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7 Attorneys for Plaintiff Dominique Mitchell
and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LAKE**
11

12 DOMINIQUE MITCHELL, on behalf of
herself and all "aggrieved employees"
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 COLEMAN ENVIRONMENTAL
ENGINEERING, INC., a California
17 corporation, DOES 1 through 10, inclusive,

18 Defendants.
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CASE NO: CV421915

*Assigned to the Honorable Michael S. Lunas
Department 1*

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

DATE: August 1, 2022

TIME: 9:00 a.m.

DEPT.: 1

Action Filed: July 1, 2021

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Dominique Mitchell ("Mitchell"
4 or "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts
5 set forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Since becoming a member of the Bar, and until his recent retirement, I practiced law
14 with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with
15 an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex
16 employment litigation similar to the instant action.

17 5. My firm has represented employees in complex employment matters such as this
18 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
19 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
20 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

21 **Factual and Procedural Background:**

22 6. On April 21, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code
23 Private Attorneys General Act of 2004 ("PAGA").

24 7. On or about July 1, 2021, Plaintiff initiated the Action by filing a Representative
25 Action Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved
26 employees (the "Complaint"). Plaintiff intends to amend the complaint and as such, the First
27 Amended Complaint, attached to the Settlement as **Exhibit 3** and which will be filed as part of the
28 settlement approval process, asserts class and PAGA representative action claims against

1 Defendant for (a) failure to pay all wages due (Labor Code §§ 510, 1194, 1197, 1720, 1771, 1772
2 and 1774); (b) failure to provide compliant rest periods or compensation in lieu thereof (Labor
3 Code §§ 226.7 and 558; IWC Wage Order 16-2001); (c) failure to provide compliant meal periods
4 or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, 558; IWC Wage Order 16-2001);
5 (d) failure to reimburse employee business expenses (Labor Code § 2802); (e) failure to comply
6 with itemized employee wage statement provisions (Labor Code §§ 226 and 226.3); (f) failure to
7 timely pay wages due at separation of employment (Labor Code §§ 201-203); (g) violation of
8 Business and Professions Code §§ 17200, *et seq.*; and (h) civil penalties pursuant to Labor Code
9 §§ 2698, *et seq.* for violations of Labor Code §§ 201, 202, 226, 226.3, 226.7, 510, 558, 1194, 1197,
10 1720, 1771, 1772, 1774 and 2802 (the "First Amended Complaint").

11 8. Defendant denies any liability or wrongdoing of any kind associated with the claims
12 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
13 purpose other than this settlement. Defendant contends that it has complied at all times with the
14 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
15 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to
16 be litigated, class certification would be inappropriate because Plaintiff is not an adequate class
17 representative, Plaintiff's claims are not typical of putative class members, and individual issues
18 predominate over class issues. The Action, the negotiation and execution of the Settlement
19 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
20 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
21 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
22 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
23 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
24 class certification in the Action or with respect to any other proceeding.

25 9. The Class Representative contends that Defendant violated the California Labor
26 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
27 certification.
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1 **Investigation and Settlement Discussions**

2 10. My colleagues and I have conducted a thorough investigation into the facts and law
3 during the prosecution of this class action case, including the exchange of extensive formal and
4 informal discovery and the review and verification of statistical data and other facts and
5 information provided by Defendant, including Defendant's detailed financial statements and tax
6 returns. My colleagues and I have investigated the applicable law as applied to the facts discovered
7 regarding the alleged claims of Plaintiff and potential defenses thereto, and the damages and other
8 losses claimed by Plaintiff.

9 11. On January 10, 2022, following their exchange of information and documents
10 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
11 commenced arm's-length negotiations with the assistance of mediator Lisa Klerman, an
12 experienced mediator who has mediated numerous wage-hour class actions. Through continued
13 negotiations, the Parties reached the resolution of the Action on or about March 24, 2022.

14 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
15 **Litigation:**

16 12. Based on our independent investigation and evaluation, my colleagues and I are of
17 the opinion (and will so represent to the Court) that settlement for the consideration and on the
18 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
19 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
20 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
21 asserted by Defendant.

22 13. The Parties agree that the Settlement Class described herein may be certified for
23 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
24 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
25 approved, the certification will have no force or effect and will immediately be revoked. The
26 Parties further agree that certification for purposes of the settlement is in no way an admission that
27 class certification is proper under the more stringent standard applied for litigation and that
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1 evidence of this limited stipulation for settlement purposes only will not be admissible for any
2 purpose in this or any other proceeding.

3 14. The parties jointly prepared the Settlement Agreement and Release of Claims
4 ("Settlement Agreement", "Settlement", or "Stip."). A true and correct copy of the Settlement is
5 attached hereto as **Exhibit B**.

6 15. This settlement is limited by Defendant's precarious financial situation. In
7 connection with settlement negotiations, Defendant provided counsel for Plaintiff with extensive
8 financial disclosures, including tax returns. From these disclosures, it is clear that this settlement
9 will be difficult (but not impossible) for Defendant to fund.

10 16. The aggregate value of all claims alleged by the approximately 659 Class Members
11 during their 19,364 weekly pay periods during the Class Period could exceed \$8,700,000
12 (calculated as follows: meal break claims \$503,464 (based on a 25% violation rate), rest break
13 claims \$503,464 (based on a 25% violation rate), unpaid wages (nominal classwide damages,
14 based on the strength of the defenses proffered by Defendant), wage statement penalties
15 \$1,903,450, waiting time penalties \$3,744,000, unreimbursed expenses \$111,715 (based on \$25
16 cell phone expense reimbursement per month), and PAGA penalties \$1,936,400 (without stacking
17 multiple violations)). Considering Defendant's financial condition, this settlement is a fair
18 compromise for Class Members; it falls within a realistic range of recovery on Class Members'
19 claims, particularly in light of the risk of non-recovery.

20 17. Defendant allegedly failed to permit or authorize Plaintiff and Class Members to
21 take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor
22 Code §§ 226.7, 512, 558 and IWC Wage Order 5-2001. Labor Code § 512 provides that employers
23 (like Defendant) may not employ an employee for a work period of more than 5 hours without
24 providing a 30-minute meal period starting no later than the end of the fifth hour of work. When
25 Plaintiff and Aggrieved Employees did receive meal periods, they would typically be late
26 (commencing after the fifth hour of work) or interrupted and they would be required to continue
27 working, resulting in off-the-clock work, in violation of Labor Code §§ 226.7, 510, 512, 558, and
28 1194 and IWC Wage Order 5-2001.

1 18. More importantly, Defendant's applicable employee handbook for the applicable
2 time period allegedly contained a facially unlawful rest and meal period policy. Plaintiff therefore
3 contends that Defendant's written policy makes the meal (and rest) break claim(s) easily certifiable
4 as a class claim.

5 19. Defendant also allegedly failed to provide Plaintiff and Class Members with legally
6 compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by Labor
7 Code § 226.7 and Wage Order 5-2001. For the same reasons discussed above, Plaintiff contends
8 that Defendant's written rest break policy is unlawful because it lacks the requisite language. She
9 also argued that Defendant's jobsite practices further resulted in rest periods never being
10 authorized or permitted, and when employees were able to take a rest period, they were frequently
11 late, cut short, or on-duty in violation of Labor Code §§ 226.7, 558 and IWC Wage Order No. 5-
12 2001. Accordingly, Defendant's liability for this claim will also be significant.

13 20. Plaintiff further contended that Class Members were not paid all wages due because
14 Defendant allegedly did not pay prevailing wages for government job sites. This claim has
15 minimal value because Defendant demonstrated that Class Members did not engage in job duties
16 which required the payment of prevailing wages.

17 21. Plaintiff and Class Members also contend that they were required to incur expenses
18 in the performance of their job duties for which they were not fully reimbursed, in violation of
19 Labor Code § 2802. Plaintiff and other Class Members were allegedly required to use their own
20 personal cellular phones to perform work for Defendant, both to communicate with each other
21 about work matters throughout the workday, and to enter the information they were required to
22 log in order to complete reports. They contend they were not reimbursed by Defendant for these
23 expenses, although Defendant argues that it always reimbursed employees when they properly
24 sought reimbursement for expenses.

25 22. Plaintiff alleges that Defendant failed to issue Plaintiff and Class Members
26 accurately itemized wage statements, failed to pay waiting time penalties, and owes PAGA civil
27 penalties, all derivative of the claims alleged above. As noted above, these penalty claims would
28 be large but required a substantial discount for settlement purposes because they are wholly

1 derivative of the underlying unpaid wage claims (i.e. if Plaintiff did not prevail on her underlying
2 meal and rest period claims, she would not prevail on these penalty claims), they are subject to
3 independent defenses of their own (including proof of injury and/or willfulness), and they are
4 subject to reduction in the Court's discretion. Plaintiff believed it was unlikely that the Court
5 would entertain an award of penalties which was substantial compared to the amount of the unpaid
6 wages sought. As such, these claims required a compromise to resolve at this juncture of the
7 litigation.

8 23. The discount negotiated for settlement here is a reasonable compromise, particularly
9 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
10 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which
11 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses
12 on the merits of the claims). Class certification is a substantial risk in any class action case. Here,
13 while Plaintiff maintains that the requirements of class certification are met, Defendant proffers
14 various arguments why class treatment is not appropriate, including but not limited to that
15 individualized inquires among class members predominate over common ones. If Defendant was
16 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
17 most class members would likely not file individual claims.

18 24. Plaintiff also faced the risk of a loss on the merits on her claims. It is very possible
19 that the Court would agree with Defendant's position that its meal and rest period practices
20 complied with the requirements of California law or could not be certified. In such a case, the
21 value of the majority of Plaintiff's claims would be zero.

22 25. Finally, Plaintiff faced the risk that she would not obtain a maximum
23 damage/penalty award on all (or any of) her claims. For example, Plaintiff seeks discretionary
24 penalties pursuant to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that
25 the Court would not impose all penalties pursuant to its discretionary power to reduce them.

26 26. Defendant strongly contends that its policies and practices do not violate any laws.
27 It contends that it properly provided for all meal and rest periods and fully compensated its
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1 employees for all time worked. It further contends that the wage statements it provides to its
2 employees are fully compliant with California law.

3 27. When the costs and risks of non-certification and loss on the merits are considered,
4 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

5 28. The settlement for each Class Member is fair, reasonable and adequate, given the
6 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
7 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
8 Action.

9 **Class Certification Requirements:**

10 29. To date, no class has been certified. The Stipulation of Settlement contains a
11 provision pursuant to which we stipulate to the Court's provisional certification of the
12 approximately 659-member Settlement Class, but do so for purposes of this settlement only.

13 30. In this case, the Class Members are identifiable from Defendant's employment and
14 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
15 According to Defendant's records, the Class comprises approximately 659 employees.

16 31. The Class Members' claims all stem from a common source: members of the
17 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
18 with their employment. All members of the Class seek the same relief under the same California
19 laws (related to unpaid wages, unpaid meal and rest period premiums, inaccurate or incomplete
20 wage statements, failure to timely pay wages due upon separation, failure to reimburse expenses,
21 and derivative claims). Under these circumstances, the commonality requirement is satisfied for
22 purposes of certifying the Settlement Class for settlement purposes.

23 32. In this case, named Plaintiff and proposed Class Representative Dominique Mitchell
24 is a former non-exempt employee who worked for Defendant in the State of California during the
25 Class Period. She contends that Defendant failed to pay all wages due, failed to provide meal and
26 rest periods, failed to comply with itemized employee wage statement provisions, failed to
27 reimburse expenses, and failed to timely pay wages at the separation of employment, in violation
28 of Labor Code §§ 2201, 202, 226, 226.3, 226.7, 510, 558, 1194, 1197, 1720, 1771, 1772, 1774,

1 2698, 2802, 2699, and 2802, among other Labor Code provisions. She has the same claims as
2 those that the members of the Settlement Class would reasonably be expected to bring based on
3 the course of conduct alleged herein.

4 33. Plaintiff has also demonstrated that she will aggressively and competently assert the
5 interests of the proposed Settlement Class; she has taken an active role in this litigation and has no
6 apparent conflicts with other class members.

7 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

8 34. Concurrently with the filing of this Motion, Plaintiff's counsel is transmitting the
9 Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor
10 Code § 2699(1)(2).

11 I declare, under penalty of perjury, under the laws of the State of California, that the
12 foregoing is true and correct. Executed this 28th day of June, 2022 at Calabasas, California.

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14 Daniel F. Gaines
15 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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Inc.

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

DOMINIQUE MITCHELL, on behalf of
herself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

COLEMAN ENVIRONMENTAL
ENGINEERING, INC., a California
corporation, DOES 1 through 10, inclusive,

Defendants.

CASE NO: CV421915

Assigned to Hon. Michael S. Lunas, Department 1

CLASS ACTION

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: June 18, 2021

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 This Settlement Agreement and Release of Claims (“Settlement Agreement” or “Stipulation
3 of Settlement”) is made and entered into by and between Plaintiff Dominique Mitchell (“Mitchell”
4 or “Plaintiff” or “Class Representative”), individually and on behalf of the Settlement Class and all
5 others similarly situated, and Defendant Coleman Environmental Engineering, Inc. (“Defendant”),
6 subject to the terms and conditions herein and the Court’s approval.

7 **A. Definitions.**

8 1. Plaintiff and the Settlement Class (as defined below) and Defendant are collectively
9 referred to herein as the “Parties.”

10 2. Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC are counsel of
11 record for Plaintiff. For purposes of this settlement only, the firm of Gaines & Gaines, APLC shall
12 be designated as “Class Counsel.”

13 3. The “Action” means the case entitled *Dominique Mitchell v. Coleman*
14 *Environmental Engineering, Inc.*, Case No. CV421915, pending before the Superior Court of the
15 State of California for the County of Lake.

16 4. The “Settlement Class” shall be defined as “all non-exempt California employees
17 of Defendant from April 21, 2020 through March 24, 2022” (the “Class Period”). Defendant
18 represents that this Class contains no more than 659 members.

19 5. Members of the Settlement Class shall collectively be referred to as a “Class
20 Member” or “Class Members.” Any Class Member who files a timely Request for Exclusion, as
21 detailed below, will be excluded from the final Settlement Class.

22 **B. General.**

23 1. On April 21, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code
24 Private Attorneys General Act of 2004 (“PAGA”).

25 2. On or about July 1, 2021, Plaintiff initiated the Action by filing a Representative
26 Action Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved
27 employees (the “Complaint”). Plaintiff intends to amend the complaint and as such, the First
28 Amended Complaint, attached hereto as **Exhibit 3** and which will be filed as part of the settlement

1 approval process, asserts class and PAGA representative action claims against Defendant for (a)
2 failure to pay all wages due (Labor Code §§ 510, 1194, 1197, 1720, 1771, 1772 and 1774); (b)
3 failure to provide compliant rest periods or compensation in lieu thereof (Labor Code §§ 226.7 and
4 558; IWC Wage Order 16-2001); (c) failure to provide compliant meal periods or compensation in
5 lieu thereof (Labor Code §§ 226.7, 510, 512, 558; IWC Wage Order 16-2001); (d) failure to
6 reimburse employee business expenses (Labor Code § 2802); (e) failure to comply with itemized
7 employee wage statement provisions (Labor Code §§ 226 and 226.3); (f) failure to timely pay
8 wages due at separation of employment (Labor Code §§ 201-203); (g) violation of Business and
9 Professions Code §§ 17200, *et seq.*; and (h) civil penalties pursuant to Labor Code §§ 2698, *et seq.*
10 for violations of Labor Code §§ 201, 202, 226, 226.3, 226.7, 510, 558, 1194, 1197, 1720, 1771,
11 1772, 1774 and 2802 (the "First Amended Complaint").

12 3. Defendant denies any liability or wrongdoing of any kind associated with the claims
13 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
14 purpose other than this settlement. Defendant contends that it has complied at all times with the
15 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
16 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to be
17 litigated, class certification would be inappropriate because Plaintiff is not an adequate class
18 representative, Plaintiff's claims are not typical of putative class members, and individual issues
19 predominate over class issues. The Action, the negotiation and execution of this Settlement
20 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
21 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
22 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
23 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
24 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
25 class certification in the Action or with respect to any other proceeding.

26 4. The Class Representative contends that Defendant violated the California Labor
27 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
28 certification.

1 5. Class Counsel represent that they have conducted a thorough investigation into the
2 facts and law during the prosecution of this class action case, including the exchange of extensive
3 formal and informal discovery and the review and verification of statistical data and other facts and
4 information provided by Defendant. Counsel for the Parties also represent that they have
5 investigated the applicable law as applied to the facts discovered regarding the alleged claims of
6 Plaintiff and potential defenses thereto, and the damages and other losses claimed by Plaintiff.

7 6. On January 10, 2022, following their exchange of information and documents
8 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties
9 commenced arm's-length negotiations with the assistance of mediator Lisa Klerman, an
10 experienced mediator who has mediated numerous wage-hour class actions. Through continued
11 negotiations, the Parties reached the resolution of the Action set forth herein on or about March 24,
12 2022.

13 7. Based on their own independent investigation and evaluation, Class Counsel are of
14 the opinion (and will so represent to the Court) that settlement for the consideration and on the
15 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
16 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
17 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
18 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
19 that this settlement is fair and in the best interest of the Settlement Class.

20 8. The Parties agree that the Settlement Class described herein may be certified for
21 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
22 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
23 approved, the certification will have no force or effect and will immediately be revoked. The
24 Parties further agree that certification for purposes of the settlement is in no way an admission that
25 class certification is proper under the more stringent standard applied for litigation and that
26 evidence of this limited stipulation for settlement purposes only will not be admissible for any
27 purpose in this or any other proceeding.
28

1 **C. Terms of Settlement.**

2 The financial terms of the settlement are as follows:

3 1. **Maximum Settlement Amount:** The Parties agree to settle this Action for a
4 Maximum Settlement Amount of Four Hundred Twenty-Five Thousand Dollars (\$425,000.00) (the
5 “Maximum Settlement Amount”), subject to any increase based on the escalator provision in
6 paragraph H(16) herein. The Maximum Settlement Amount includes the attorneys’ fees of Class
7 Counsel; litigation costs and expenses (which includes, without limitation, all such fees and costs
8 incurred to date, as well as such fees and costs to be incurred in documenting the settlement,
9 providing any notices required as part of the settlement, securing Court approval of the settlement,
10 and obtaining judgment in the Action); the Enhancement Payment to the Class Representative, as
11 approved by the Court; the payment to the California Labor and Workforce Development Agency
12 (“LWDA”); and all costs of administration, including, without limitation, settlement administration
13 fees and expenses. Defendant shall pay all employer payroll tax obligations due on wage payments
14 made from the Net Settlement Proceeds in addition to, and separate and apart from, the Maximum
15 Settlement Amount.

16 2. **Net Settlement Proceeds:** “Net Settlement Proceeds” is defined as the Maximum
17 Settlement Amount less the amounts approved and awarded by the Court for: attorneys’ fees and
18 documented litigation costs and expenses incurred or advanced by Class Counsel; the Enhancement
19 Payment to the Class Representative; the payment to the LWDA pursuant to PAGA; and the costs
20 of administering the settlement.

21 3. **Individual Payment Amounts:** “Individual Payment Amount” means the portion
22 of the Net Settlement Proceeds distributable to each Class Member who participates in the
23 Settlement (i.e., who does not submit a valid request for exclusion form). The Individual Payment
24 Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by
25 all participating Class Members in California in a non-exempt position during the Class Period,
26 which will yield the applicable weekly rate. The weekly rate shall be multiplied by the number of
27 weeks each individual participating Class Member worked for Defendant in California in a non-
28 exempt position during the Class Period to yield their Individual Payment Amount. Each

1 Participating Settlement Class Member who does not opt out will receive an Individual Payment
2 Amount equal to their individual weeks worked in California in a non-exempt position during the
3 Class Period multiplied by the weekly rate.

4 For tax purposes, each Individual Payment Amount will be apportioned (a) 30% as wages
5 (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 50% to penalties
6 (reported on an IRS Form 1099); (c) 10% to expense reimbursement; and (d) 10% to interest
7 (reported on an IRS Form 1099). All Individual Payment Amounts paid to Class Members will be
8 subject to any applicable wage garnishments, liens, or other legally mandated treatment as required
9 by law.

10 4. **PAGA Payment:** The Parties agree that Ten Thousand Dollars (\$10,000.00) shall
11 be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this amount, Seventy-Five
12 percent (75%), or Seven Thousand Five Hundred Dollars (\$7,500.00), shall be paid to the LWDA,
13 and the remaining Twenty-Five percent (25%), or Two Thousand Five Hundred Dollars
14 (\$2,500.00), shall be included in the Net Settlement Proceeds for payment to Class Members.

15 5. **Enhancement Payment to Class Representative:** The amount awarded to the
16 Class Representative as an Enhancement Payment will be set by the Court in its discretion, not to
17 exceed Twelve Thousand Dollars (\$12,000.00). This amount will be deducted from the Maximum
18 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for her
19 Enhancement Payment. Defendant agrees not to dispute or otherwise object to the Enhancement
20 Payment if Plaintiff requests \$12,000 or less.

21 6. **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be deducted
22 from the Maximum Settlement Amount in an amount to be set by the Court taking into account the
23 settlement award that has been made available for the Settlement Class by the efforts of Class
24 Counsel. The amount awarded shall not exceed 35% of the Maximum Settlement Amount (i.e.,
25 One Hundred Forty-Eight Thousand Seven Hundred Fifty Dollars (\$148,750.00)). An IRS Form
26 1099 will be issued to Class Counsel with respect to its award of attorneys' fees. Defendant agrees
27 not to dispute or otherwise object to the attorneys' fee award requested by Class Counsel so long
28 as the request does not exceed 35% of the Maximum Settlement Amount.

1 7. **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from the
2 Maximum Settlement Amount in an amount to be set by the Court for documented out-of-pocket
3 litigation costs and expenses, not to exceed Fifteen Thousand Dollars (\$15,000.00). An IRS Form
4 1099 will be issued to Class Counsel with respect to its award of costs and expenses. Defendant
5 agrees not to dispute or otherwise object to the attorneys' cost award requested by Class Counsel
6 so long as the request does not exceed \$15,000.

7 (a) **Settlement Administration Costs:** The fees and other charges of the
8 Settlement Administrator to administer the Settlement are expected to total no more than Twelve
9 Thousand Five Hundred Dollars (\$12,500.00) and will be paid from the Maximum Settlement
10 Amount. These fees shall include any costs associated with the required tax reporting on any
11 Individual Payment Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to
12 approval of the Court, the Parties have agreed that Phoenix Class Action Administration Solutions
13 will serve as a neutral third-party claims' administrator ("Settlement Administrator") to perform all
14 acts related to providing notice to the Settlement Class. Settlement Administrator shall be
15 responsible for (a) printing and distributing the Court-approved Notice of Class Action Settlement
16 ("Class Notice") to all Class Members; (b) administering the settlement; (c) processing exclusions,
17 objections, and field inquiries from Class Members; (d) resolving disputes; (e) calculating the
18 Individual Payment Amount each Participating Class Members is eligible to receive; (f) distributing
19 the Maximum Settlement Amount as directed by the Court and set forth herein; (g) tax reporting;
20 (h) providing necessary weekly status reports; and (i) other duties and responsibilities set forth
21 herein.

22 8. **No Warranty by Defendant:** Plaintiff understands and agrees that Defendant is
23 not providing Plaintiff or Class Members with tax or legal advice and that Defendant makes no
24 representations regarding tax obligations or consequences, if any, related to this Settlement
25 Agreement.

26 **D. Release of Claims.**

27 1. Upon the Effective Date, and subject to Defendant's full payment of the Maximum
28 Settlement Amount, Plaintiff and all Settlement Class Members who do not timely opt-out will be

1 deemed to have fully released and discharged Defendant Coleman Environmental Engineering,
2 Inc. and each of its present and former officers, directors, members, owners, managers,
3 shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related
4 entities, consultants, attorneys, successors or assignees (collectively, "Released Parties") from any
5 and all Released Claims which arose during their employment in a non-exempt position in
6 California during the Class Period.

7 2. The "Released Claims" include any and all claims, debts, liabilities, demands,
8 obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions
9 or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued,
10 under any legal theory under state law for any alleged failure to pay all business expense
11 reimbursements, wages due (including minimum wage and overtime wages), failure to pay for all
12 hours worked (including off-the clock), failure to provide meal and authorize and permit rest
13 periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods,
14 failure to timely pay wages and final wages and waiting time penalties, and failure to furnish
15 accurate wage statements, including claims derivative and/or related to these claims, liquidated
16 damages, and conversion of wages. The Released Claims shall include, claims that were raised, or
17 that reasonably could have been raised based on the facts and allegations in the Complaint. This
18 Release shall include all claims and theories arising under the applicable regulations, Labor Code
19 section 2802, Wage Orders and Labor Code, state wage and hour law, as well as claims under
20 Business and Professions Code section 17200 et seq., and/or Labor Code section 2698 et seq.
21 based on violations of the above Labor Code provisions.

22 3. Upon the Effective Date, and subject to Defendant's full payment of the Maximum
23 Settlement Amount, Plaintiff shall be bound by a complete and general release of all claims under
24 any and all applicable federal and state laws and/or regulations as to Released Parties, and shall
25 also be bound by a California Civil Code section 1542 release and waiver of all claims known and
26 unknown, without exception, except as may be prohibited by law, such as claims for workers'
27 compensation benefits. California Civil Code section 1542 reads as follows:
28

1 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
2 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
3 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
4 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
5 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
6 **DEBTOR OR RELEASED PARTY.”**

7
8 **E. Notice and Exclusion Process.**

9 1. Within ten (10) calendar days after entry of the order granting preliminary approval
10 of this Settlement, Defendant shall provide to the Settlement Administrator a list of all Class
11 Members, including their last known addresses, telephone numbers, social security numbers, and
12 their dates of employment in a non-exempt position in California during the Class Period
13 (“Settlement Class Information”). The names, addresses, telephone numbers, and Social Security
14 numbers will only be disclosed to the Settlement Administrator and not to Plaintiff’s Counsel. All
15 information provided to the Settlement Administrator will be marked CONFIDENTIAL. This
16 information shall be kept confidential and shall not be disclosed, either in writing or orally, by the
17 Settlement Administrator. The Settlement Administrator shall use due care with respect to the
18 storage, custody, use, and/or dissemination of the confidential information. Such information must
19 be stored in a secure fashion and all persons who access the data must agree to keep it confidential.

20 2. A notice of pendency of class action, proposed settlement, and hearing date for
21 Court approval (“Class Notice”) in the form attached hereto as Exhibit 1, and as approved by the
22 Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail,
23 within twenty (20) calendar days after entry of the order granting preliminary approval. Attached
24 to the Class Notice will be a request for exclusion form (“Request for Exclusion Form”) in the form
25 attached hereto as Exhibit 2.

26 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
27 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
28 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the

1 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
2 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
3 notices.

4 4. Each Class Member will be fully advised of the settlement, the ability to object to
5 the settlement, and the ability to submit a Request for Exclusion Form. The Class Notice will
6 inform the Class Members of the Court-established deadlines for filing objections and a Request
7 for Exclusion Form.

8 5. Each Class Notice will contain personalized information setting forth the number of
9 weeks each Class Member worked for Defendant in California in a non-exempt position during the
10 Class Period and their estimated Individual Payment Amount. To the extent a Class Member
11 disputes any of the information listed on his or her Class Notice, the Class Member may produce
12 evidence to the Settlement Administrator showing such information the Class Member contends
13 should be reflected in the Class Notice. Defendant's records will be presumed determinative,
14 however, and the Settlement Administrator's decision on these matters will be final. The Class
15 Notice will also set forth IRS W-9 information if required.

16 6. All Class Members who do not submit a Request for Exclusion Form will be eligible
17 to receive an Individual Payment Amount which shall be mailed to them if and when the Effective
18 Date occurs.

19 7. In order to elect not to participate in the Settlement, a Class Member must submit a
20 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
21 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to
22 Class Members, unless the Court requires a longer period, in which case the Court ordered
23 exclusion period will apply. The date of the postmark shall be deemed the date of submission. The
24 timeliness of submitted Request for Exclusion Forms will be determined by valid postmark. If the
25 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended to the
26 next day on which the U.S. Postal Service is open.

27 8. The deadline for submission of Exclusion Forms shall be extended once by 30 days
28 for those Class Members whose Class Notice and Exclusion Form are returned as "undeliverable."

1 If the 30th day falls on a Sunday or federal holiday, this deadline will be extended to the next day
2 on which the U.S. Postal Service is open.

3 9. The Settlement Administrator will search for additional addresses on returned mail
4 and will re-mail the Class Notice and Exclusion Form to an updated address (if any) within 15 days
5 of receipt of the returned mail. The 30-day extended time limit will run from the date of the second
6 mailing for those Class Members. To the extent a Class Notice from the initial mailing is not
7 returned within 30 days, it shall be deemed to have been sent to a valid address even if it is thereafter
8 returned. It is the intent of the Parties that reasonable, but not extraordinary, efforts be used to
9 locate Class Members. If the initial Class Notice and Request for Exclusion Form is returned, the
10 Settlement Administrator will search using the social security number for a more current address.
11 If no address is found within 10 days, no further action is required.

12 10. The Settlement Administrator will notify the Parties of the total number of valid
13 Request for Exclusion Forms within ten (10) calendar days after the deadline for receipt of the
14 Request for Exclusion Forms (fifty-five (55) days following the initial mailing of the Class Notice
15 and Request for Exclusion Forms to Class Members).

16 11. In order to object to the settlement, a Class Member must mail his or her objection
17 to the Settlement Administrator no later than forty-five (45) calendar days after the mailing of the
18 Class Notice and Request for Exclusion Form to Class Members, unless the Court requires a longer
19 period, in which case the Court ordered objection period will apply. If the 45th day falls on a
20 Sunday or federal holiday, the time to object to the settlement will be extended to the next day on
21 which the U.S. Postal Service is open. Under no circumstances shall the objection deadline be
22 extended for any reason.

23 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
24 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a declaration
25 of due diligence and proof of mailing with regard to the mailing of the Class Notice and Request
26 for Exclusion Forms. The Settlement Administrator will also provide to the Parties, at least twelve
27 (12) calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a report
28

1 listing the amount of all payments to be made to each Class Member without names or personal
2 identifying information.

3 13. Defendant shall deposit the Maximum Settlement Amount with the Settlement
4 Administrator on an installment plan, as follows: Three Hundred Thousand Dollars (\$300,000.00)
5 no later than the first day of the month after which final approval of this Settlement is granted;
6 Twenty-Five Thousand Dollars (\$25,000) no later than the first day of the following month; and
7 ten (10) subsequent monthly payments of Ten Thousand Dollars (\$10,000.00) each, payable n
8 later that the first day of each month thereafter (i.e. \$425,000 paid over 12 months). The
9 installment payments shall be held by the settlement administrator in a Qualified Settlement Fund.
10 No disbursements shall be made unless and until the Effective Date of the Settlement first occurs.
11 The effective date of this Settlement Agreement is the date of the later of: (a) final approval by the
12 Court; or (b) if there are objections to the settlement which are not withdrawn, and if an appeal,
13 review, or writ is not sought from the judgment, the sixty-first (61st) day after service of notice of
14 entry of judgment; or (c) the dismissal or denial of an appeal, review, or writ, if the Judgment is no
15 longer subject to judicial review (the "Effective Date").

16 14. The Settlement Administrator shall disburse pro rata shares of Individual Payment
17 Amount checks within ten (10) days after the second installment payment is deposited by Defendant
18 and within ten (10) days after the final installment payment is deposited by Defendant, such that
19 Class Members will be paid in two (2) installments. Plaintiff, Class Counsel, the Settlement
20 Administrator, and the LWDA shall each be paid their pro rata share of each installment payment
21 promptly after receipt. Class Members must cash each of their Individual Payment Amount checks
22 within one hundred eighty (180) calendar days after they are mailed by the Settlement
23 Administrator. The value of any checks uncashed more than one hundred eighty (180) days after
24 mailing shall be paid to the State of California State Controller's Office, to be held in the name of
25 the respective Class Member.

1 **F. Duties of the Parties Prior to Court Approval.**

2 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
3 Court for preliminary approval of this settlement and entry of an order accomplishing the
4 following:

- 5 (a) scheduling a fairness hearing on the question of whether the proposed
6 settlement should be finally approved as fair, reasonable and adequate as to the Class Members;
7 (b) approving as to form and content the proposed Class Notice;
8 (c) approving as to form and content the proposed Request for Exclusion
9 Form;
10 (d) preliminarily certifying the Settlement Class for purposes of settlement;
11 (e) preliminarily approving the PAGA payment of \$7,500 to the LWDA;
12 (f) preliminarily setting attorneys' fees and costs payable to Class Counsel;
13 (g) preliminarily setting the enhancement payment to the Class Representative;
14 (h) preliminarily approving Phoenix Class Action Administration Solutions
15 as the Settlement Administrator and its estimated fees and costs of \$12,500; and
16 (i) permitting Plaintiff to file the First Amended Complaint.

17 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
18 of Plaintiff's unopposed motion for preliminary approval of the settlement.

19 **G. Duties of the Parties in Connection with and Following Final Court Approval.**

20 1. In connection with the hearing on final approval of the settlement provided for in
21 this Settlement Agreement, the Parties will submit a proposed final order no later than ten (10)
22 calendar days prior to the scheduled date of the hearing on final approval (unless otherwise ordered
23 by the Court):

- 24 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable
25 and adequate, and directing consummation of its terms and provisions;
26 (b) approving Class Counsel's application for an award of attorneys' fees and
27 reimbursement of documented litigation costs and expenses, the Enhancement Payment to the
28

1 Class Representative, the PAGA payment to the LWDA, and the costs of administering the
2 settlement; and

3 (c) entering judgment in this Action in accordance with this Stipulation,
4 pursuant to Cal. Rules of Court, Rule 3.769(h).

5 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
6 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
7 on final approval (unless otherwise ordered by the Court).

8 **H. Miscellaneous Provisions:**

9 1. **Voiding the Agreement.**

10 A failure of the Court to approve any material condition of this Settlement Agreement which
11 effects "a fundamental change of the Parties' settlement," or if the settlement is reversed or
12 materially modified on appellate review, shall render the entire Stipulation of Settlement voidable
13 and unenforceable as to all Parties herein at the option of any Party.

14 2. **Parties' Authority.**

15 The signatories hereto represent that they are fully authorized to enter into this Settlement
16 Agreement and bind the Parties hereto to the terms and conditions hereof.

17 3. **Mutual Full Cooperation.**

18 The Parties agree to fully cooperate with each other to accomplish the terms of this
19 Stipulation of Settlement, including but not limited to, execution of such documents and such other
20 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
21 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated
22 by this Settlement Agreement and any other efforts that may become necessary by order of the
23 Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As
24 soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the
25 assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the
26 Court's preliminary and final approval of the settlement.

27 ///

28 ///

1 **4. No Prior Assignments.**

2 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
3 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
4 entity any portion of any liability, claim, demand, action, cause of action or rights released and
5 discharged by this Stipulation of Settlement.

6 **5. No Admission.**

7 This Stipulation of Settlement is entered into solely for the purpose of compromising
8 highly disputed claims. Nothing contained herein, nor the consummation of this Stipulation of
9 Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or
10 wrongdoing on the part of Defendant or any of the other Released Parties or that the Action was
11 not barred in its entirety by the ministerial exception. Defendant makes no admission of liability
12 or wrongdoing by virtue of entering into this Stipulation of Settlement. Additionally, Defendant
13 reserves the right to contest any issues relating to class certification and liability if this Stipulation
14 of Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has
15 failed to comply with the law in any respect, has any liability to anyone under the claims asserted
16 in the Action, or that but for this Stipulation of Settlement, a Class should be certified in the Action.
17 This Stipulation of Settlement, and Plaintiff's and Defendant's willingness to settle the Action will
18 have no bearing on, and will not be admissible in connection with, any litigation between the parties
19 (other than in connection with this Stipulation of Settlement). Each of the Parties hereto has entered
20 into this Settlement Agreement with the intention of avoiding further disputes and litigation with
21 the attendant inconvenience and expenses. This Settlement Agreement is a settlement document
22 and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408
23 and/or any other similar law, be inadmissible in evidence in any proceeding, except an action or
24 proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

25 **6. Construction.**

26 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
27 result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement
28

1 Agreement shall not be construed in favor of or against any Party by reason of the extent to which
2 any Party or her or its counsel participated in the drafting of this Settlement Agreement.

3 **7. Captions and Interpretations.**

4 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
5 reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement
6 or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a
7 recital.

8 **8. Modification.**

9 This Settlement Agreement may not be changed, altered, or modified, except in writing and
10 signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be
11 discharged except by performance in accordance with its terms or by a writing signed by each of
12 the Parties hereto on their attorneys.

13 **9. Integration Clause.**

14 This Settlement Agreement contains the entire agreement between the Parties relating to
15 the settlement and transactions contemplated hereby, and all prior or contemporaneous agreements,
16 understandings, representations, and statements, whether oral or written and whether by a Party or
17 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in
18 writing.

19 **10. Binding on Assigns.**

20 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
21 hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

22 **11. Governing Law.**

23 All terms of this Settlement Agreement and its exhibits shall be governed by and interpreted
24 according to the laws of the State of California, without giving effect to any conflict of law
25 principles or choice of law principles.

26 **12. Signatures of All Class Members Unnecessary to be Binding.**

27 It is agreed that, because the members of the Settlement Class are numerous, it is impossible
28 or impractical to have each Class Member execute this Settlement Agreement. The Class Notice,

1 attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release
2 provided herein and such shall have the same force and effect as if this Settlement Agreement was
3 executed by each Class Member.

4 **13. Counterparts.**

5 This Settlement Agreement may be executed in counterparts, and when each Party has
6 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
7 and when taken together with other signed counterparts, shall constitute one fully-signed Settlement
8 Agreement, which shall be binding upon and effective as to all Parties. The Parties may transmit a
9 signed copy of this Settlement Agreement and any mutually agreed upon modification via a
10 facsimile or digital (i.e., DocuSign, HelloSign, pdf, tiff or jpeg) signature to the other party, and the
11 Parties hereby agree that each may accept and rely upon signatures as if they bore an original
12 signature of a party. If a party fails to provide the other with documents bearing an original
13 signature a facsimile or digital signature version shall be treated at the original for any and all
14 purposes.

15 **14. Confidentiality**

16 Until Plaintiff files her motion for preliminary approval of the class action settlement, the
17 Parties and their Counsel agree to maintain confidentiality as to the Settlement, including the
18 amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing
19 agencies, or as otherwise required by law.

20 **15. No Publicity**

21 Plaintiff and her Counsel will not contact the media about the settlement or respond to any
22 inquiries by the media regarding the Settlement, other than to state that the matter was amicably
23 settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not post
24 any information about the settlement on social media or their firms' websites.

25 **16. Non-Disparagement.**

26 Released Parties agree that all inquiries about Plaintiff shall be referred to Human
27 Resources, who will confirm the Plaintiff's dates of employment and last position held. No other
28 information concerning Plaintiff will be provided by Human Resources without authorization from

1 Plaintiff. Plaintiff agrees not to make any statements, written or verbal, or cause or encourage
2 others to make any statements, written or verbal, that defame, disparage or in any way criticize the
3 personal or business reputation, practices, or conduct of Defendant, its employees, directors, and
4 officers. Plaintiff acknowledges and agrees that this prohibition extends to statements, written or
5 verbal, made to anyone, including but not limited to, the news media, investors, potential investors,
6 any board of directors or advisory board or directors, industry analysts, competitors, strategic
7 partners, vendors, employees (past and present), and clients. Plaintiff understands and agrees that
8 this Paragraph is a material provision of this Settlement Agreement and that any breach of this
9 Paragraph shall be a material breach of this Settlement Agreement, and that Defendant would be
10 irreparably harmed by violation of this provision

11 **17. Representation Regarding Class Size.**

12 Defendant has represented that there are no more than 659 Class Members who worked no
13 more than 19,364 aggregate pay periods during the Class Period. Should either of these number
14 increase, the Maximum Settlement Amount will increase proportionately based on the larger
15 percentage increase. For example, if there are 660 Class Members but 19,364 pay periods, the
16 Maximum Settlement Amount will increase by one percent (1.0%) (i.e. \$3,000).

17 **18. Default; Notice; Cure; Acceleration; Time is of the Essence.**

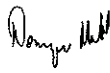
18 Time is of the essence with respect to all provisions of this Agreement. If Defendant fails
19 to timely make any payment within five (5) business days of the due date hereunder, it shall be in
20 default of its obligations. Plaintiff shall thereafter give notice of default and Defendant must cure
21 said default within five (5) business days thereof. In the event of an uncured default, all unpaid
22 amounts shall be accelerated and be all due and payable together with interest at the legal rate
23 from the date of default.

24 **19. Continuing Jurisdiction.**

25 The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to
26 the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of
27 Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive and
28

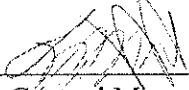
1 continuing equity jurisdiction of this Action over all Parties and Class Members to interpret and
2 enforce the terms, conditions and obligation of the Agreement.

3
4 Dated: ^{06 / 07 / 2022} May _____, 2022

By: 
DOMINIQUE MITCHELL
Plaintiff and Class Representative

5
6
7 Dated: ^{June 3} ~~May~~ _____, 2022

COLEMAN ENVIRONMENTAL
ENGINEERING, INC.

8
9 By: 
Its: General Manager

10 **APPROVED AS TO FORM AND CONTENT:**

11
12 Dated: May _____, 2022

GAINES & GAINES, APLC

13 By: _____
14 Daniel F. Gaines, Esq.
15 Alex P. Katofsky, Esq.
16 Counsel for Plaintiff and Class
17 Representative

18
19 Dated: ^{June 3} ~~May~~ _____, 2022

LEECH TISHMAN FUSCALDO & LAMPL,
INC.

20 By: _____
21 Christopher Gonzalez, Esq.
22 Counsel for Defendant

23
24 [END OF PLEADING]

1 continuing equity jurisdiction of this Action over all Parties and Class Members to interpret and
2 enforce the terms, conditions and obligation of the Agreement.

3
4 Dated: May _____, 2022

By: _____
DOMINIQUE MITCHELL
Plaintiff and Class Representative

5
6 ~~June 3~~
7 Dated: May _____, 2022

COLEMAN ENVIRONMENTAL
ENGINEERING, INC.

8
9 By: _____
Its: General Manager

10 **APPROVED AS TO FORM AND CONTENT:**

11
12 Dated: June 6, 2022

GAINES & GAINES, APLC

13 By: Daniel F. Gaines
14 Daniel F. Gaines, Esq.
15 Alex P. Katofsky, Esq.
Counsel for Plaintiff and Class
Representative

16 ~~June 3~~
Dated: May _____, 2022

17 LEECH TISHMAN FUSCALDO & LAMPL,
INC.

18 By: Christopher Gonzalez
19 Christopher Gonzalez, Esq.
Counsel for Defendant

20 [END OF PLEADING]

TITLE	Settlement Agreement
FILE NAME	Coleman-Mitchell-...(clean) (002).pdf
DOCUMENT ID	855fc552ef421a3e16d96fddd8a01158586d231e
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	✱ Signed

Document History



SENT

06 / 06 / 2022

16:46:02 UTC

Sent for signature to Dominique Mitchell
(d70mitchell@gmail.com) from office@gaineslawfirm.com
IP: 47.181.216.90



VIEWED

06 / 07 / 2022

18:12:15 UTC

Viewed by Dominique Mitchell (d70mitchell@gmail.com)
IP: 174.193.129.235



SIGNED

06 / 07 / 2022

18:13:55 UTC

Signed by Dominique Mitchell (d70mitchell@gmail.com)
IP: 174.193.129.235



COMPLETED

06 / 07 / 2022

18:13:55 UTC

The document has been completed.

EXHIBIT 1

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

DOMINIQUE MITCHELL, on behalf of herself
and all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiffs,

v.

COLEMAN ENVIRONMENTAL
ENGINEERING, INC., a California corporation,
DOES 1 through 10, inclusive,

Defendants.

CASE NO: CV421915

*Assigned to the Honorable Michael S. Lunas,
Dept. 1*

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

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A CALIFORNIA COURT AUTHORIZED THIS NOTICE.

THIS IS NOT A SOLICITATION FROM A LAWYER.

- A Settlement (as defined below) will provide \$425,000 to pay claims to all individuals who worked for Coleman Environmental Engineering, Inc. (“Defendant”) as a non-exempt employee in California at any time between April 21, 2020 through March 24, 2022.
- The Settlement resolves a lawsuit alleging Defendant failed to pay all wages due; provide compliant meal and rest periods or premium compensation in lieu thereof; reimburse employee business expenses; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$148,750 as attorneys’ fees and \$15,000 as expenses for investigating the facts, litigating the case, and negotiating the Settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Coleman Environmental Engineering, Inc. about the legal claims that were brought in this case.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

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

WHAT IS THIS LAWSUIT ABOUT?

On July 1, 2021, Plaintiff Dominique Mitchell ("Plaintiff"), a former employee of Coleman Environmental Engineering, Inc., filed this lawsuit in the Lake County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between April 21, 2020 through March 24, 2022 ("Class Period"). Specifically, the lawsuit alleges members of the class were not paid all wages due; were not provided all compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; were not issued accurate and complete itemized wage statements; and were not reimbursed for all business expenses incurred. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies it owes Class Members (as defined below) any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
GAINES & GAINES, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Christopher Gonzalez, Esq.
LEECH TISHMAN FUSCALDO & LAMPL, INC.
200 South Los Robles Avenue, Suite 300
Pasadena, CA 91101
Phone: (818) 550-8300

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe Plaintiff would have won anything from a trial. There has been no trial. Instead, Plaintiff, on behalf of herself and the Class Members, and Defendant agreed to a settlement, which is memorialized in the Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's attorneys believe the Settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for Coleman Environmental Engineering, Inc. as a non-exempt employee in California at any time between April 21, 2020 through March 24, 2022.

C. What does the Settlement provide?

1. Maximum Settlement Amount.

The Settlement provides Defendant will pay \$425,000 (the "Maximum Settlement Amount") to settle the lawsuit.

2. Net Settlement Proceeds.

The "Net Settlement Proceeds" is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Proceeds amount is the Maximum Settlement Amount less the following amounts that will be requested at a Court "Final Approval Hearing" and are subject to comment or objection by Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$148,750;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$15,000;

(c) **Service Payments to the Class Representative (i.e., Plaintiff)** in an amount set by the Court, not to exceed \$12,000 for her service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$12,500.00, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$10,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"), in which 75% or \$7,500, shall be paid to the California Labor and Workforce Development Agency ("LWDA") and the remaining 25% or \$2,500, shall be included in the Net Settlement Proceeds for payment to Class Members.

3. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon the Effective Date (DEFINITION?), and subject to Defendant's full payment of the Maximum Settlement Amount, Plaintiff and all Class Members who do not timely opt-out will be deemed to have fully released and discharged Defendant Coleman Environmental Engineering, Inc. and each of its present and former officers, directors, members, owners, managers, shareholders, agents, operators, partners, joint ventures, subsidiaries, parent companies, related entities, consultants, attorneys, successors or assignees (collectively, "Released Parties") from any and all Released Claims (as defined below) which arose during employment as a non-exempt employee in California during the Class Period.

The "Released Claims" include any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under state law for any alleged failure to pay all business expense reimbursements, wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock), failure to provide meal and authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to timely pay wages and final wages and waiting time penalties, and failure to furnish accurate wage statements, including claims derivative and/or related to these claims, liquidated damages, and conversion of wages. The Released Claims shall also include, claims that were raised, or that reasonably could have been raised based on the facts and allegations in the Complaint. This Settlement shall include all claims and theories arising under the applicable regulations, Labor Code section 2802, Wage Orders and Labor Code, state wage and hour law, as well as claims under Business and Professions Code section 17200 et seq., and/or Labor Code section 2698 et seq. based on violations of the above Labor Code provisions.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) ("Class Member(s)") shall receive an "Individual Payment Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total weeks worked by all participating Class Members in California in a non-exempt position during the Class Period, which will yield the applicable weekly rate. The weekly rate shall be multiplied by the

number of weeks each individual participating Class Member worked for Defendant in California in a non-exempt position during the Class Period to yield their Individual Payment Amount. Each Participating Settlement Class Member who does not opt out will receive an Individual Payment Amount equal to their individual weeks worked in California in a non-exempt position during the Class Period multiplied by the weekly rate.

For tax purposes, each Individual Payment Amount will be apportioned (a) 30% as wages (reported on an IRS Form W-2 and subject to applicable withholdings); (b) 50% to penalties (reported on an IRS Form 1099); 10% to expense reimbursement; and 10% to interest (reported on an IRS Form 1099). All Individual Payment Amounts paid to Class Members will be subject to any applicable wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from April 21, 2020 through March 24, 2022. Based on these weeks worked, you are entitled to an Individual Payment Amount of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than [], 2022. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

F. When Will I Be Paid?

After the Court grants approval of the Settlement, you will receive your Individual Payment Amount in two (2) installments over approximately ten (10) months.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on [], at [] m., in the Courtroom of Judge Michael S. Luna of the Lake County Superior Court, Department 1, located at 255 North Forbes Street, Lakeport, California 95453. The Court will determine: (A) whether the lawsuit should finally be certified as a class action for settlement purposes; (B) whether the Settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Class Members; (C) whether the Class Members should be bound by the terms of the Settlement; (D) the amount of the attorneys' fees and costs to be awarded to Plaintiff's attorneys; and (E) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

• OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING

TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator's address is [Settlement Administrator address].

• **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

• **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("opt out") from the Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own claims in a separate suit. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Lake County Superior Court, located at 255 North Forbes Street, Lakeport, California 95453.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT CALL THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS. THE COURT CANNOT PROVIDE YOU WITH LEGAL ADVICE OR ANY OPINION AS TO THIS SETTLEMENT OR LAWSUIT.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION FORM

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (I.E., NOT PARTICIPATE IN) THE SETTLEMENT OF THE LAWSUIT KNOWN AS *Dominique Mitchell v. Coleman Environmental Engineering, Inc., and Does 1 Through 10, Inclusive, Defendants*, Lake County Superior Court, Case No. CV421915. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by Defendant Coleman Environmental Engineering, Inc. as a non-exempt employee in California between April 21, 2020 through March 24, 2022.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

Coleman Environmental Engineering, Inc. Claims Administrator
c/o [REDACTED]

EXHIBIT 3

1 DANIEL F. GAINES, ESQ. SBN 251488
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2 ALEX P. KATOFISKY, ESQ. SBN 202754
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5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Dominique Mitchell, on behalf of herself and on behalf of all similarly
8 situated individuals and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LAKE**

11 DOMINIQUE MITCHELL, on behalf of
12 herself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*,

13 Plaintiff,

14 v.

15 COLEMAN ENVIRONMENTAL
16 ENGINEERING, INC., a California
corporation, DOES 1 through 10, inclusive,

17 Defendants.

CASE NO: CV121915

*Assigned to the Honorable Michael S. Lunas
Department 1*

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

1. FAILURE TO PAY ALL WAGES DUE
(LABOR CODE §§ 510, 1194, 1197, 1720,
1771, 1772, AND 1774)
2. FAILURE TO PROVIDE COMPLIANT
REST PERIODS OR COMPENSATION
IN LIEU THEREOF (LABOR CODE §
226.7; IWC WAGE ORDER 16-2001)
3. FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS OR COMPENSATION
IN LIEU THEREOF (LABOR CODE §§
226.7, 510, AND 512; IWC WAGE ORDER
16-2001)
4. FAILURE TO REIMBURSE BUSINESS-
RELATED EXPENSES (LABOR CODE §
2802)
5. FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))

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**6. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

**7. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200 ET SEQ.**

**8. CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2698 ET SEQ. FOR
VIOLATIONS OF LABOR CODE §§ 201,
202, 226(a), 226.7, 510, 512, 1194, 1197,
1720, 1771, 1772, 1774, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: July 1, 2021

Plaintiff DOMINIQUE MITCHELL (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other employees who work or formerly worked for COLEMAN ENVIRONMENTAL ENGINEERING, INC., a California corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within the State of California.

2. From April 21, 2020 through March 24, 2022, Defendants have had a consistent policy of failing to pay Class Members (as defined below) all wages due; provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; reimburse all business-related expenses to Class Members; provide accurately itemized wage statements to Class Members; and to timely pay wages upon separation of employment to Class Members.

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3. Plaintiff, on behalf of herself and the members of the Class, brings this action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1197, 1720, 1771, 1772, 1774, and 2802, seeking compensation for all unpaid wages, statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

5. Plaintiff, on behalf of herself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks civil penalties for Defendants' various violations of the California Labor Code.

II.

A. Plaintiff

- a. Willfully denied all wages due;
- b. Willfully denied compliant rest periods or compensation in lieu thereof;
- c. Willfully denied compliant meal periods or compensation in lieu thereof;
- d. Willfully denied the payment of all business-related expense reimbursement due;
- e. Willfully denied accurately itemized wage statements; and
- f. Denied the timely payment of wages upon separation of her employment.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of herself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

THE CLASS

All non-exempt California employees of Defendant COLEMAN ENVIRONMENTAL ENGINEERING, INC. from April 21, 2020 through March 24, 2022.

14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify these class descriptions with greater specificity or further division into subclasses or limitation to particular issues.

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1 15. This action has been brought and may properly be maintained as a class action under
2 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
3 interest in the litigation and the proposed Class is easily ascertainable.

4 **A. Numerosity**

5 16. The potential members of the Class as defined are so numerous that joinder of all Class
6 Members is impracticable. While the precise number of members of the Class has not been
7 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 currently employ, and during the relevant time periods employed, over 100 persons in the State of
9 California who fall within the Class definition.

10 17. Accounting for employee turnover during the relevant period necessarily increases this
11 number. Plaintiff alleges Defendants' employment records would provide information as to the
12 number and location of members of the Class. Joinder of members of the Class is not practicable.

13 **B. Commonality**

14 18. There are questions of law and fact common to the Class that predominate over any
15 questions affecting only individual Class Members. These common questions of law and fact include,
16 without limitation:

- 17 a. Whether Defendants failed to pay all wages due to Plaintiff and Class
18 Members, in violation of Labor Code §§ 510, 1194, 1197, 1720, 1771, 1772,
19 and 1774;
- 20 b. Whether Defendants failed to properly provide compliant rest periods or
21 compensation in lieu thereof to Plaintiff and Class Members, in violation of
22 Labor Code § 226.7 and IWC Wage Order 16-2001;
- 23 c. Whether Defendants failed to properly provide compliant meal periods or
24 compensation in lieu thereof to Plaintiff and Class Members, in violation of
25 Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 16-2001;
- 26 d. Whether Defendants failed to reimburse Plaintiff and Class Members for
27 necessary business expenses incurred in direct consequence of the discharge
28 of their duties, in violation of Labor Code § 2802;

- 1 e. Whether Defendants failed to provide Plaintiff and Class Members with
2 accurately itemized wage statements, in accordance with Labor Code § 226(a),
3 (e);
4 f. Whether Defendants failed to timely pay Plaintiff and Class Members all
5 wages due and owing at the separation of their employment, in violation of
6 Labor Code §§ 201-203; and
7 g. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
8 to Business & Professions Code § 17200 *et seq.*

9 **C. Typicality**

10 19. The claims of the named Plaintiff are typical of the claims of members of the Class.
11 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
12 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
13 of law, and statutes as alleged herein.

14 **D. Adequacy of Representation**

15 20. Plaintiff will fairly and adequately represent and protect the interests of members of
16 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
17 employment class actions.

18 **E. Superiority of Class Action**

19 21. A class action is superior to other available means for the fair and efficient adjudication
20 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
21 questions of law and fact common to the proposed Class predominate over any questions affecting
22 only individual members of the proposed Class. Each member of the proposed Class has been
23 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

24 22. Class action treatment will allow those similarly situated persons to litigate their
25 claims in the manner that is most efficient and economical for the parties and the judicial system.
26 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
27 action that would preclude its maintenance as a class action.

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1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

5 FAILURE TO PAY ALL WAGES DUE

6 (LABOR CODE §§ 510, 1194, 1197, 1720, 1771, 1772, AND 1774)

7 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
8 forth herein.

9 24. During the liability period, Defendants failed to compensate Plaintiff and Class
10 Members with all wages due during the course of employment, in violation of Labor Code §§ 510,
11 1194, 1197, 1720, 1771, 1772, and 1774. Defendants compensated Plaintiff and Class Members with
12 significantly less wages than the prevailing wage to which they were entitled. Defendants also paid
13 Plaintiff and Class Members weekly per diem benefits which exceeded the amount of reimbursement
14 for which they were intended and were therefore required to be included in Plaintiff's and Class
15 Member's regular rate of pay, but were not. As a result, Plaintiff and Class Members were not paid
16 at the correct overtime rate of pay when they worked overtime hours, in violation of Labor Code §§
17 510, 558, and 1194.

18 25. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
19 Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and
20 are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and
21 costs pursuant to Labor Code § 1194.

22 26. Wherefore, Plaintiff and the Class she seeks to represent request relief as described
23 below.

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V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

**FAILURE TO PROVIDE COMPLIANT REST PERIODS OR COMPENSATION IN LIEU
THEREOF**

(LABOR CODE § 226.7 AND IWC WAGE ORDER 16-2001)

27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods, as required by Labor Code § 226.7 and IWC Wage Order 16-2001.

29. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 16-2001. Plaintiff and Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes late or cut short. This violates Labor Code § 226.7 and IWC Wage Order No. 16-2001.

30. Pursuant to Labor Code § 226.7 and IWC Wage Order 16-2001, Plaintiff seeks the payment of all rest period compensation which she and Class Members are owed, according to proof.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

**FAILURE TO PROVIDE COMPLIANT MEAL PERIODS OR COMPENSATION IN LIEU
THEREOF**

(LABOR CODE §§ 226.7, 510, AND 512 AND IWC WAGE ORDER 16-2001)

31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more compliant meal periods as set forth in Labor Code §§ 226.7, 510, and 512 and IWC Wage Order 16-2001.

33. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 510, and 512 and IWC Wage Order 16-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours in duration, but were not paid premium wages of one hour's pay for each missed first or second meal period. When Plaintiff and Class Members were able to take a meal period, it was typically late (after the end of the fifth or tenth hour of a shift) or interrupted. These practices violate Labor Code §§ 226.7, 510, and 512 and IWC Wage Order 16-2001.

34. Pursuant to Labor Code §§ 226.7, 510, and 512 and IWC Wage Order 16-2001, Plaintiff seeks the payment of all unpaid meal period compensation and unpaid wages which she and Class Members are owed, according to proof.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES

(LABOR CODE § 2802)

35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiff and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

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37. Plaintiff and Class Members to were required to use their personal cellular phones while working for Defendants (including clocking in and out for each shift as well as making phone calls for work purposes), but were not reimbursed for this expense.

38. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at the time of trial.

39. Pursuant to Labor Code § 2802, Plaintiff and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT

PROVISIONS

(LABOR CODE § 226(a), (e))

40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have failed to comply with Labor Code § 226(a).

42. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members were not paid all wages due and premium wages for unauthorized meal and rest periods, as stated above. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9). Independent of the above allegations, the wage statements issued to Plaintiff and all Class Members failed to set forth an employee identification number or the last four digits of the employees' social security number, in violation of Labor Code § 226(a)(7).

43. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and Class Members have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to accurately state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements themselves. As a result, Plaintiff and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

44. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set forth herein.

45. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

46. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, including premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment.

47. More than 30 days have passed since Plaintiff and Class Members have left Defendants' employ.

48. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

49. Plaintiff incorporates paragraphs 1 through 48 of this Complaint as though fully set forth herein.

50. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this

1 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
2 and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within
3 the meaning of Code of Civil Procedure § 1021.5.

4 51. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
5 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
6 appropriate equitable relief.

7 52. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
8 practices.

9 53. Wage and hour laws express fundamental public policies. Properly providing
10 employees with all wages and expense reimbursement due are fundamental public policies of this
11 State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
12 enforce vigorously minimum labor standards, to ensure that employees are not required or permitted
13 to work under substandard and unlawful conditions, and to protect law-abiding employers and its
14 employees from competitors who lower their costs by failing to comply with minimum labor
15 standards.

16 54. Defendants have violated statutes and public policies. Through the conduct alleged
17 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
18 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
19 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
20 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
21 guaranteed to all employees under law.

22 55. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
23 §17200 *et seq.* of the Business & Professions Code.

24 56. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
25 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
26 17200 *et seq.* of the Business & Professions Code.

27 57. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
28 similarly situated have been damaged in a sum as may be proven.

58. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the money Defendants have unlawfully failed to pay.

XI.

EIGHTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS
OF LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194, 1197, 1720, 1771, 1772, 1774,
AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 226.3 AND 558**

59. Plaintiff incorporates paragraphs 1 through 58 of this Complaint as though fully set forth herein.

60. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

61. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, 1194, 1197, 1720, 1771, 1772, 1774, and 2802; and

b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

62. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

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63. On April 21, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of April 21, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

XII.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid wages due to Plaintiff and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
3. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant to Labor Code § 2802;
6. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
8. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
9. An award of prejudgment and post-judgment interest;

- 1 10. An award providing for payment of costs of suit;
2 11. An award of attorneys' fees; and
3 12. Such other and further relief as this Court may deem just and proper.
4 13.

5 Dated: June 27, 2022

Respectfully submitted,

6 GAINES & GAINES
7 A Professional Law Corporation

8 By: _____
9 DANIEL F. GAINES
10 EVAN S. GAINES
 Attorney for Plaintiff

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

13 Dated: June 27, 2022

Respectfully submitted,

14 GAINES & GAINES
15 A Professional Law Corporation

16 By: _____
17 DANIEL F. GAINES
18 EVAN S. GAINES
 Attorney for Plaintiff