plaintiff discounted the maximum exposure by 30% for the risk of non-
17 certification of the underlying claims and 35% for a risk of being unsuccessful on the merits,
18 including failing to prove the violations were "knowing and intentional," that the Class
19 Members "suffer[ed] injury," or that any derivative wage statement penalties were recoverable,
20 for an estimated recovery on this claim of \$32,782.75.

21 24. Based on data provided by Defendant, approximately 19 Settlement Class
22 members separated their employment during the Class Period. Assuming Plaintiff can prove
23 that each of these employees was owed wages that were not paid at the time of their separation,
24 Plaintiff calculated a maximum exposure of \$74,784 ((average waiting time penalty of \$3,936
25 (\$16.40 average hourly rate x 8 hours x 30)). Defendant maintains that waiting time penalties
26 are not appropriate because Plaintiff's claims fail on the merits, and given its good-faith
27 defenses, Plaintiff cannot show that any failure by Defendant to pay all final wages was willful
28 under 8 Cal. Code Regs. § 13520. Thus, Plaintiff discounted this claim by 30% for the risk of

1 non-certification and by an additional 10% for risk of being unsuccessful on the merits or
2 failing to establish willfulness, for an estimated recovery of \$47,113.92.

3 25. Plaintiff alleges that PAGA civil penalties would be recoverable for each pay
4 period in which he could prove an underlying Labor Code violation. According to Plaintiff's
5 data analysis, the Settlement Class members worked a combined total of 824 pay periods
6 during the PAGA liability period in which Defendant failed to pay employees all of their
7 earned overtime wages. Plaintiff therefore calculates Defendant's maximum PAGA exposure
8 at \$206,000 (824 pay periods x \$250 per violation). However, these penalties are almost
9 exclusively derivative of the underlying violations that Defendant vigorously disputes, both as
10 to certification and the merits. Plaintiff also recognizes that the Court has discretion to
11 substantially reduce any award of PAGA penalties. Therefore, Plaintiff discounted the
12 maximum figure by 30% to account for the risk that he would not prevail on the underlying
13 claims, and by an additional 40% for the likely possibility that this Court would reduce the
14 PAGA penalties, especially given that Defendant had already issued overtime true up payments
15 to the Settlement Class members, to arrive at an estimated exposure on this claim of \$86,520.

16 26. Using these estimated figures, Plaintiff estimated that the potential reasonable
17 recovery for the Settlement Class would be approximately \$166,416.67. Thus, the proposed
18 recovery to the Settlement Class of \$145,000 represents approximately 87.13% of Plaintiff's
19 reasonably forecasted class-wide recovery, which is well within the range approved by courts
20 as being fair, reasonable and adequate, while also avoiding further expense and risk of
21 proceeding towards class certification and trial.

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27. Concurrently with the filing of this motion, Plaintiff provided notice of the proposed Settlement, as well as copies of the Motion for Preliminary Approval and all papers filed in support hereof, to the LWDA. Attached hereto as **Exhibit C** are true and correct copies of Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

I declare under penalty of perjury under the laws of the United States and the state of California that the foregoing is true and correct. Executed on April 7, 2022, at El Segundo, California.

Matthew H. Lee

Matthew K. Moen

EXHIBIT A

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

By: Kathryn Eppright

Kathryn M. Eppright

Michaela R. Cotton

Attorneys for Defendant

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

STEPHEN FIANT, as an individual and on behalf of
all others similarly situated,

Plaintiff,

vs.

ERNIE BALL, INC., a California corporation; and
DOES 1 through 100,

Defendants.

Case No. 21CV-0016

NOTICE OF CLASS ACTION SETTLEMENT

To: All current and former non-exempt employees who worked for Defendant Ernie Ball, Inc. 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. Collectively, these employees will be referred to as "Settlement Class Members."

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Stephen Fiant v. Ernie Ball, Inc.*, San Luis Obispo County Superior Court, Case No. 21CV-0016 (the "Lawsuit"). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant Ernie Ball, Inc.'s ("Defendant") records show that you were employed by Defendant as a non-exempt employee 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 Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

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

What is this case about?

Plaintiff Stephen Fiant ("Plaintiff") brought this lawsuit against Defendant, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class Members, are known as "Class Counsel."

In the Lawsuit, Plaintiff alleges that Defendant paid an attendance bonus during the Covid pandemic but did not include that additional compensation in the calculation of the Regular Rate of Pay when determining the overtime rate to be paid to anyone who worked overtime during that same period. On or about 4-1-2021, Defendant paid the underpaid overtime, but Plaintiff alleged that Defendant owed additional penalties due to the fact that the error resulted in inaccurate itemized wage statements, unpaid wages due at separation of employment, as well as penalties recoverable for unfair competition and under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) ("PAGA").

Defendant denies that it has done anything wrong. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, and that it has any liability to anyone under the claims asserted in the Lawsuit. Defendant denies that it owes Settlement Class Members any wages, restitution, penalties, or other

damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in the best interests of Defendant and the Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided relevant information to Class Counsel, the Settlement was reached after mediation and arms'-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

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

Who are the Attorneys?

Attorneys for Plaintiff / Settlement Class Members:	Attorneys for Defendant, Ernie Ball, Inc.:
HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Fletcher W. Schmidt (SBN 286462) fschmidt@haineslawgroup.com Matthew K. Moen (SBN 305956) mmoen@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	ANDRE, MORRIS & BUTTERY Kathryn M. Eppright, (SBN 161429) keppright@amblaw.com Michaela R. Cotton mcotton@amblaw.com 1102 Laurel Lane Post Office Box 730 San Luis Obispo, California 93406-0730 Telephone: (805) 543-4171 Facsimile: (805) 543-0752

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of 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 during the Class Period. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant, as described below in the “Release” section.

Defendant agreed to pay \$145,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and verified cost reimbursement, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Payment. The following deductions from the Maximum Settlement Amount will be requested by the parties:

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

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount (which is currently estimated to be \$48,833.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$12,500.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award \$5,000.00 to Plaintiff as a Class Representative Enhancement Payment. This is meant to compensate Plaintiff for his general release of claims against Defendant and his service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$10,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$7,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$2,500.00) will be payable to the Settlement Class as part of the Net Settlement Amount.

Calculation of Settlement Class Members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (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 PAGA civil penalties 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 October 1, 2021, 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 October 1, 2021.
- (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.

Settlement Awards to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives a Settlement Award must negotiate that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not negotiated within 180 calendar days after mailing will be distributed by the Settlement Administrator to Community Action Partnership of San Luis Obispo, the Court-approved *cy pres* designee.

Allocation and Taxes. For tax purposes, each Settlement Award will be allocated as 100% penalties and interest issued pursuant to an IRS Form 1099. Settlement Class Members are responsible for the proper income tax treatment of the Settlement Awards. The Settlement Administrator, Defendant and its respective counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully release and discharge Defendant and any of its former or present parents, subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors or successors, and all agents, employees, officers, directors, members, managers, holding companies, insurers, and attorneys thereof, (collectively 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”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and the entry of Judgment.

How can I claim money from the Settlement?

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

What other options do I have?

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

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

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion” letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion must state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *STEPHEN FIANT* v. *ERNIE BALL, INC.* LAWSUIT FILED IN THE SAN LUIS OBISPO COUNTY SUPERIOR COURT, CASE NO. 21CV-0016. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

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

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection must include your full name and current address, as well as contact information for any attorney representing you regarding your objection, the case name and number, all objections and the factual and legal basis for the same, and any and all

supporting papers, briefs, declarations, and/or other evidence supporting your objection. All objections or other correspondence must state the name and number of the case, which is *Stephen Fiant v. Ernie Ball, Inc.*, San Luis Obispo County Superior Court, Case No. 21CV-0016. Objections in writing must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department 9 of the San Luis Obispo County Superior Court, Civil & Family Law Branch, located at 1050 Monterey Street, San Luis Obispo, California 93408. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Department 9 of the San Luis Obispo County Superior Court, Civil & Family Law Branch, located at 1050 Monterey Street, San Luis Obispo, California 93408. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office, at the San Luis Obispo Courthouse, Room 385, located at 1035 Palm Street, California 93408, between the hours of 8:30 a.m. and 4:00 p.m. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANT, OR ITS ATTORNEYS FOR INFORMATION
ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

REMINDER AS TO TIME LIMITS

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

NOTICE OF SETTLEMENT AWARD

STEPHEN FIANT v. ERNIE BALL, INC.
SAN LUIS OBISPO COUNTY SUPERIOR COURT, CASE NO. 21CV-0016

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

(I) Please type or print your name:

(First, Middle, Last)

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

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Settlement Award:

According to Ernie Ball, Inc.'s records:

- (a) You worked _____ workweeks from January 14, 2017 to October 1, 2021 (the Class Period);
- (b) You worked _____ workweeks from January 14, 2020 to October 1, 2021 (the Wage Statement/PAGA Period); and
- (c) Your employment with Defendant <<DID/DID NOT>> end between January 14, 2018 and October 1, 2021 (the Waiting Time Period).

Based on the above, your Settlement Award is estimated to be \$ _____.

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

If you dispute the above information from Ernie Ball, Inc.'s records, those records will control unless you are able to provide documentation that establishes that Ernie Ball, Inc.'s records are mistaken. If there is a dispute about whether Ernie Ball's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____

Date: _____

EXHIBIT C