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MAYRA CORTES

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

MAYRA CORTES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

WETMORE TOOL AND ENGINEERING
COMPANY, a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. CIVDS2016160

*[Assigned for all purposes to the Hon. David S.
Cohn, Dept. S-26]*

**DECLARATION OF ELIZABETH NGUYEN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: June 14, 2021
Time: 10:00 a.m.
Dept.: S-26

Action Filed: July 23, 2020
Trial Date: None

1 I, ELIZABETH NGUYEN, declare as follows:

2 1. I am a shareholder of the law firm Lidman Law, APC, and counsel for the named Plaintiff
3 Mayra Cortes (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I am a
4 member in good standing of the bar of the State of California and am admitted to practice in this Court. I
5 have personal knowledge of the facts stated in this declaration and could testify competently to them if
6 called upon to do so.

7 2. I am a 2005 graduate of Loyola Law School. During law school, I worked as an extern for
8 the Honorable Erithe A. Smith, U.S. Bankruptcy Court for the Central District of California. During law
9 school, I also worked as a law clerk in the Enforcement Unit of the Office of the Chief Trial Counsel for
10 the State Bar of California.

11 3. Since graduating from law school, my practice has focused almost exclusively on
12 employment litigation. In October 2007, I began working as an associate attorney at the international law
13 firm of Littler Mendelson P.C., at its Los Angeles office, which according to its website is the “largest
14 law firm in the world exclusively devoted to representing management in employment, employee benefits
15 and labor law matters.”

16 4. In June 2012, I left Littler Mendelson to work at the Los Angeles office of Reed Smith
17 LLP. During my employment at Reed Smith, I worked exclusively in the labor and employment practice
18 group. In June 2013, I returned to Littler Mendelson as an associate attorney, was promoted to Shareholder
19 in 2015, and was elevated to participating Shareholder in 2017. Since October 2007, my practice has been
20 and continues to be exclusively labor and employment law, with a strong emphasis on wage and hour
21 class actions venued in both state and federal courts. During this time period and my legal career in
22 general, I also worked on a number of single and multi-plaintiff wage and hour matters as well. During
23 my employment at Littler Mendelson, I was a member of its Class Action Practice Group.

24 5. During my employment at Littler Mendelson, I played a significant role in the class actions
25 that I was staffed on, and was primarily responsible for managing the litigation both in my role as a Senior
26 Associate and as a Shareholder. In particular, I received a wide-array of wage and hour class action
27 experience performing the following types of tasks: drafting demurrers, motions to strike and/or dismiss;
28 removing actions from state court to federal court; drafting and responding to written discovery; drafting

1 and opposing discovery related motions; arguing discovery related motions; drafting motions to
2 consolidate related matters; interviewing putative class members and obtaining declarations in connection
3 with class certification; drafting oppositions to motions for class certification; conducting exposure
4 analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class
5 certification and potential damages resulting from such claims; drafting mediation briefs; serving as the
6 primary contact to in-house counsel; deposing named plaintiffs and putative class members; deposing
7 retained expert witnesses; and defending the depositions of corporate witnesses. I also was involved in
8 the negotiations and settlements of many large wage and hour class actions. In short, I played an integral
9 role in all aspects of litigation from the inception of a matter through and beyond class certification. I also
10 supervised the work of several associate attorneys who were staffed on the same wage and hour class
11 actions.

12 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
13 actions that I performed substantial work on while I was an Associate and/or Shareholder at Littler
14 Mendelson:

- 15 ► *Branch v. PM Realty Group, Inc.* Case No. BC575759, Los Angeles Superior
16 Court, County of Los Angeles, Honorable Ann Jones, presiding.
- 17 ► *Herrera v. Pharmavite, LLC*, Case No. BC599201, Los Angeles Superior Court,
18 County of Los Angeles, Honorable Judge Carolyn Kuhl, presiding.
- 19 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
20 States District Court, Central District of California, Honorable Judge Percy
21 Anderson, presiding.
- 22 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
23 States District Court, Central District of California, Honorable Judge Percy
24 Anderson, presiding.
- 25 ► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
26 Superior Court, County of Los Angeles, Honorable Judge Jane Johnson, presiding.¹

27
28 ¹ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

- 1 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
2 Superior Court, County of Orange, Honorable Judge Thierry Patrick Colaw,
3 presiding.
- 4 ▶ *Page v. Luxottica Retail North America, Inc.*, Case No. FCS041512, California
5 Superior Court, County of Solano, Honorable Judge Paul Berman, presiding.
- 6 ▶ *Parker v. FedEx National LTL, Inc.*, Case No. 11-CV-006380-DSF-FFM, United
7 States District Court, Central District of California, Honorable Judge Dale Fischer,
8 presiding.
- 9 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
10 States District Court, Central District of California, Honorable Judge Margaret
11 Morrow, presiding.
- 12 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
13 District Court, Central District of California, Honorable Judge Margaret Morrow,
14 presiding.
- 15 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
16 California Superior Court, County of San Diego, Honorable Judge Jeffrey B.
17 Barton, presiding.
- 18 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
19 Court, County of Santa Clara.
- 20 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior Court,
21 County of Los Angeles, Honorable Judge Terry Green, presiding.
- 22 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
23 Court, County of San Francisco.
- 24 ▶ *Robertson v. FedEx National LTL, Inc.*, Case No. 09-CV-05016-DSF-FFM, United
25 States District Court, Central District of California, Honorable Judge Dale Fischer,
26 presiding.

1 ► *Wittman v. FedEx National LTL, Inc.*, Case No. 09-CV-03663-DSF-FFM, United
2 States District Court, Central District of California, Honorable Judge Dale Fischer,
3 presiding.

4 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to start a law firm
5 with another former Littler Mendelson Shareholder, Scott M. Lidman, to represent employees with work-
6 related claims, including primarily wage and hour claims and almost exclusively on a class-action basis.
7 I am currently a Shareholder of Lidman Law, APC. Currently, over ninety percent (90%) of my practice
8 is dedicated exclusively to the prosecution of wage and hour class actions, and I am currently responsible
9 for prosecuting over sixty-five (65) wage and hour class actions filed in State courts throughout
10 California, with several of them having been removed to Federal courts. I believe that my professional
11 experience renders me more than qualified to serve as class counsel in this lawsuit involving claims of
12 underpaid overtime and minimum wages, meal and rest period violations, and derivative penalty claims.
13 Not only have I litigated dozens of wage and hour cases throughout my career involving similar claims,
14 including the wage and hour class actions identified above, I have litigated similar claims from both
15 plaintiff and defense perspectives. As a result, I am able to realistically assess and evaluate the facts and
16 legal arguments that can be made in pursuit and defense of similar wage and hour claims, as well as those
17 facts and arguments in support and in opposition to class certification. Consequently, I am able to
18 appreciate the significant risks, uncertainties, and delay involved in wage and hour class action litigation.

19 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
20 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
21 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
22 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-2017-
23 00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Cluster
24 presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412, California Superior Court,
25 County of San Bernardino, Honorable Judge David Cohn presiding; *Molina v. Mader News, Inc.*, Case
26 No. BC685960, California Superior Court, County of Los Angeles, Honorable Judge Yvette M.
27 Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case No. BC688326, California
28 Superior Court, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez*

1 v. *H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable
2 Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California
3 Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western*
4 *Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge
5 Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477,
6 California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Huynh*
7 *v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los
8 Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case No.
9 RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes
10 presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court,
11 County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers*
12 *Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of
13 Sacramento, Honorable Judge Alan G. Perkins presiding *Romero v. Fillmore Hospitality, LLC*, Case No.
14 BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson
15 presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California
16 Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al.*
17 *v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of
18 San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578,
19 California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v.*
20 *Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles,
21 Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*,
22 Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the
23 Honorable Judge Philip S. Gutierrez presiding.

24 9. As co-lead counsel for Plaintiff Mayra Cortes and the proposed Settlement Class, I have
25 been intimately involved in every aspect of this case from its inception through the present, and I believe
26 that the proposed Settlement is a favorable result for the Settlement Class Members under the
27 circumstances presented.

28 10. According to its website, Defendant Wetmore Tool and Engineering Company (hereinafter

referred to as “Wetmore” or “Defendant”) is a manufacturer of adaptive shank drill technology, as well as fasteners, reamers and rivet shavers. On July 23, 2020, Plaintiff filed a putative class action complaint against Defendant in San Bernardino County Superior Court. Pursuant to the terms of the Settlement Agreement, subject to Court approval, the Parties stipulated to allow Plaintiff to file a First Amended Complaint Class and Representative Action Complaint (“FAC”) adding causes of action for: (i) failure to provide accurate, itemized wage statements; (ii) failure pay all final wages due upon separation of employment; and (iii) civil penalties under the Labor Code Private Attorneys General Act (“PAGA”). On March 11, 2021, Plaintiff sent a letter to the California Labor Workforce Development Agency (“LWDA”) regarding Defendant’s alleged Labor Code violations and Plaintiff’s intent to bring a claim for civil penalties under the PAGA. Thus, in order to effectuate the terms of the Settlement Agreement, Plaintiff also seeks leave from the Court to file the FAC after exhausting her administrative remedies, which is attached as Exhibit A to the Settlement Agreement.² Therefore, Plaintiff’s primary allegations are that Defendant: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to timely pay all wages upon separation of employment; (7) engaged in unlawful business practices; and (8) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11. After agreeing to participate in early mediation, Defendant informally produced time records and payroll data for the 15% of the putative class randomly selected by Plaintiff, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged in advance of mediation. Plaintiff conducted an analysis of the payroll data and time records produced by Defendant. After the detailed review of the payroll and time records and other documents and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. This discovery also allowed the Parties to discuss the strengths and weaknesses of Plaintiff’s contemplated claims for wage statement violations, waiting time penalties, civil penalties under the PAGA, and Plaintiff’s various theories of liability on her claims. This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims and Defendant’s defenses thereto for mediation.

² The sixty-five day exhaustion period will expire on May 17, 2021.

12. On March 1, 2021, after extensive research and analysis, including a detailed analysis of Defendant's potential exposure by Plaintiff, a full-day mediation was held with Jeffrey A. Ross, Esq., a well-respected wage and hour class action mediator. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, as well as the legal basis for the claims and defenses. As part of the negotiations and settlement discussions, the Parties agreed that Plaintiff would file a First Amended Complaint which adds claims for failure to for failure to issue accurate, itemized wage statements pursuant to Labor Code section 226, failure to timely pay all final wages due upon separation of employment pursuant to Labor Code section 203, and civil penalties under the PAGA pursuant to Labor Code sections 2699 *et seq.* After a full day mediation, the Parties reached agreement and executed a Memorandum of Understanding ("MOU"). Thereafter, the Parties signed the Stipulation of Settlement ("Settlement"). A true and correct copy of the Settlement is attached hereto as **Exhibit 1**. The proposed First Amended Class and Representative Action Complaint ("FAC") is attached to the Settlement as Exhibit A. The proposed Notice of Pendency of Class Action and Proposed Settlement and Notice of Individual Settlement Award are attached as Exhibit B to the Settlement.

13. If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of \$990,000.00. The Settlement is non-reversionary. Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *See* Settlement, ¶ 5.B. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):³	\$990,000.00
Minus Court-approved attorneys' fees (1/3 of GSA):	\$330,000.00
Minus Court-approved, verified costs (up to):	\$25,000.00
Minus Court-approved Class Representative Enhancement:	\$10,000.00
Minus Settlement Administration Costs:	\$8,250.00

³ Defendant represents that there are an estimated 35,395 workweeks worked by the Settlement Class Members during the Class Period as of February 1, 2021. If the number of workweeks during the Class Period is more than 15% greater than this figure (i.e., if there are 40,705) or more workweeks worked by the Settlement Class Members during the Class Period, Defendant has the option to either: (1) agree to increase the Gross Settlement Amount on a proportional basis by the amount by which it exceeds 15% (i.e., if there was 16% increase in the number of workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%); or (2) in the alternative, in the event that this escalator provision is triggered, then Defendant has the option to elect to end the Class Period on the date on which the workweeks reach 40,704 in lieu of paying an increase to the Gross Settlement Amount. *See* Settlement ¶ 5.D.

1 Minus PAGA payment to the LWDA: \$37,500.00⁴

2 **Net Settlement Amount (“NSA”):** **\$579,250.00**

3 Defendant shall pay the Gross Settlement Amount within thirty (30) days of the Effective Date.
4 The “Effective Date” is defined as: the date upon which both of the following have occurred: (i) final
5 approval of the settlement is granted by the Superior Court of California for the County of San Bernardino,
6 or other court assuming jurisdiction of this matter, and (ii) the Court’s Judgment approving the settlement
7 becomes Final. “Final” shall mean the latest of: (i) if there is an appeal of the Court’s Judgment, the date
8 the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to
9 file a petition for writ of certiorari to the California Supreme Court, or, (ii) if a petition for writ of certiorari
10 is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant
11 to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal
12 of the Judgment. *See* Settlement, ¶ 5.A.1. After deducting amounts for the Court-approved attorneys’ fees
13 and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to
14 the LWDA, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) of at least
15 **\$579,250.00** to all Settlement Class members who do not timely opt out. Pursuant to the terms of the
16 Settlement, Defendant will have the option of rescinding the Settlement if more than 5% of the Settlement
17 Class opts out of the Settlement and all actions taken in furtherance of it will thereby be null and void.
18 *See* Settlement ¶ 12. This amount includes the \$12,500.00 PAGA Amount to be paid to the PAGA
19 Employees defined in the Settlement as “All current and former non-exempt, hourly, employees of
20 Defendant Wetmore Tool and Engineering Company who worked in California at any time between July
21 23, 2019 and the date of preliminary approval (or end date of Class Period if Defendant exercises its right
22 under Paragraph 5.D of the Settlement).” Settlement, ¶ 3.

23 14. According to Defendant, there are approximately 274 total Settlement Class members
24 defined as:

25 All current and former non-exempt, hourly, employees of Defendant Wetmore Tool and
26 Engineering Company who worked in California at any time between July 23, 2016 and the
27 date of preliminary approval.

28 ⁴ The total amount allocated to PAGA is \$50,000 which will be split 75% to the LWDA and 25% to the PAGA Employees.
This means \$37,500 of the \$50,000 will be paid to the LWDA and \$12,500 of the \$50,000 will be distributed to the PAGA
Employees.

1 Thus, the average Settlement Award is projected to be approximately \$2,114.05, a fair recovery per
2 person.

3 15. Settlement Class members' claims arise from Defendant's common, uniform policies and
4 practices that applied to Settlement Class members during the class period. Specifically, Plaintiff alleged
5 that Defendant's common and uniform policies and practices resulted in the following violations: (1)
6 failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide
7 all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5)
8 failure to provide accurate, itemized wage statements; (6) failure to timely pay all wages upon separation;
9 (7) unlawful business practices; and (8) liability for civil penalties under the PAGA.

10 16. As described in the accompanying Motion for Preliminary Approval, Plaintiff alleges that
11 she and Settlement Class Members were not fully paid for time worked. Specifically, Plaintiff alleges
12 that Defendant would keep track of Plaintiff's time worked and would unlawfully round/shave Plaintiff's
13 work time such that Plaintiff would not be fully paid for all time worked. This time-shaving and/or
14 rounding practice utilized by Defendant was not even-handed over time and would almost exclusively
15 round and shave in Defendant's favor such that Plaintiff was routinely underpaid for all her time worked.
16 Accordingly, based on a review of the time punch data and payroll records, Plaintiff calculated
17 Defendant's maximum exposure at approximately \$125,780 (35,395 workweeks x .16 [hours per
18 workweek unpaid] x \$22.21 [average overtime rate]).

19 17. Defendant contends that it compensated non-exempt employees for all of their time
20 worked and that the time punch data would necessarily include minutes that were not compensable work
21 time because the employees would not and could not start performing any work prior to the start of the
22 scheduled shift time given the nature of Defendant's manufacturing operations. In addition, Defendant
23 contends employees working on the production floor would not start any work prior to the daily team
24 meetings and that the daily team meetings only occurred after the shift started, meaning even if an
25 employee clocked in prior to the start of his or her shift, the employee would be unable to perform any
26 work until after the team meeting. Defendant also contends that it only rounded during a portion of the
27 relevant time period and its rounding practices were lawful. Defendant further contends any unpaid time
28 was *de minimis* and therefore non-compensable. Defendant further asserts that Plaintiff would be unable

1 to certify a rounding or off-the-clock claim given the individualized inquiries that would be required,
2 given that Defendant's rounding mechanism, according to Defendant, allegedly favored the employees.
3 Based on these risks, Plaintiff discounted the maximum exposure by 20% for the risk of non-certification,
4 and an additional 10% to account for Defendant's defenses on the merits to arrive at an estimated
5 exposure of approximately \$90,562.

6 18. Plaintiff alleges that she and Settlement Class Members were not provided with all legally-
7 required meal periods in compliance with California law due to Defendant's unlawful meal period
8 policies/practices. Specifically, Plaintiff alleges that Defendant's meal period policies/practices failed to
9 required employees to record the start and stop times for alleged meal periods taken. Further, during
10 portions of the relevant time period, Plaintiff was often prevented from taking meal periods at all due to
11 the heavy work demands imposed by Defendant. Additionally, for at least a portion of the class period,
12 Defendant would automatically-deduct 30 minutes from Plaintiff's and other non-exempt employees'
13 work time each shift for a meal break regardless of whether a meal period was actually taken or not, and
14 regardless of whether it was less than 30 minutes. Further, Plaintiff alleges that she and other non-exempt
15 employees did not receive legally-complaint second meal periods when they worked in excess of 10.0
16 hours. Therefore, Plaintiff calculated Defendant's maximum exposure for the alleged first meal period
17 violations at approximately \$3,774,240 ((169,896 shifts over 6.0 hours x \$14.81 [average hourly rate]) +
18 (169,896 shifts over 6.0 hours x .50 [30 minutes auto-deducted] x \$14.81 [average hourly rate])). This
19 estimated exposure is based on Defendant's practice of automatically-deducting 30 minutes for a
20 purported meal period for 100% of all meal enabling shifts, or shifts over 6.0 hours, and also 30 minutes
21 of unpaid time worked for each and every shift with a 30 minute automatically-deducted meal period at
the average hourly rate of pay.

22 19. Defendant counters that it has always provided non-exempt employees with an opportunity
23 to take legally compliant meal periods, utilized a bell schedule to provide employees with legally
24 compliant lunches, and all non-exempt employees within the same department are provided with their
25 meal breaks at the same time. Defendant also counters that any non-compliant meal periods reflected in
26 employee timekeeping records were solely the result of employee choice, rather than any policy or practice
27 of Defendant. Furthermore, Defendant counters that the time records reflect compliant meal periods.
28 Defendant also points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,

1 it are only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken,
2 and that they have always done so. Finally, Defendant contends Plaintiff’s meal period claim is not suited
3 for class certification, since individual inquiries would be required to assess which employees took non-
4 compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a
5 particular employee took a non-compliant meal period or missed a meal period during a particular shift.
6 Accordingly, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and an
7 additional 40% to account for Defendant’s defenses on the merits to arrive at an estimated exposure of
8 \$1,358,726.

9 20. Plaintiff alleges that she and other Settlement Class Members were not authorized and
10 permitted to take all required rest periods due to Defendant’s rest period policies/practices which fail to
11 authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically,
12 Defendant did not authorize and permit Plaintiff to take a 2nd rest period when she worked a shift in excess
13 of 6.0 hours, nor a 3rd rest break for shifts worked in excess of 10.0 hours. Accordingly, Plaintiff calculated
14 Defendant’s maximum exposure at approximately \$2,516,160 (169,896 shifts over 10.0 hours x \$14.81
[average hourly rate]).

15 21. Defendant contends it has always maintained and enforced lawful rest period policies and
16 practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest
17 periods in compliance with California law. Defendant argues Plaintiff’s rest period theory of liability is
18 inherently unsuited for class treatment as it requires an individualized inquiry into whether each
19 Settlement Class member was in fact authorized and permitted to take a compliant rest period, which
20 would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff discounted the
21 maximum exposure by 40% for the risk of non-certification, and an additional 30% to account for
22 Defendant’s defenses on the merits to arrive at an estimated exposure of \$1,056,787.

23 22. Plaintiff further alleges that Defendant issued inaccurate wage statements in violation of
24 Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium wages
25 described above. Specifically, Plaintiff contends that this conduct violated Labor Code § 226(a) because
26 the wage statements issued to Settlement Class Members did not include all hours worked and the rate at
27 which they were being paid. Therefore, Plaintiff calculated Defendant’s maximum exposure for wage
28 statement violations at approximately \$530,100 (($\50.00×110 current employees) + ($\$100.00 \times 5,246$

subsequent wage statements)).

23. Defendant argues that meal and rest period claims cannot support a claim for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. App. 5th 444 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244. Defendant further argues that its alleged wage statement violations could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that she or any other employee “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. As such, Plaintiff discounted the calculated exposure by 30% for a risk of non-certification and an additional 20% for a risk of being unsuccessful on the merits to arrive at an estimated total of \$296,856.

24. Plaintiff alleges that Defendant is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages upon separation of employment. Based on the data provided by Defendant, there were approximately 168 Settlement Class Members who have separated their employment with Defendant during the relevant time period who could be entitled to waiting time penalties. Therefore, Plaintiff calculated Defendant’s maximum exposure for waiting time penalties at approximately \$597,139 (168 former employees x \$14.81 [average regular rate] x 30 days x 8 hours/day).

25. Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and an additional 40% to account for Defendant’s defenses on the merits to arrive at an estimated exposure of approximately \$143,313.

26. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Plaintiff calculated Defendant’s maximum exposure at \$535,600 (5,356 pay periods x \$100 initial violation rate).

27. Defendant argues that Plaintiff’s PAGA claim will fail for the same reasons that her underlying claims will fail. Therefore, Plaintiff discounted the maximum exposure figure by 30% for a risk of being unsuccessful on the merits, and an additional 30% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$262,444.

28. Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$3,208,689. The proposed

1 settlement of \$990,000.00 therefore represents approximately 30.8% of the reasonably forecasted recovery
2 for the Settlement Class. Preliminary approval is appropriate as the settlement will provide tangible
3 monetary relief to Settlement Class members, and will still provide an average recovery to Settlement
4 Class members of over \$2,100.

5 29. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA,
6 which is currently estimated to be \$330,000.00, and up to \$25,000.00 in verified costs reimbursement.
7 Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and
8 time-consuming litigation on a purely contingent fee basis. Further, Plaintiff has provided written
9 approval of the split of attorneys' fees in this action. Class Counsel has incurred substantial attorney fees
10 conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing
11 Defendant's documents and policies, analyzing Settlement Class members' timekeeping data and payroll
12 records, preparing for and attending mediation, negotiating and revising the long-form Settlement,
13 preparing this Motion, and otherwise litigating the case. Class Counsel expect to expend additional
14 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding
15 questions from Settlement Class members, preparing the final approval papers and attending the Final
16 Approval hearing.

17 30. Plaintiff has provided written approval of the split of attorneys' fees in this action: 46.5%
18 to Haines Law Group, APC, 31% to Lidman Law, APC, and 22.5% to the Michael Burgis & Associates,
19 PC. Michael Burgis & Associates, PC is the referring attorney.

20 31. Plaintiff will seek a service award of \$10,000.00 at the time of seeking final approval, of
21 which \$5,000.00 is designated as payment for Plaintiff's agreement to separate her employment with
22 Defendant, and I believe this is reasonable given Plaintiff's efforts in this case and the risks she undertook
23 on behalf of the Settlement Class members, including the risk that she could be liable for Defendant's
24 costs if this case was unsuccessful, and because this amount is consideration for Plaintiff's general release
25 and 1542 waiver against Defendant as well as her agreement to separate her employment with Defendant.
26 Plaintiff was integral in the prosecution of this action, by, among other things, providing substantial
27 factual information and documents to Class Counsel, attending multiple meetings and conferences with
28

1 Class Counsel to discuss the claims and theories at issue in the litigation, and otherwise actively
2 participating in the prosecution of their claims.

3 32. Although the Parties engaged in informal discovery throughout this action, the Parties still
4 had significant discovery to complete in formal litigation had the matter not settled. Moreover, Plaintiff
5 still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class
6 certification ruling for Plaintiff and/or an adverse summary judgment ruling. Even if the classes sought
7 to be certified by Plaintiff were in fact certified, the Parties would incur considerably more attorneys'
8 fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement
9 avoids those risks and the accompanying expense.

10 33. A true and correct copy of Plaintiff's March 11, 2021 letter to the LWDA is attached
11 hereto as **Exhibit 2**. I have directed my office to submit a copy of the instant Motion for Preliminary
12 Approval and all supporting documents via the LWDA's website on the same date concurrently herewith
13 and will have a supplemental proof of service filed after the Motion for Preliminary Approval and all
14 supporting documents are submitted to the LWDA.

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

17 Executed on April 19, 2021 at El Segundo, California.

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20 Elizabeth Nguyen
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EXHIBIT 1

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Mayra Cortes (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Wetmore Tool and Engineering Company (“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 of Haines Law Group, APC and Scott M. Lidman, Elizabeth Nguyen, Milan Moore, and Romina Tamiry of Lidman Law, APC (collectively, “Class Counsel”). Defendant is represented by Krista M. Cabrera of Foley & Lardner LLP.

On July 23, 2020, Plaintiff filed a Complaint against Defendant in San Bernardino County Superior Court, in the matter entitled *Mayra Cortes, as an individual and on behalf of all others similarly situated v. Wetmore Tool and Engineering Company; DOES 1 through 100, inclusive*, Case No. CIVDS2016160 (the “Action”) alleging the following claims against Defendant: (a) failure to pay all minimum wages owed; (b) failure to pay overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods. As a result of the foregoing alleged violations, Plaintiff contends that Defendant is further liable to Plaintiff and the Settlement Class (defined below) because it engaged in unlawful business practices pursuant to Business and Professions Code section 17200 premised on the facts, claims, causes of action or legal theories described above.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class, aggrieved employees and the State of California. Accordingly, Plaintiff and Defendant 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, hourly, employees of Defendant Wetmore Tool and Engineering Company who worked in California at any time between July 23, 2016 and the date of preliminary approval.

For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of July 23, 2016 through the date of preliminary approval of this Settlement Agreement.

The Parties agree that certification for purposes of this Settlement Agreement 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. **Amendment to Complaint.** In connection with the mediation, Defendant provided Plaintiff with time punch and pay data and other information for its hourly employees for the time period July 23, 2016 through the date of mediation. That information was analyzed by Plaintiff,

and the Parties negotiated this Settlement with the intention of resolving not only the claims asserted in the Complaint, but also claims for failure pay all final wages due upon separation of employment pursuant to Labor Code section 203, failure to provide accurate, itemized wage statements pursuant to Labor Code section 226, and civil penalties under the Labor Code Private Attorneys General Act of 2004 pursuant to Labor Code sections 2699 *et seq.* (“PAGA”) based on the factual allegations alleged in the operative complaint and the aforementioned alleged violations of the California Labor Code. Therefore, as a material term and condition of this Settlement, the Parties agree to stipulate, for settlement purposes only, that Plaintiff be granted leave to file a First Amended Complaint to add causes of action for failure pay all final wages due upon separation of employment pursuant to Labor Code section 203, failure to provide accurate, itemized wage statements pursuant to Labor Code section 226, and civil penalties under the Labor Code Private Attorneys General Act of 2004 pursuant to Labor Code sections 2699 *et seq.* based on the factual allegations alleged in the operative complaint and the aforementioned alleged violations of the California Labor Code. Defendant shall cooperate, as necessary, to stipulate to and/or otherwise effectuate the filing of the First Amended Complaint. This Settlement is expressly conditioned upon the Court granting leave to file the First Amended Complaint. If the Court denies preliminary or final approval of this settlement for any reason, then the First Amended Complaint shall be stricken and the pleadings in this Action shall be restored as if no settlement was reached by the parties. The Proposed First Amended Complaint is attached to this Settlement as **Exhibit A**. If the Court grants preliminary approval and leave for Plaintiff to file the First Amended Complaint, Defendant is not required to file an answer to the First Amended Complaint.

3. **PAGA Employees.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the following definition of PAGA Employees:

All current and former non-exempt, hourly, employees of Defendant Wetmore Tool and Engineering Company who worked in California at any time between July 23, 2019 and the date of preliminary approval (or end date of Class Period if Defendant exercises its right under Paragraph 5.D).

For purposes of this Settlement Agreement, the “PAGA Period” and release under the PAGA shall mean the time period between July 23, 2019 through the date of preliminary approval (or end date of Class Period if Defendant exercises its right under Paragraph 5.D).

4. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) will fully and forever completely release and discharge Defendant, and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), as follows:

- A. Settlement Class Members’ Release: Settlement Class members and Plaintiff will release all claims, demands, rights, liabilities and causes of action that were pled, or could reasonably have been pled based on the factual allegations, in any of the Complaints in the Action (including the proposed First Amended Complaint attached hereto as **Exhibit A**) that arose during the Class Period with respect to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay

overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to timely pay all wages due upon separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the “Released Claims”).

- B. Unless otherwise provided herein, the time period for the release of the Released Claims shall be the same time period as the Class Period.
- C. **PAGA Release:** PAGA Employees, including Plaintiff, will release and forever discharge all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 against the Released Parties as alleged in the operative complaint based on the: the (a) failure to pay all minimum wages owed; (b) failure to pay overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; and (f) failure to timely pay all wages due upon separation of employment that occurred during the PAGA Period (collectively, “PAGA Released Claim”). The PAGA Period and the time period of the PAGA Released Claims is defined as the time period July 23, 2019 through the date the Court enters the order granting preliminary approval or end date of Class Period if Defendant exercises its right under Paragraph 5.D (“PAGA Period”).
- D. **Plaintiff’s Release:** In light of the Class Representative Service Award and consideration for Plaintiff separating her employment with Defendant, Plaintiff agrees to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims, which includes waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which 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.

- a. The Parties agree that Plaintiff’s employment will be separated effective on the Effective Date. The Parties have agreed to specifically designate \$5,000 of the requested Class Representative Service Award (in an amount not to exceed \$10,000) as consideration for Plaintiff’s agreement to separate her employment.
- b. Notwithstanding the above, nor anything else in this Settlement, the waiver and release in this Settlement Agreement does not apply to (i) those rights that as a

matter of law cannot be waived, including, but not limited to, workers' compensation claims; and (ii) rights or claims arising out of this Settlement Agreement. This Settlement Agreement in no way affects benefits to be received by Plaintiff in workers' compensation pursuant to the jurisdiction of workers' compensation.

- E. The releases identified herein shall be null and void if the Gross Settlement Amount is not fully funded.

5. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a "Gross Settlement Amount" of Nine Hundred Ninety Thousand Dollars and Zero Cents (\$990,000.00) (unless such Gross Settlement Amount is increased pursuant to Paragraph 5.D below) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators (or other mutually agreeable alternative Settlement Administrator) as the "Settlement Administrator" to administer this Settlement. All administrative costs shall be paid from the Gross Settlement Amount.

1. The Gross Settlement Amount shall be paid by Defendant and deposited with the Settlement Administrator within 30 days of the Effective Date. The term "Effective Date" refers to the date upon which both of the following have occurred: (i) final approval of the settlement is granted by the Superior Court of California for the County of San Bernardino, or other court assuming jurisdiction of this matter, and (ii) the Court's Judgment approving the settlement becomes Final. "Final" shall mean the latest of: (i) if there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court, or, (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

- B. This is a **non-reversionary** settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class members;
- (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Eight Thousand Two Hundred Fifty Dollars and Zero Cents (\$8,250.00);
- (3) Up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for Plaintiff's Class Representative Service Award, in recognition of her contributions to the Action, her service to the Settlement Class, her general release of all claims against Defendant, waiver under section 1542 of the Civil Code, and agreement to separate her employment with Defendant. The Parties have

expressly designated \$5,000 of the requested \$10,000 as consideration for Plaintiff's agreement to separate her employment with Defendant to occur on the Effective Date;

- (4) Up to one-third of the Gross Settlement Amount in Class Counsel's attorneys' fees (including one-third of any increase the Gross Settlement Amount pursuant to Paragraph 5.D) below, 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 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Class Counsel's attorneys' fees are currently estimated to be Three Hundred Thirty Thousand Dollars and Zero Cents (\$330,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees and/or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
- (5) Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

C. Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.

D. **Unexpected Workweeks/Escalator Clause.** Defendant represents that there are an estimated 35,395 workweeks during the Class Period as of February 1, 2021. If the number of workweeks during the Class Period is more than 15% greater than this figure (i.e., if there are 40,705 or more workweeks worked by the Settlement Class Members), Defendant agrees to increase the Gross Settlement Amount on a proportional basis by the amount by which it exceeds 15% (i.e., if there was a 16% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%). If this escalator clause is triggered and the more than 15% increase is reached prior to preliminary approval, Defendant has the option of ending the Class Period on the date on which the workweeks reach 40,704 in lieu of being required to pay the additional amounts.

6. **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 Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative Service Award, the Settlement Administrator's fees and expenses for administration, and the amount designated as PAGA civil penalties 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. Ninety-Five Percent (95%) of the Net Settlement Amount shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of workweeks the Settlement Class Member worked during the Class Period, 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 workweeks worked by all Settlement Class Members (who do not opt out) who worked during the Class Period.
 - ii. Five Percent (5%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." Each participating Settlement Class Member whose employment with Defendant was separated at any time during the Class Period shall receive a portion of the Waiting Time Amount. The Waiting Time Amount shall be distributed equally among each participating Settlement Class Member whose employment with Defendant was separated at any time between July 23, 2017 and the end date of the Class Period.
- C. PAGA Amount: Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each Settlement Class Member (including those who opt-out) who was employed by Defendant at any time during the PAGA Period shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked as a non-exempt employee during this time period. Each PAGA Employee who worked during this time period shall receive a portion of the PAGA Amount, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee's number of workweeks worked as a non-exempt, hourly employee during the PAGA Period, and the denominator of which is the total number of workweeks worked by all PAGA Employees as non-exempt, hourly employees during the PAGA Period.
- D. Within ten (10) calendar days following Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating

Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.

- E. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: seventy-five percent (75%) as wages; and twenty-five percent (25%) as penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- F. Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member.

7. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be Three Hundred Thirty Thousand Dollars and Zero Cents (\$330,000.00) (unless the Gross Settlement Amount is increased pursuant to Paragraph 5.D above, in which case the attorneys' fees shall increase accordingly). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

8. **Class Representative Service Award.** Defendant will not object to a request for a Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff for her time and risk in prosecuting this case, her service to the Settlement Class, her general release of all claims against Defendant, waiver under section 1542 of the Civil Code, and agreement to separate her employment with Defendant. The Parties agree that Plaintiff's employment will be separated effective on the Effective Date. The Parties have agreed to specifically designate \$5,000 of the requested Class Representative Service Award (in an amount not to exceed \$10,000) as consideration for Plaintiff's agreement to separate her employment. This

award will be in addition to Plaintiff's Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

9. **Settlement Administrator.** Defendant will not object the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff's seeking permission to pay up to Eight Thousand Two Hundred Fifty Dollars and Zero Cents (\$8,250.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant's share of taxes payable on the wages, which shall be paid by Defendant separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class members.

10. **Preliminary Approval.** Within 30 calendar days after execution of this Settlement Agreement by all Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Milan Moore, Elizabeth Nguyen, and Romina Tamiry of Lidman Law, APC as Class Counsel.
- C. Appointing Mayra Cortes 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 Notice of Pendency of Class Action and Settlement and Notice of Settlement Award, drafts of which are attached collectively hereto as **Exhibit B**), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

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

- A. Within twenty (20) calendar days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the number of workweeks worked (or information allowing the Settlement Administrator to calculate same) as an hourly, non-exempt employee by each Settlement Class member while employed during the Class Period and PAGA Period (the "Class

Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.

- B. Within fourteen (14) calendar 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) calendar 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) calendar 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 Individual Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (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. Unless otherwise provided for in this Settlement Agreement, 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. The Parties agree there is no statutory or other right for any PAGA Employees to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement. A PAGA Employee who submits a valid and timely Request for Exclusion shall still receive his or her proportionate share of the PAGA Amount and be bound by the PAGA Release.
- iii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.

E. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by mailing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel). Class Counsel shall file any objections with the Court. 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 written objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence, if any; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing in person or virtually irrespective of whether they submitted any written objections.

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 the Settlement Class member's number of pay periods worked as a non-exempt employee during the Class Period. 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. If a resolution cannot be reached by and among the Parties and the Settlement Administrator, the Court will render all final decisions on disputes.

- G. 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 three (3) business days of receiving the returned Notice Packet. If an updated mailing address is identified before the Response Deadline, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) 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 fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant’s Counsel to provide notice of the proposed settlement.

12. **Revocation Option for Defendant.** If more than five percent (5%) of the Settlement Class Members opt out of the Settlement, Defendant may, at its election, rescind the Settlement and all actions taken in furtherance of it will thereby be null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel within ten (10) calendar days after the Settlement Administrator notifies the Parties of a greater than five (5%) opt-out rate. If the option to rescind is exercised, then Defendant shall be solely responsible for all costs of the settlement administration accrued to that point.

13. **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 Service Award, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769 and posting notice of the judgment on a static website created and maintained by the Settlement Administrator.

14. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context

other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendant and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member has suffered any damage. 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.

15. **Non-disclosure and Non-publication.** Plaintiff and Plaintiff's counsel agree not to publicize the Settlement. This provision shall not apply to the filing of any documents with the Court which are necessary to effectuate the Settlement, nor is it intended to interfere with or restrict: (1) the third-party administrator from distributing the notice packets and otherwise complying with its obligation to provide information to affected Class Members; or (2) the third-party administrator from posting any judgment on its website. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. This provision shall not apply to limit Plaintiff and Class Counsel's ability to effectuate their duties to the Settlement Class Members or limit their ability to communicate with Settlement Class Members as contractually required to effectuate the terms of the Settlement Agreement as set forth herein.

16. **Legal Developments.** The Parties agree that Plaintiff will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Claims.

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

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

19. **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 Defendant:	Krista M. Cabrera of Foley & Lardner LLP, 11988 El Camino Real, Ste 400, San Diego, CA 92130; kcabrera@foley.com
------------------	---

if to Plaintiff:

Scott M. Lidman, Elizabeth Nguyen, Milan Moore, and Romina Tamiry of Lidman Law, APC, 2155 Campus Drive, Suite 150 El Segundo, California 90245; slidman@lidmanlaw.com, enguyen@lidmanlaw.com, mmoore@lidmanlaw.com, rtamiry@lidmanlaw.com.

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com

20. **Cooperation.** The Parties agree to work cooperatively and in good faith to execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement, and the Parties agree to work cooperatively, diligently, and in good faith to ensure that all documents necessary to seek the Court's approval of this Settlement are timely filed.

21. **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.

22. **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.

DATED: April 6, 2021

DEFENDANT WETMORE TOOL AND
ENGINEERING COMPANY



By: Brian Norris
Its: President of the Americas

DATED:

DEFENDANT WETMORE TOOL AND
ENGINEERING COMPANY

By: George De La Riva
Its: VP of Operations

if to Plaintiff: Scott M. Lidman, Elizabeth Nguyen, Milan Moore, and Romina Tamiry of Lidman Law, APC, 2155 Campus Drive, Suite 150 El Segundo, California 90245; slidman@lidmanlaw.com, enguyen@lidmanlaw.com, mmoore@lidmanlaw.com, rtamiry@lidmanlaw.com.

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com

20. **Cooperation.** The Parties agree to work cooperatively and in good faith to execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement, and the Parties agree to work cooperatively, diligently, and in good faith to ensure that all documents necessary to seek the Court's approval of this Settlement are timely filed.

21. **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.

22. **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.

DATED: DEFENDANT WETMORE TOOL AND
ENGINEERING COMPANY

By: Brian Norris
Its: President of the Americas

DATED: April 5, 2021

DEFENDANT WETMORE TOOL AND
ENGINEERING COMPANY



By: George La Riva
Its: VP of Operations

DATED: Apr 1, 2021

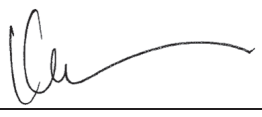
PLAINTIFF MAYRA CORTES

By: 
mayra cortes (Apr 1, 2021 16:31 PDT)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: April 6, 2021

FOLEY & LARDNER LLP

By: 
Krista M. Cabrera,
Attorney for Wetmore Tool
and Engineering Company

DATED: April 2, 2021

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Attorneys for Plaintiff Mayra Cortes

DATED: April 2, 2021

LIDMAN LAW, APC

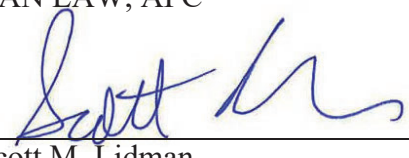
By: 
Scott M. Lidman
Attorneys for Plaintiff Mayra Cortes

EXHIBIT A

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)

slidman@lidmanlaw.com

Elizabeth Nguyen (SBN 238571)

enguyen@lidmanlaw.com

Milan Moore (SBN 308095)

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2155 Campus Drive, Suite 150

El Segundo, California 90245

Tel: (424) 322-4772

Fax: (424) 322-4775

Attorneys for Plaintiff

MAYRA CORTES

[*ADDITIONAL COUNSEL ON NEXT PAGE*]

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

MAYRA CORTES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

WETMORE TOOL AND ENGINEERING
COMPANY, a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. CIVDS2016160

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

- (1) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§
204, 510, 558, 1194, 1198);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) FAILURE TO AUTHORIZE AND
PERMIT ALL PAID REST PERIODS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE § 226
et seq.);**
- (6) FAILURE TO TIMELY PAY ALL
WAGES UPON TERMINATION
(LABOR CODE §§ 201-203);**

- 1 (7) **UNFAIR COMPETITION (BUS &**
2 **PROF CODE § 17200 *et seq.*); and**
3 (8) **CIVIL PENALTIES UNDER THE**
4 **PRIVATE ATTORNEYS GENERAL**
5 **ACT (LABOR CODE § 2698 *et seq.*)**

6 **DEMAND FOR JURY TRIAL**
7 **UNLIMITED CIVIL CASE**

8 **HAINES LAW GROUP, APC**
9 Paul K. Haines (SBN 248226)
10 phaines@haineslawgroup.com
11 2155 Campus Drive, Suite 180
12 El Segundo, California 90245
13 Tel: (424) 292-2350
14 Fax: (424) 292-2355

15 Attorneys for Plaintiff
16 MAYRA CORTES
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1 Plaintiff Mayra Cortes (“Plaintiff”), on behalf of herself and all others similarly situated, hereby
2 brings this First Amended Class and Representative Action Complaint (“FAC”) against Defendants
3 Wetmore Tool and Engineering Company, a Delaware corporation and Does 1 through 100, inclusive
4 (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this FAC for
7 recovery of unpaid wages and penalties under California Business & Professions Code § 17200 *et seq.*,
8 Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et*
9 *seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”), in addition to seeking
10 declaratory relief and restitution. This FAC is brought pursuant to California Code of Civil Procedure §
11 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
12 amount in controversy exceeds this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a) and
15 395.5, as at least some of the acts and omissions complained of herein occurred in the County of San
16 Bernardino. Defendants own, maintain offices, transact business, have agent(s) within the County of San
17 Bernardino, and/or otherwise are found within the County of San Bernardino, and Defendants are within
18 the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff
21 was and currently is, a California resident. During the four years immediately preceding the filing of the
22 lawsuit in this action and within the statute of limitations periods applicable to each cause of action pled
23 herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim
24 of Defendants’ policies and/or practices complained of herein, lost money and/or property, and has been
25 deprived of the rights guaranteed by Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558,
26 1194, 1194.2, 1197, 1198; 2698 *et seq.*, California Business & Professions Code § 17200 *et seq.* (“Unfair
27 Competition Law”); and Wage Order 1, which sets employment standards for occupations in the
28 manufacturing industry, which includes the industry in which Plaintiff works for Defendants.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four years
2 preceding the filing of the lawsuit and continuing to the present, Defendants did (and continue to do)
3 business as a manufacturer of adaptive shank drill technology, as well as fasteners, reamers and rivet
4 shavers. Defendants employed Plaintiff and other, similarly-situated non-exempt employees within,
5 among other counties, San Bernardino County and the state of California and, therefore, were (and are)
6 doing business in San Bernardino County and the State of California.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
8 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants
9 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this FAC
10 when such true names and capacities are discovered. Plaintiff is informed, and believes, and based
11 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
12 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
13 and the Classes (as defined in Paragraph 16) to be subject to the unlawful employment practices, wrongs,
14 injuries and damages complained of herein.

15 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein,
16 Defendants were and are the employers of Plaintiff and all members of the Classes.

17 7. At all times herein mentioned, each of said Defendants participated in the doing of the
18 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
19 and each of them, were the agents, servants, and employees of each and every one of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within
21 the course and scope of said agency and employment. Defendants, and each of them, approved of,
22 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

23 8. At all times mentioned herein, Defendants, and each of them, were members of and
24 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
25 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
26 that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

27 **GENERAL FACTUAL ALLEGATIONS**

28 9. Plaintiff has been employed by Defendants as an hourly, non-exempt employee from

1 approximately March 2018 and performed work for Defendants from approximately March 2018 through
2 January 5, 2019. Plaintiff worked at Defendants' facility located in Chino, California as a machine
3 operator.

4 10. During her employment with Defendants, Plaintiff was generally scheduled to work from
5 approximately 9:00 p.m. to approximately 7:00 a.m. Throughout Plaintiff's employment with
6 Defendants, Defendants utilized policies and procedures that required Plaintiff to clock in and out on a
7 timecard twice a day, when her shift commenced and when it ended. Further, Defendants would keep
8 track of Plaintiff's time worked and would unlawfully shave and/or round Plaintiff's work time such that
9 Plaintiff would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized
10 by Defendants was not even handed over time and would almost exclusively round and shave in
11 Defendants' favor such that Plaintiff was routinely unpaid for her time worked. As a result, Defendants
12 failed to pay Plaintiff all required minimum wages. Further, because Plaintiff would often work more
13 than 8 hours per day and/or 40 hours per week, Defendants' time-shaving practice also deprived Plaintiff
14 of overtime wages owed to her.

15 11. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided with all
16 required meal periods in compliance with California law due to Defendants' unlawful meal period
17 policies/practices. Specifically, Defendants' meal period policies/practices failed to require employees
18 to record the start and stop times for alleged meal periods taken. Further, during portions of the relevant
19 time period, Plaintiff was often prevented from taking meal periods at all due to the heavy work demands
20 imposed by Defendants. Additionally, Plaintiff is informed and believes that, during this time period,
21 Defendants unlawfully automatically deducted thirty (30) minutes from Plaintiff's work time each shift
22 for her meal break regardless of whether a meal period was actually taken or not, and regardless of
23 whether it was less than 30 minutes. As a result, Defendants' policies and practices resulted in the failure
24 by Defendants to provide lawful meal periods and also resulted in the failure to pay wages (including
25 minimum and overtime wages) to Plaintiff and other non-exempt employees.

26 12. Although Plaintiff was not provided with all legally-compliant meal periods to which she
27 was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each
28 workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Upon

information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Plaintiff and their non-exempt employees.

13. In addition, throughout Plaintiff's employment with Defendants, Plaintiff was not authorized and permitted to take all legally compliant rest periods due to Defendants' unlawful rest period policies and practices. Defendants' rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, *or major fraction thereof*. Specifically, Defendants did not authorize and permit Plaintiff to take a 2nd rest period when she worked a shift in excess of 6.0 hours, nor a 3rd rest break for shifts worked in excess of 10.0 hours.

14. Although Plaintiff was not provided with all legally-compliant rest periods to which she was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to Plaintiff and their non-exempt employees.

15. As a result of Defendants' failure to pay all minimum and overtime wages, as well as the failure to pay all meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff. As a further result of Defendants' failure to pay all minimum and overtime wages, as well as the failure to pay all meal and rest period premium wages, Defendants failed to timely pay all wages owed to Plaintiff upon her separation of employment from Defendants.

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- 1 a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt
2 employees in California who were subject to Defendants' timekeeping policies/practices,
3 during the four years preceding the filing of the lawsuit through the present.
- 4 b. The Overtime Class consists of all of Defendants' current and former non-exempt
5 employees in California who worked more than eight hours per day and/or forty hours per
6 week, and were subjected to Defendants' timekeeping policies and practices, during the
7 four years immediately preceding the filing of the lawsuit through the present.
- 8 c. The Meal Period Class consists of all of Defendants' current and former non-exempt
9 employees who worked at least one shift in excess of 5.0 hours during the four years
10 immediately preceding the filing of the lawsuit through the present.
- 11 d. The Rest Period Class consists of all of Defendants' current and former non-exempt
12 employees in California who worked at least one shift of 3.5 hours or more, during the
13 four years immediately preceding the filing of the lawsuit through the present.
- 14 e. The Wage Statement Class consists of all members of the: (i) Minimum Wage Class; (ii)
15 Overtime Class; (iii) Meal Period Class; and/or (iv) Rest Period Class, during the one year
16 immediately preceding the filing of the lawsuit through the present.
- 17 f. The Waiting Time Penalty Class consists of all members of the (i) Minimum Wage Class;
18 (ii) Overtime Class; (iii) Meal Period Class; and/or (iv) Rest Period Class who separated
19 their employment with Defendants during the three years immediately preceding the filing
20 of the lawsuit through the present.
- 21 g. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class;
22 (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Class; and (vi) Waiting
23 Time Penalty Class.

24 17. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend
25 or modify the description of the various classes with greater specificity or further division into subclasses
26 or limitation to particular issues.

27 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder
28 of all members would be unfeasible and not practicable. The membership of the Classes is unknown to

Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants' properly paid all minimum wages and/or overtime wages at the correct regular rate of pay and/or paid for all hours worked to members of the Minimum Wage Class and Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, and 1198;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- v. Whether Defendants policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of their separation of employment were lawful; and
- vi. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

20. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, and meal and rest period policies/practices. As such, the common questions

predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the lawsuit. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum and overtime wages, was not provided with all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when she was not provided compliant meal and rest periods, was not provided with accurate, itemized wage statements, and was not timely paid all wages upon separation of her employment.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for

1 real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment.
2 Further, the prosecution of separate actions by the individual class members, even if possible, would
3 create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual
4 class members against Defendants herein; and which would establish potentially incompatible standards
5 of conduct for Defendants; and/or legal determinations with respect to individual class members which
6 would, as a practical matter, be dispositive of the interest of the other class members not parties to
7 adjudications or which would substantially impair or impede the ability of the class members to protect
8 their interests. Further, the claims of the individual members of the Classes are not sufficiently large to
9 warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending
10 thereto. As such, the Classes identified in Paragraph 16 are maintainable as a Class under § 382 of the
11 Code of Civil Procedure.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

14 **(AGAINST ALL DEFENDANTS)**

15 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully
16 set forth herein.

17 25. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and 1198 which
18 provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and
19 provide a private right of action for the failure to pay all minimum wage compensation for all work
20 performed.

21 26. At all times relevant herein, Defendants were required to properly compensate Plaintiff
22 and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code
23 §§ 1194, 1197 and 1198, and Wage Order 1. Wage Order 1, Section 4 requires an employer to pay to
24 every employee on the established payday for the period involved not less than the applicable minimum
25 wage for all hours worked in the payroll period. Defendants caused Plaintiff and the members of the
26 Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiff and the
27 members of the Minimum Wage Class at least minimum wages for such hours.

28 27. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds

1 for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not
2 a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial
3 Welfare Commission. Defendants therefore, in addition to owing minimum wages to Plaintiff and the
4 members of the Minimum Wage Class, also owe liquidated damages in an amount equal to the wages
5 unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

6 28. The foregoing practices and policies are unlawful and create entitlement to recovery by
7 Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of
8 minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages,
9 civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558,
10 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5, and
11 Civil Code §§ 3287(b) and 3289.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY ALL OVERTIME WAGES OWED**

14 **(AGAINST ALL DEFENDANTS)**

15 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198
17 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked
18 (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the
19 failure to pay all overtime compensation for overtime work performed.

20 31. At all times relevant herein, Defendants were required to properly compensate Plaintiff
21 and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code
22 §§ 510 and 1194, and Wage Order 1. Labor Code § 510 and Wage Order 1, Section 3 require an employer
23 to pay an employee "one and one-half (1½) times the regular rate of pay" for work in excess of 8 hours
24 per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 1, Section
25 3 also require an employer to pay an employee double the employee's regular rate for work in excess of
26 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the
27 workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8
28 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the

1 members of the Overtime Class at one and one-half their regular rate of pay for such hours.

2 32. The foregoing practices and policies are unlawful and create entitlement to recovery by
3 Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime
4 premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys'
5 fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage
6 Order 1, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **(AGAINST ALL DEFENDANTS)**

10 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
12 their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff
13 and members of the Meal Period Class, with all legally compliant meal periods in accordance with the
14 mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations,
15 Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at
16 their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and
17 512.

18 35. As a result, Defendants are responsible for paying premium compensation for meal period
19 violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit,
20 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, California Code of Civil Procedure §
21 1021.5 and Civil Code §§ 3287(b) and 3289.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS**

24 **(AGAINST ALL DEFENDANTS)**

25 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully
26 set forth herein.

27 37. Wage Order 1, § 12 and California Labor Code §§ 226.7 and 516 establish the right of
28 employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest

time for each four (4) hour period worked, or *major fraction thereof*.

38. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required and paid rest periods.

39. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, Wage Order 1, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements with respect to their actual regular and overtime hours worked, total gross wages earned, and total net wages earned in violation of Labor Code § 226 *et seq.*

42. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all earned overtime and minimum wages, and meal and rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

43. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION**

3 **(AGAINST ALL DEFENDANTS)**

4 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 45. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an
6 employer to pay all wages immediately at the time of separation of employment in the event the employer
7 discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the
8 event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages
9 become due and payable not later than 72 hours upon said employee's last date of employment.

10 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to
11 timely pay Plaintiff and members of the Waiting Time Penalty Class all final wages due to them at their
12 separation from employment, including, unpaid minimum wages, overtime wages, and meal and rest
13 period premium wages.

14 47. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of
15 uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting
16 Time Penalty Class all earned wages at the end of employment in a timely manner pursuant to the
17 requirements of Labor Code §§ 201-203.

18 48. Defendants' failure to pay all final wages was willful within the meaning of Labor Code
19 § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Penalty
20 Class their earned wages upon separation from employment results in a continued payment of wages up
21 to thirty days from the time the wages were due.

22 49. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled to
23 compensation pursuant to Labor Code section 203, plus reasonable attorneys' fees and costs of suit.

24 **SEVENTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(AGAINST ALL DEFENDANTS)**

27 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully
28 set forth herein.

51. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to properly pay all minimum and overtime wages, failing to provide all required meal periods and failing to authorize and permit all required rest periods, and failing to pay meal and rest period premium wage payments.

52. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

53. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

54. The acts complained of herein occurred within the last four years immediately preceding the filing of the lawsuit in this action.

55. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

57. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against

Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required and paid rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees;
- e. Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month; and
- g. Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees.

58. On March 11, 2021 Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the

1 California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor
2 Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 57
3 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations,
4 Plaintiff has exhausted her administrative requirements for bringing a claim under the Labor Code Private
5 Attorneys General Act with respect to these violations.

6 59. Plaintiff was compelled to retain the services of counsel to file this court action to protect
7 her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties
8 owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to
9 receive under California Labor Code § 2699.

10 **PRAYER**

11 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this
12 suit is brought against Defendants, as follows:

- 13 1. For an order certifying the proposed Classes;
- 14 2. For an order appointing Plaintiff as representative of the Classes;
- 15 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 16 4. Upon the First Cause of Action, for compensatory, consequential, general and special
17 damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197, 1197.1 and 1198;
- 18 5. Upon the Second Cause of Action, for compensatory, consequential, general and special
19 damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 20 6. Upon the Third Cause of Action, for compensatory, consequential, general and special
21 damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 22 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special
23 damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 24 8. Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant to Labor
25 Code § 226 *et seq.*;
- 26 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor
27 Code § 203;
- 28 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes

of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 57 (a)-(g) above;

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

14. For such other and further relief the Court may deem just and proper.

Dated: _____ Respectfully submitted,
LIDMAN LAW, APC

By: _____
Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Romina Tamiry
Attorneys for Plaintiff
MAYRA CORTES

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: _____ Respectfully submitted,
LIDMAN LAW, APC

By: _____
Scott M. Lidman
Elizabeth Nguyen
Milan Moore
Romina Tamiry
Attorneys for Plaintiff
MAYRA CORTES

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

MAYRA CORTES,

Plaintiff,

vs.

WETMORE TOOL AND ENGINEERING
COMPANY, a California corporation; and Does 1
through 100,

Defendants.

Case No. CIVDS2016160

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees who have worked for Defendant Wetmore Tool and Engineering Company (“Defendant” or “Wetmore”) in California at any time between July 23, 2016 and [<<Preliminary Approval Order>>]. 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 *Mayra Cortes, as an individual and on behalf of all others similarly situated v. Wetmore Tool and Engineering Company; DOES 1 through 100, inclusive*, Case No. CIVDS2016160 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Wetmore’s records show that you were employed at Wetmore as an hourly, non-exempt employee in California between July 23, 2016 and [<<Preliminary Approval Order>>] (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 Mayra Cortes (“Plaintiff”) brought this Lawsuit against Wetmore, seeking to assert claims on behalf of a class of current and former hourly, non-exempt employees who worked for Wetmore in California at any time between July 23, 2016 and [<<Preliminary Approval Order>>]. Plaintiff is known as the “Class Representative,” and her attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

The Lawsuit alleges that Wetmore failed to pay Settlement Class Members all minimum and overtime wages, failed to provide to Settlement Class Members all required meal and rest periods, and failed to provide Settlement Class Members with itemized wage statements in compliance with California law. The Lawsuit also alleges that Wetmore failed to timely pay all final wages due to Settlement Class Members upon their separation of employment from Wetmore. As a result of the foregoing alleged violations, Plaintiff also alleges that Wetmore failed to provide accurate, itemized wage statements, engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorney General Act.

Wetmore denies that it has done anything wrong. Wetmore further 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 Wetmore, 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 its business operations, Wetmore has concluded that it is in its best interests and the interests of Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Wetmore provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's-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 Wetmore, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

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

Who are the Attorneys?

Attorneys for the Plaintiff / Settlement Class Members: LIDMAN LAW, APC Scott M. Lidman slidman@lidmanlaw.com Elizabeth Nguyen enguyen@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com Romina Tamir mmoore@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Wetmore Tool and Engineering Company Foley & Lardner LLP Krista M. Cabrera kcabrera@foley.com 11988 El Camino Real, Ste 400, San Diego, CA 92130 Tel: (858) 847-6700 Fax: (858) 792-6773
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What are the terms of the Settlement?

On **[INSERT DATE OF PRELIMINARY APPROVAL]**, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt, hourly employees who worked for Wetmore in California at any time between July 23, 2016 and **[<<Preliminary Approval Order>>]**. Settlement Class Members who do not opt out

of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Wetmore as described below.

Wetmore has agreed to pay \$990,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, which includes payments to Settlement Class Members, attorneys’ fees and expenses, payment to the Labor Workforce Development Agency (“LWDA”), settlement administration costs, the Class Representative’s Service Award and monies to be paid to the LWDA. Wetmore’s share of payroll taxes associated with any wage payments to Settlement Class Members shall be paid by Wetmore separately from, and in addition to, the Gross Settlement Amount.

The following deductions from the Gross 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 will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$8,250.00 from the Gross 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 Gross 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 Gross Settlement Amount, which is estimated to be \$330,000.00 (unless the Gross Settlement Amount is increased pursuant to the terms of the Settlement Agreement) 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 in an amount not to exceed \$25,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount not to exceed \$10,000.00, to compensate her for her service and extra work provided on behalf of the Settlement Class Members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$50,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act (“PAGA”). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), will be payable to certain Settlement Class members as the “PAGA Amount,” as described below.

Calculation of Individual Settlement Class Members’ Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$<< >>, to be shared among an estimated << >> Settlement Class Members.

The NSA will be divided as follows:

- i. Ninety-Five Percent (95%) of the Net Settlement Amount shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of workweeks the Settlement Class Member worked during the Class Period, 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 workweeks worked by all Settlement Class Members (who do not opt out) who worked during the Class Period.

ii. Five Percent (5%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” Each participating Settlement Class Member whose employment with Defendant was separated at any time during the Class Period shall receive a portion of the Waiting Time Amount. The Waiting Time Amount shall be distributed equally among each participating Settlement Class Member whose employment with Defendant was separated at any time between July 23, 2017 and [<<End of Class Period>>].

In addition, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount”. All PAGA Employees shall receive a portion of the PAGA Amount. “PAGA Employees” include all current and former non-exempt, hourly, employees of Defendant who worked in California (including those who submit a Request for Exclusion) at any time between July 23, 2019 and [<<End of Class Period>>] (“PAGA Period”). A PAGA Employee shall receive a portion of the PAGA Amount proportionate to the number of Workweeks that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of Workweeks worked during the PAGA Period, and the denominator of which is the total number of Workweeks worked by all PAGA Employees during the PAGA Period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class Members who did not submit a valid and timely Request for Exclusion.

Payment Plan by Wetmore of Gross Settlement Amount. The Gross Settlement Amount shall be paid by Wetmore within thirty (30) calendar days after the “Effective Date” which is defined as the date upon which both of the following have occurred: (i) final approval of the settlement is granted by the Superior Court of California for the County of San Bernardino, or other court assuming jurisdiction of this matter, and (ii) the Court’s Judgment approving the settlement becomes Final.

“Final” shall mean the latest of: (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court, or, (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

Within ten (10) calendar days following Wetmore’s deposit of the Gross Settlement Amount, the Settlement Administrator, the Settlement Administrator will calculate Individual Settlement Award amounts and provide the same to the Parties’ counsel for review and approval. Within seven (7) calendar days of approval by the Parties’ counsel, the Settlement Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class Members.

Allocation and Taxes. For tax purposes, each Settlement Award shall be allocated as follows: twenty-five percent (25%) as penalties and interest; and seventy-five percent (75%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class Members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Wetmore and its 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, the Settlement Class, and each Settlement Class Member who has not submitted a timely and valid Request for Exclusion, will fully and forever completely release and discharge Wetmore, and all of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively the “Released Parties”), from all claims, demands, rights, liabilities and causes of action that were pled or could have reasonably be plead based on the factual allegations in any of the Complaints in the Action that arose during the Class Period with respect to the following claims: (a) failure to pay all minimum wages owed; (b) failure to pay overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to timely pay all wages due upon

separation of employment; and (g) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the “Released Claims”).

The time period of the Released Claims shall be the same time as the Class Period.

PAGA Release and PAGA Employees. If the Court approves the Settlement, all PAGA Employees will release the Released Parties, from all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 as alleged on the operative complaint based on the (a) failure to pay all overtime wages owed; (b) failure to pay minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; and (f) failure to pay all wages due upon separation of employment (collectively, “PAGA Released Claim”). The time period of the PAGA Released Claim is the PAGA Period.

The Parties acknowledge that under the release, the right of the LWDA to investigate the released PAGA claims is not released, but PAGA Released Claim does include any claims for penalties by a Class Member as a result of any such LWDA investigation, and Class Members are waiving their right to act as a private attorney general as to the Released Claims.

The Releases shall not be effective until Wetmore fully funds the settlement.

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, 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 share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above), and 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 you worked during the Class Period and whether your employment was separated after July 23, 2017. The information contained in Wetmore’s records regarding all of these factors, 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. The Settlement Administrator’s decision regarding any dispute will be final.

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 from the Class Action Settlement” 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 should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CORTES V. WETMORE LAWSUIT. 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 **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who files 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.

You will still receive a portion of the PAGA Amount if you submit a Request for Exclusion.

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 name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason for your objection, and any legal or factual or evidence you may have in support of your objection. Written objections must be postmarked on or before **<<RESPONSE DEADLINE>>**.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department **[REDACTED]** of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. You have the right to appear either remotely, in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before **<<RESPONSE DEADLINE>>**. All objections or other correspondence must state the name and number of the case, which *Mayra Cortes v. Wetmore Tool and Engineering Company*. San Bernardino County Superior Court Case No. CIVDS2016160

Any Settlement Class Member who elects to appear personally at the Court for any reason related to this Lawsuit must comply with the Court's social distancing and mandatory face covering requirements, as well as other orders related to COVID-19. All such rules and orders can be located at the Court's website: <https://www.sb-court.org/general-information/information-regarding-court-reopening-plans>

For more information about how to appear remotely, please visit the Court's website at: <https://www.sb-court.org/general-information/remote-access>.

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 **[REDACTED]** of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class Members. **You are not required to attend the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing.**

The Court's final judgment will be posted on the Settlement Administrator's website (**<http://.com>**).

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 Office of the Clerk of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. Due to COVID-19, please visit the Court's website at <https://www.sb-court.org/general-information/information-regarding-court-reopening-plans> for information on accessing the Court and modified service hours due to COVID. You may also contact Class Counsel using the contact information listed above for more information.

Information about the Settlement will be posted on the Settlement Administrator's website (**<http://www.>**).

**PLEASE DO NOT CALL OR WRITE THE COURT, WETMORE 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>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

NOTICE OF INDIVIDUAL SETTLEMENT AWARD

MAYRA CORTES V. DEFENDANT WETMORE TOOL AND ENGINEERING COMPANY
SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVDS2016160

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 items 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 Individual Settlement Award:

According to Wetmore Tool and Engineering Company's records ("Wetmore"):

(a) You were employed by Wetmore and worked a total of [] workweeks during the time period July 23, 2016 through [<<Preliminary Approval Order>>].

(b) You [were/were not] separated from employment with Wetmore between July 23, 2017 and [<<Preliminary Approval Order>>].

Based on the above, your Individual Settlement Award is estimated to be \$ [].

(IV) If you disagree with items (a) – (b) 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 Wetmore's records, Wetmore's records will control unless you are able to provide documentation that establishes that Wetmore's records are mistaken. If there is a dispute about whether Wetmore'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 "Notice of Pendency of Class Action and Proposed Settlement" 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>>.**

EXHIBIT 2

EXHIBIT 2

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

March 11, 2021

VIA LWDA WEBSITE

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

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Wetmore Tool and Engineering Company
c/o Krista Cabrera
Foley & Lardner LLP
11988 El Camino Real | Suite 400
San Diego, CA 92130-2594

Re: *Mayra Cortes v. Wetmore Tool and Engineering Company*

To Whom It May Concern:

Please be advised that this law firm represents Mayra Cortes in claims arising from her employment with Wetmore Tool and Engineering Company, a Delaware corporation (“Defendant”). Ms. Cortes is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Ms. Cortes intends to pursue a lawsuit on behalf of other “aggrieved employees”, which should be considered to include all current and former hourly employees in California who worked, at least in part, for the period July 23, 2019 through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Ms. Cortes has been employed by Defendant and worked for Defendant as an hourly, non-exempt employee from approximately March 2018 through approximately January 5, 2019. Ms. Cortes worked at Defendant’s facility located in Chino, California as a machine operator.

Throughout Ms. Cortes’ employment with Defendant, Ms. Cortes was generally scheduled to work from approximately 9:00 p.m. to approximately 7:00 a.m.

During her employment with Defendant, Defendant utilized policies and procedures that required Ms. Cortes to clock in and out on a timecard twice a day, when her shift commenced and when it ended. Further, Defendant would keep track of Ms. Cortes’ time worked and would unlawfully shave and/or round Ms. Cortes’ work time such that she would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by Defendant was not even handed over time and would almost exclusively round and shave in Defendant’s favor such that Ms. Cortes was routinely unpaid for

her time worked. As a result, Defendant failed to pay Ms. Cortes all required minimum wages. Further, because Ms. Cortes would often work more than 8 hours per day and/or 40 hours per week, Defendant's time-shaving practice also deprived Ms. Cortes of overtime wages owed to her.

Throughout her employment with Defendant, Ms. Cortes was not provided with all required meal periods in compliance with California law due to Defendant's unlawful meal period policies/practices. Specifically, Defendant's meal period policies/practices failed to require employees to record the start and stop times for alleged meal periods taken. Further, during portions of the relevant time period, Ms. Cortes was often prevented from taking meal periods at all due to the heavy work demands imposed by Defendant. Additionally, Ms. Cortes is informed and believes that, during this time period, Defendant unlawfully automatically deducted thirty (30) minutes from her work time each shift for her meal break regardless of whether a meal period was actually taken or not, and regardless of whether it was less than 30 minutes. As a result, Defendant's policies and practices resulted in the failure by Defendant to provide lawful meal periods and also resulted in the failure to pay wages (including minimum and overtime wages) to Ms. Cortes and other non-exempt employees.

Although Ms. Cortes was not provided with all legally-compliant meal periods to which she was entitled, Defendant failed to compensate Ms. Cortes with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Ms. Cortes and their non-exempt employees.

In addition, throughout her employment with Defendant, Ms. Cortes was not authorized and permitted to take all legally compliant rest periods due to Defendant's unlawful rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, *or major fraction thereof*. Specifically, Defendant did not authorize and permit Ms. Cortes to take a 2nd rest period when she worked a shift in excess of 6.0 hours, nor a 3rd rest break for shifts worked in excess of 10.0 hours.

Although Ms. Cortes was not provided with all legally-compliant rest periods to which she was entitled, Defendant failed to compensate Ms. Cortes with the required rest period premium for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to Ms. Cortes and their non-exempt employees.

As a result of Defendant's failure to pay all minimum and overtime wages, as well as meal and rest period premium wages owed, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Cortes and other non-exempt employees. Accordingly, such wage statements were in violation of Labor Code section 226.

As a further result of Defendant's failure to pay all minimum and overtime wages, as well as the failure to pay all meal and rest period premium wages, Defendant failed to timely pay Ms. Cortes all wages owed upon her separation of employment from Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 (“Wage Order 1”):

Minimum Wage Violations

Defendant was required to pay Ms. Cortes and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. Ms. Cortes and other aggrieved employees were not paid for all hours worked due to Defendant’s timekeeping and compensation practices. As alleged above, Defendant caused Ms. Cortes and other aggrieved employees to work hours in a workweek but did not properly compensate Ms. Cortes and other aggrieved employees at least minimum wages for all such hours, due to Defendant’s unlawful timekeeping practices of rounding and/or shaving Ms. Cortes’ time worked. This practice by Defendant resulted in Defendant not paying Ms. Cortes for all wages owed for the work she performed, including failing to pay her all required minimum wages.

Overtime Violations

Defendant was required to pay Ms. Cortes and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, Defendant had a policy/practice of shaving Ms. Cortes’ work time and/or rounding Ms. Cortes’ work time such that she was not fully paid for all time worked. As a result of these policies/practices, Ms. Cortes and other aggrieved employees were not compensated for all overtime wages on occasions when they worked over eight hours in a workday and/or 40 hours in a workweek.

Meal Period Violations

As alleged above, Defendant failed to provide Ms. Cortes and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As described above, Defendant’s meal period policies/practices failed to require employees to record the start and stop times for alleged meal periods taken. Further, during portions of the relevant time period, Ms. Cortes was often prevented from taking meal periods at all due to the heavy work demands imposed by Defendant. Additionally, Ms. Cortes is informed and believes that, during this time period, Defendant unlawfully automatically deducted thirty (30) minutes from her work time each shift for her meal break regardless of whether a meal period was actually taken or not, and regardless of whether it was less than 30 minutes. As a result, Defendant’s policies and practices resulted in the failure by Defendant to provide lawful meal periods and also resulted in the failure to pay wages (including minimum and overtime wages) to Ms. Cortes and other non-exempt employees. As such, Ms. Cortes and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour

of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.""). Although Ms. Cortes was not provided with all legally-compliant meal periods to which she was entitled, Defendant failed to compensate Ms. Cortes and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Ms. Cortes and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Ms. Cortes was not authorized and permitted to take all legally compliant rest periods due to Defendant's unlawful rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, *or major fraction thereof*. Specifically, Defendant did not authorize and permit Ms. Cortes to take a 2nd rest period when she worked a shift in excess of 6.0 hours, nor a 3rd rest break for shifts worked in excess of 10.0 hours. As such, Ms. Cortes and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. As a result of the above failures to comply with the Labor Code, Defendant also failed to timely pay all employees their final wages at the time of separation, which included, among other things, all minimum and overtime wages earned, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due was willful and, consequently, entitles Ms. Cortes and other similarly aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

Wage Statement Violations

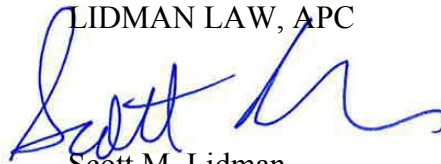
Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Ms. Cortes and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total gross wages earned, total net wages earned, and meal and rest period premium wages in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Ms. Cortes and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, unpaid meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

As an "aggrieved employee," Ms. Cortes will amend her civil action to add a claim on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Cortes own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a. Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Ms. Cortes and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Cortes and other aggrieved employees all overtime compensation earned;
- c. Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Cortes and other aggrieved employees;
- d. Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Cortes and other aggrieved employees;
- e. Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Cortes and other aggrieved employees;
- f. Defendant violated Labor Code § 226 by failing to furnish Ms. Cortes and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendant violated Labor Code § 204 by failing to pay Ms. Cortes and other aggrieved employees all earned wages at least twice during each calendar month; and
- h. Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Cortes and other aggrieved employees.

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

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman