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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

14
15 JOSUE AVALOS, individually, and on behalf
of all others similarly situated,

16 Plaintiff,

17 vs.

18 KENWOOD FLOORS INC, a California
19 corporation; and DOES 1 through 50,
inclusive,

20 Defendant.
21

CASE NO.: 21STCV29962

22 **CLASS ACTION SETTLEMENT**
23 **AGREEMENT AND RELEASE**
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1 This Class Action Settlement and Release (“Settlement Agreement”) is entered into by and
2 between Plaintiff Josue Avalos (“Plaintiff”), on behalf of himself and the Class, on the one hand, and
3 Defendant Kenwood Floors Inc., a California corporation (“Defendant”), on the other hand. Plaintiff
4 and Defendant are collectively referred to herein as “Parties” and individually referred to herein as
5 “Party.”

6 In consideration of the mutual covenants, promises, and agreements set forth herein, the
7 Parties agree that, pursuant to the terms and conditions set forth herein, which are subject to approval
8 of the Court, this Action and the Released Claims shall be settled and compromised as between
9 Plaintiff and the Class on the one hand and Defendant on the other hand.

10 **DEFINITIONS**

11 1. “Action” means *Josue Avalos v. Kenwood Floors, Inc.*, Superior Court of the State of
12 California for the County of Los Angeles, Case No.: 21STCV29962.

13 2. “Class” means: all non-exempt employees of Defendant who worked for Defendant
14 in California during the Class Period.

15 3. “Class Counsel” means the Law Office of Scott E. Wheeler.

16 4. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and
17 resolution of this Action and Class Counsel’s expenses and costs incurred in connection with this
18 Action.

19 5. “Class Information” means the compilation of the following information for each
20 Class Member: last known full name; social security number; last known address; last known
21 telephone number; number of compensable workweeks/pay periods for each Class Member during
22 the Class Period and PAGA Period; and other such mutually agreed upon information by the Parties
23 as may be necessary to independently review the Compensable Workweeks attributed to each Class
24 Member and PAGA Aggrieved Employee.

25 6. “Class Member” means each person who is a member of the Class defined above and
26 who is eligible to participate in this Settlement.

27 7. “Class Notice” means the notice, substantially in the form attached hereto as
28 **Exhibit 1**, which the Settlement Administrator will mail to each Class Member, and which

1 explains, *inter alia*, the terms of this Settlement, each Class Member's estimated Individual
2 Settlement Payment, the settlement process, and the right of Class Members to object to the
3 Settlement, opt-out of the Settlement, or dispute the number of Compensable Workweeks attributed
4 to them. Notice to the Class Members will be in English and Spanish.

5 8. "Class Period" means the time period from August 13, 2017, through April 10, 2022.

6 9. "Class Representative Service Award" means the amount that the Court authorizes
7 to be paid to Plaintiff, in addition to Plaintiff's Individual Settlement Payment and Individual PAGA
8 Payment, in recognition of, *inter alia*, his efforts and risks in assisting with the prosecution of the
9 Action and in return for executing a general release with Defendant.

10 10. "Compensable Work Week" or "Compensable Work Weeks" mean a reasonable
11 estimate of weeks worked by each Class Member individually and collectively by all Class Members
12 during the Class Period based on Defendant's records and used as a value to calculate Individual
13 Settlement Payments. A work week consists of seven (7) days, starting at 12:00 a.m. on Sunday
14 through Saturday at 11:59 p.m. A Class Member who works less than seven (7) days in a work week,
15 but at least one (1) day during the work week, will be credited as having worked a full work week.

16 11. "Court" means the Superior Court for the County of Los Angeles, State of California.

17 12. "Defendant" means *Kenwood Floors, Inc.*

18 13. "Effective Date" means the later of: (a) the Court's final approval of the settlement if
19 no objections by or on behalf of Class Members have been filed and not withdrawn; (b) the time for
20 appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c)
21 the final resolution of any appeal that has been filed; and (d) and the Gross Settlement Amount is
22 fully funded.

23 14. "Employer's Share of Payroll Taxes" means the dollar amount of Defendant's
24 employer payroll tax obligation on the employee wage portion of the Individual Settlement
25 Payments, including but not limited to, customary withholdings for federal, state and local taxes, and
26 any similar tax or charge. Defendant shall be responsible for paying the Employer's Share of Payroll
27 Taxes separately from, and in addition to, the Gross Settlement Amount, in the event that any portion
28 of the Gross Settlement Amount is designated as wages.

1 15. “Final Approval Hearing” means the hearing that the Court will hold after the Court
2 has granted preliminary approval of the Settlement and notice has been provided to the Class the
3 response of the Class to the Settlement has been determined, regarding, *inter alia*, whether final
4 approval of the Settlement is appropriate and the amounts properly payable for: (a) Individual
5 Settlement Payments; (b) the Class Counsel Award; (c) the Class Representative Service Awards;
6 (d) payment to the LWDA; and (e) the Settlement Administration Costs.

7 16. “Gross Settlement Amount” means the maximum amount which Defendant is
8 obligated to pay under this Settlement Agreement, which is Seventy Thousand Dollars (\$70,000.00).
9 This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross
10 Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant under any
11 circumstances. Payments of any appropriate and lawfully-required employer share of the payroll
12 taxes on the taxable portion of the settlement payments shall be paid separately from the Gross
13 Settlement Amount by Defendant.

14 17. “Individual Settlement Payment” means the amount payable from the Net Settlement
15 Amount to each Settlement Class Member.

16 18. “Individual PAGA Payment” means the amount payable to the PAGA Aggrieved
17 Employees from the \$3,000 allocated to them (i.e., 25% of \$12,000 allocated to penalties under the
18 PAGA included in this settlement in Paragraph 49(i) of this Agreement).

19 19. “LWDA” means the California Labor and Workforce Development Agency.

20 20. “Net Settlement Amount” means the Gross Settlement Amount, less the Class
21 Counsel Award, Class Representative Service Award, the entire Payment to the LWDA and PAGA
22 Aggrieved Employees, and Settlement Administration Costs. If the Court approves less than the
23 amounts requested for the Class Counsel Award, Class Representative Service Awards, payment to
24 the LWDA and PAGA Aggrieved Employees for PAGA penalties, or Settlement Administration
25 Costs, such amounts will return to the Net Settlement Amount.

26 21. “Objection” means a letter or other written communication submitted by a Class
27 Member to the Settlement Administrator that contains a clear statement by the Class Member that he
28 or she is objecting to any of the terms of the Settlement.

22. "PAGA Aggrieved Employees" means all non-exempt, hourly employees employed by Defendant in California, during the PAGA Period.

23. "PAGA Period" means any time between June 9, 2020, through April 10, 2022. .

24. "PAGA Pay Period(s)" means the number of pay periods worked by each PAGA Aggrieved Employee individually during the PAGA Period and used as a value to calculate Individual PAGA Payments. The number of PAGA Pay Periods for each PAGA Aggrieved Employee will be calculated by the Settlement Administrator, based on the Class Information provided by Defendant. The number of PAGA Pay Periods for each PAGA Aggrieved Employee will be determined by counting any pay period within the PAGA Period during which a PAGA Aggrieved Employee performed work. A PAGA Pay Period starts at 12:00 a.m. on the first day of the PAGA Pay Period and 11:59 p.m. on the last date of the PAGA Pay Period. A PAGA Aggrieved Employee who works at least one (1) day in a PAGA Pay Period will be credited as having worked a full PAGA Pay Period.

25. "Parties" means Plaintiff and Defendant, collectively, and "Party" means either Plaintiff or Defendant, individually.

26. "Payment Ratio" means the respective Compensable Work Weeks for each Settlement Class Member divided by the total Compensable Work Weeks for all Settlement Class Members.

27. "PAGA Payment Ratio" means the respective PAGA Workweeks for each PAGA Aggrieved Employee divided by the total PAGA Workweeks for all PAGA Aggrieved Employees.

28. "Plaintiff" means Josue Avalos.

29. "Preliminary Approval Date" means the date upon which the Court filed an order substantially in the form attached hereto as **Exhibit 2**, and which grants preliminary approval of the Settlement.

30. "Request for Exclusion" means a letter or other written communication submitted by a Class Member to the Settlement Administrator that contains a clear statement by the Class Member that he or she is electing to be excluded from the Settlement.

1 31. “Released Claims by Plaintiff” means: As of the Effective Date, Plaintiff, as a Class
2 Member, agrees to the Release of Claims by Settlement Class Members, which is set forth in
3 paragraph 34 below. In addition to Release of Claims by Settlement Class Members, Plaintiff agrees
4 to a general release, which includes any unknown claims that he did not know or suspect to exist in
5 his favor at the time of the general release, which, if known, might have affected his Settlement with,
6 and release of, the Released Parties. With respect to the general release, Plaintiff stipulates and agrees
7 that, upon the Effective Date, he shall be deemed to have expressly waived and relinquished, to the
8 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California
9 Civil Code, or any other similar provision under federal or state law as to the generally released
10 claims, which provides:

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

15 Plaintiff may hereafter discover facts in addition to or different from those now known or
16 believed to be true with respect to the subject matter of the general release, but upon the Effective
17 Date, he shall be deemed to have fully, finally, and forever settled and released any and all of the
18 claims released pursuant to the general release, whether known or unknown, suspected or
19 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any
20 theory of law or equity. In addition, the general release applies to Plaintiff only. This release shall
21 not apply to claims which cannot otherwise be released such as Worker’s Compensation Benefits or
22 Unemployment Insurance benefits. Moreover, specifically excluded from this release include
23 Plaintiff’s claims for wrongful termination in violation of public policy, retaliation, defamation and
24 emotional distress.

25 This general release applies to Plaintiff only. It does not apply to the Released Claims by
26 Settlement Class Members or PAGA Aggrieved Employees, which is set forth in Paragraph 32
27 below.

28 32. “Released Claims by Settlement Class Members” means: As of the Effective Date,
Settlement Class Members shall fully and finally release and discharge Released Parties, from

1 August 13, 2017 through the date of preliminary approval, in exchange for the consideration
2 provided under this Settlement, Settlement Class Members shall fully and finally release and
3 discharge Released Parties, from any and all claims, debts, liabilities, demands, obligations,
4 guarantees, costs, expenses, attorneys' fees, damages, action or causes of action, pleaded or that
5 could have been pleaded based on the facts and claims asserted in the operative Complaint,
6 including: any and all claims for: (a) failure to prove meal periods; (b) failure to provide rest
7 breaks; (c) failure to overtime wages; (d) failure to pay minimum wages; (e) failure to pay timely
8 wages; (f) failure to pay all wages owed and due upon termination; (g) failure to maintain required
9 records; (h) failure to furnish accurate itemized wage statement; (i) failure to provide
10 reimbursement for employment-related expenses; (j) violation of California Business & Professions
11 Code section 17200, *et seq.*; and (k) violation of California Private Attorneys' General Act,
12 California Labor Code § 2699, *et seq.*, predicated on any of the violations of the California Labor
13 Code and applicable IWC Wage Order alleged in the Operative Complaint or the subject LWDA
14 exhaustion letter. This release shall apply to all claims arising at any point during the Class Period.

15 33. "Released PAGA Claims by PAGA Aggrieved Employees" means all claims for
16 civil penalties under the PAGA that Plaintiff, on behalf of himself, the State of California, and all
17 PAGA Aggrieved Employees, disclosed in Plaintiff's LWDA letter, and that Plaintiff and PAGA
18 Aggrieved Employees are fully and irrevocably releasing the Released Parties from, in exchange
19 for the consideration provided by this Settlement. PAGA Aggrieved Employees will only release
20 claims alleged in, or that could have been alleged, based on the facts asserted in Plaintiff's LWDA
21 letter or within the operative Complaint. In particular, the released claims include the underlying
22 purported violations for failure to provide meal and rest periods to non-exempt employees, in
23 violation of Labor Code §§ 226.7, 510, 512, 1194, 1197 and Wage Order No. 4-2001, §§ 11-12;
24 failure to pay one additional hour of compensation to non-exempt employees at their regular rate of
25 pay for each workday that a meal or rest period is not provided, in violation of Labor Code § 226.7
26 and Wage Order No. 4-2001, §§ 11(B) and 12(B); failure to pay non-exempt employees overtime
27 wages, and failure to properly calculate overtime wages and minimum wages, in violation of Labor
28 Code §§ 510, 1194, 1198, and Wage Order No. 4-2001, § 3; failure to pay non-exempt employees

1 the unpaid balance of the full amount of overtime compensation, including interest, in violation of
2 Labor Code § 1194; failure to timely pay non-exempt employees all wages due, in violation of
3 Labor Code § 204; willful failure to pay discharged or quitting non-exempt employees all wages
4 due, in violation of Labor Code §§ 201-203; failure to provide accurate itemized wage statements
5 to non-exempt employees in violation of Labor Code §§ 226, 1174, and 1174.5; and failure to
6 maintain required records of non-exempt employees, in violation of Labor Code §§ 1174, 1174.5,
7 and Wage Order No. 4-2001, § 7.

8 34. PAGA Aggrieved Employees will release the PAGA Claims even if they, as a Class
9 Member, request exclusion from the class. Released PAGA Claims include any claims for
10 attorneys' fees, costs, or other damages that may be recoverable under the PAGA claims that are
11 alleged or could have been alleged in the operative Complaint. This release shall apply to PAGA
12 claims arising at any point during the PAGA Period.

13 35. "Released Parties" collectively mean: Defendant and its respective past, present
14 and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents,
15 representatives, and any individual or entity which could be jointly liable with any of the foregoing
16 under contract, common law, or pursuant to California Labor Code section 558.1 (including,
17 without limitation, Ken Peng).

18 36. "Response Deadline" means forty-five (45) days after the postmark date of the Notice
19 of Class Settlement that the Settlement Administrator shall mail to Class Members, and the last date
20 on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an Objection to the
21 Settlement.

22 37. "Settlement" means the disposition of the Action pursuant to this Agreement.

23 38. "Settlement Administration Costs" means the amount to be paid to the Settlement
24 Administrator from the Gross Settlement Amount for administration of this Settlement.

25 39. "Settlement Administrator" means Phoenix Settlement Administrator. The Settlement
26 Administrator shall be responsible for, *inter alia*: (a) printing and mailing the Class Notice to the
27 Class; (b) calculating the Individual Settlement Payments based on the Class Information; (c) to the
28 extent applicable, calculating the Employer's Share of Payroll Taxes which Defendant shall pay in

1 addition to the Gross Settlement Amount; (d) receiving and reporting the Requests for Exclusion and
2 Objections submitted by Class Members to the Parties; (e) providing declaration(s) as necessary in
3 support of preliminary and/or final approval of this Settlement; (f) processing and mailing payments
4 to Plaintiffs, Class Counsel, the LWDA, and Settlement Class Members; (g) creating and maintaining
5 a static settlement website where relevant documents and information pertaining to the Settlement
6 will be posted, including *inter alia*, the judgment and amended judgment if applicable; and (h) any
7 other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.
8 The Settlement Administrator shall keep the Parties timely apprised of the performance of all
9 Settlement Administrator responsibilities. The Parties agree that they have no financial interest or
10 other relationship with Phoenix Settlement Administrator that could create a conflict of interest.
11 Should a conflict of interest or other issue lead to the disqualification of the selected Settlement
12 Administrator, the Parties will meet and confer as to a suitable replacement.

13 40. “Settlement Class” or “Settlement Class Members” means all Class Members who
14 have not opted out of the Class by submitting a valid and timely Request for Exclusion.

15 **RECITALS**

16 41. Procedural History. On August 13, 2021, Plaintiff filed a complaint against
17 Defendant in Los Angeles County Superior Court, Case No.: 21STCV29962. Defendant has not filed
18 an answer to the complaint.

19 42. Investigation and Discovery. The Parties have conducted significant investigation of
20 the facts and law during the prosecution of this Action and before this Settlement was reached. Such
21 discovery and investigation includes, *inter alia*, the exchange of information and documents
22 pertaining to Plaintiff and the Class, and numerous meetings and informal conferences wherein the
23 Parties exchanged information, class data, and theories of the case. Plaintiff has also investigated the
24 law as applied to the facts of Plaintiff’s claims and Defendant’s potential defenses thereto.

25 43. The Parties participated in a private mediation session with Steve Pearl, Esq., on
26 February 22, 2022. Although the Parties did not initially resolve the matter, shortly thereafter the
27 Parties were able to reach a proposed class action settlement that would fully resolve this matter.
28

1 44. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
2 expense and length of continued proceedings necessary to litigate Plaintiff's claims through trial and
3 any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of
4 further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class
5 Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted
6 in the Action, both generally and in response to Defendant's defenses thereto, and the difficulties in
7 establishing damages for the Class. Plaintiff and Class Counsel have also taken into account
8 Defendant's agreement to enter into a settlement that confers substantial relief upon the members of
9 the Class. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
10 set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the
11 best interests of the Class.

12 45. Defendant's Reasons for Settlement. Defendant has concluded that any further
13 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
14 Defendant's time, energy, and resources have been and, unless this Settlement is completed, will
15 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken
16 into account the risks of further litigation in reaching its decision to enter into this Settlement. Even
17 though Defendant continues to contend that it is not liable for any of the claims alleged by Plaintiff
18 in this Action, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth
19 in this Settlement Agreement to put to rest the claims in this Action. As to the Released Claims,
20 Defendant denies and continues to deny each of those claims.

21 **STIPULATION AND AGREEMENT**

22 46. NOW THEREFORE, in consideration of the mutual covenants, promises, and
23 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

24 47. It is agreed by and among Plaintiff and Defendant that this Settlement shall bind
25 Plaintiff, Settlement Class Members, PAGA Aggrieved Employees, and Defendant, subject to the
26 terms and conditions hereof.

27 48. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
28 the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an

1 “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written
2 communication or disclosure between or among the Parties or their attorneys and other advisers, is
3 or was intended to be, nor shall any such communication or disclosure constitute or be construed or
4 be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230
5 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her,
6 or its own, independent legal and tax counsel for advice (including tax advice) in connection with
7 this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
8 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
9 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty
10 that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party
11 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
12 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
13 acknowledging party of the tax treatment or tax structure of any transaction, including any transaction
14 contemplated by this Agreement.

15 49. Class Certification. The Parties stipulate to class certification for purposes of
16 settlement only. If the Court does not grant either preliminary or final approval of this Settlement,
17 the Parties stipulate that this stipulation regarding class certification will be revoked and the Parties
18 will return to a point in litigation immediately prior to the execution of this Settlement Agreement.

19 50. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
20 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
21 have this matter presented to the Court for preliminary and final approval.

22 51. LWDA Notice. Plaintiff acknowledges and agrees that he will provide notice to the
23 LWDA of this Settlement in accordance with California Labor Code § 2699(1)(2).

24 52. Release of Claims by Plaintiff. Plaintiff releases the “Released Claims by Plaintiff”
25 as of the date that the Gross Settlement Amount is fully-funded by Defendant. The Settlement
26 Administrator shall notify the Parties in writing upon receipt of the full Gross Settlement Amount.

27 53. Release of Class Claims by Settlement Class Members. Settlement Class Members
28 release the “Released Claims by Settlement Class Members” as of the date that the Gross Settlement

1 Amount is fully-funded by Defendant. The Settlement Administrator shall notify the Parties in
2 writing upon receipt of the full Gross Settlement Amount.

3 54. Release of PAGA Claims by PAGA Aggrieved Employees. PAGA Aggrieved
4 Employees release the “Released PAGA Claims” as of the date that the Gross Settlement Amount is
5 fully-funded by Defendant. The Settlement Administrator shall notify the Parties in writing upon
6 receipt of the full Gross Settlement Amount.

7 55. Settlement Administration. Within thirty (30) calendar days after the Preliminary
8 Approval Date, Defendant shall provide the Settlement Administrator with the Class Information.

9 56. Notice to the Class. Upon receipt of the Class Information, the Settlement
10 Administrator will perform a search based on the National Change of Address Database to update
11 and correct any known or identifiable address changes. Within fourteen (14) calendar days after
12 receiving the Class Information, the Settlement Administrator shall mail copies of the Class Notice
13 to all Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise
14 its best judgment to determine the current mailing address for each Class Member. The address
15 identified by the Settlement Administrator as the current mailing address shall be presumed to be
16 the best mailing address for each Class Member.

17 a. The Class Notice and Procedure Comports with Due Process. The Parties
18 agree that the notice procedures outlined in this Agreement provide the best and most practical
19 method of giving notice to the Class and fully comply with due process and all applicable laws and
20 rules.

21 b. Undeliverable Notices. Any Class Notice returned to the Settlement
22 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the
23 forwarding address affixed thereto within seven (7) calendar days. If no forwarding address is
24 provided, the Settlement Administrator shall promptly attempt to determine a correct address by use
25 of skip-tracing, or other search using the name, address and/or Social Security number of the Class
26 Member involved, and shall then perform a re-mailing, if another mailing address is identified by
27 the Settlement Administrator. If the undeliverable notice is for a currently employed Class Member,
28 the Settlement Administrator shall contact Defendant, which will then make all reasonable efforts to

1 obtain the Class Member's current mailing address within seven (7) calendar days and provide it to
2 the Settlement Administrator. Class Members who receive a re-mailed Notice of Class Settlement
3 shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement
4 to: (a) submit a Request for Exclusion; (b) submit an Objection to the Settlement; or (c) dispute the
5 number of Compensable Workweeks attributed to them.

6 c. Disputes Regarding Individual Settlement Payments. Class Members will
7 have the opportunity, should they disagree with Defendant's records regarding the dates of
8 employment stated in the Class Notice and/or the number of Compensable Workweeks attributed
9 to them, to provide documentation and/or an explanation to show contrary information by the
10 Response Deadline. The dispute form must: (a) contain the full name, address, and telephone
11 number of the Class Member, and the last four digits of the Class Member's social security number
12 or full employee ID number; (b) contain the case name and case number; (c) a clear statement by
13 the Class Member that he or she is disputing the number of Compensable Workweeks and the
14 basis for the dispute; (d) be signed by the Class Member; and (e) be postmarked or e-mailed by the
15 Response Deadline. The date of the postmark on the return mailing envelope on the dispute form,
16 or the date the e-mail is sent, shall be the exclusive means used to determine whether it has been
17 timely submitted. If there is a dispute, the Settlement Administrator will consult with the Parties to
18 determine whether an adjustment is warranted. The Settlement Administrator shall then determine
19 the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this
20 Agreement. In the absence of circumstances indicating fraud, manipulation or destruction,
21 Defendant's records shall be given a rebuttable presumption of accuracy.

22 d. Requests for Exclusion. Class Members who wish to exclude themselves
23 from the Settlement must mail to the Settlement Administrator a Request for Exclusion by the
24 Response Deadline. The Request for Exclusion must: (a) contain the full name, address, and
25 telephone number of the Class Member, and the last four digits of the Class Member's social
26 security number; (b) contain the case name and case number; (c) a clear statement by the Class
27 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class
28 Member; and (e) be postmarked or e-mailed by the Response Deadline. The date of the postmark

1 on the return mailing envelope on the Request for Exclusion, or the date the e-mail is sent, shall be
2 the exclusive means used to determine whether it has been timely submitted. Any Class Member
3 who requests to be excluded from the Settlement Class shall not be entitled to any Individual
4 Settlement Payment, shall not release any of the Released Claims by Settlement Class Members,
5 and shall not have any right to object, appeal or comment thereon. Class Members who fail to
6 submit a valid and timely Request for Exclusion on or before the Response Deadline shall be
7 bound by all terms of the Settlement and any Final Approval Order and Judgment entered in this
8 Action. Any Class Member who submits a valid and timely Request for Exclusion will still
9 receive their share of the PAGA portion of this settlement.

10 e. Objections. Class Members who wish to object to the Settlement may do so
11 orally at the Final Approval Hearing without the need to submit a written Objection, or by mailing
12 to the Settlement Administrator a written Objection by the Response Deadline. The Class Notice
13 will inform Class Members that they appear at the final approval hearing by audio or video per the
14 instructions listed on the Court's website. The written Objection must: (a) contain the full name,
15 address, and telephone number of the Class Member, and the last four digits of the Class
16 Member's social security number; (b) contain the case name and case number; (c) the dates of
17 employment of the Class Member; (d) be signed by the Class Member; (e) state the basis for the
18 Objection, including any legal briefs, papers or memoranda in support of the Objection; and (f) be
19 postmarked or e-mailed by the Response Deadline. The date of the postmark on the return mailing
20 envelope on the written Objection, or the date the e-mail is sent, shall be the exclusive means used
21 to determine whether the written Objection has been timely submitted. Class Members who fail to
22 make Objections in the manner specified above shall be deemed to have waived any objections and
23 shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.
24 Class Counsel shall not represent any Class Members with respect to any Objections. The
25 Settlement Administrator will provide the Parties with any written Objection within seven (7)
26 calendar days of its receipt of any Objection. Plaintiff will file any and all written Objections with
27 the Court in advance of the Final Approval Hearing.

1 57. Funding Gross Settlement Amount. Within ninety (90) days of the Effective Date,
2 Defendant shall wire transfer the full Gross Settlement Amount. Defendant shall also separately pay
3 Employer's Share of Payroll Taxes to the Settlement Administrator as calculated and directed by the
4 Settlement Administrator.

5 58. Allocation of Settlement. Individual Settlement Payments will be paid from the Net
6 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual
7 Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members'
8 last known mailing address.

9 a. The Settlement Administrator shall calculate the total Compensable Work
10 Weeks for all Settlement Class Members based on the Class Information provided by Defendant.
11 The respective Compensable Work Weeks for each Settlement Class Member will be divided by the
12 total Compensable Work Weeks for all Settlement Class Members, resulting in the Payment Ratio
13 for each Settlement Class Member. Each Settlement Class Member's Payment Ratio will then be
14 multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment.

15 1. Individual Settlement Payments due to each Settlement Class
16 Member shall be designated as follows:

17 (a). Thirty-three percent (33%) of the Individual Settlement
18 Payment shall represent payment for alleged unpaid wages. This payment shall be subject to the
19 withholding of all applicable local, state, and federal taxes. Applicable payroll taxes and/or
20 contributions will be deducted from the amount paid to Settlement Class Members. The Settlement
21 Administrator will issue a W-2 Form to each Settlement Class Member in relation to this payment.

22 (b). Sixty-Seven percent (67%) of the Individual Settlement
23 Payment shall represent payment of all penalties and interest. These payments will not be subject
24 to withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS
25 Form 1099 to each Settlement Class Member in relation to these payments.

26 b. The Settlement Administrator shall calculate the total PAGA Workweeks for
27 all PAGA Aggrieved Employees based on the Class Information. The respective PAGA Workweeks
28 for each PAGA Aggrieved Employee will be divided by the total PAGA Workweeks for all PAGA

1 Aggrieved Employees, resulting in the PAGA Payment Ratio for each PAGA Aggrieved Employee.
2 Each PAGA Aggrieved Employee's PAGA Payment Ratio will then be multiplied by \$3,000 to
3 determine his or her Individual PAGA Payment.

4 c. Un-Negotiated Individual Payment Checks by Settlement Class Members.

5 Individual Settlement Payment checks shall remain negotiable for one hundred and eighty (180)
6 calendar days from the postmark date of issuance. If the Individual Settlement Payment check is not
7 cashed, deposited, or otherwise negotiated by the Settlement Class Member within the 180-day
8 deadline, the check will be voided, and the funds associated with any such voided checks shall be
9 paid in the name of the Class Member to the State of California Controller's Unclaimed Property
10 division. Neither Defendant, Defendant's counsel, Plaintiff's counsel nor Plaintiff will have any
11 liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized
12 negotiation of settlement checks or failure to timely cash a settlement check within the 180-day
13 period. The Settlement Administrator shall send a reminder postcard to any Class Member whose
14 settlement distribution check has not been negotiated within sixty (60) days after the date of mailing.

15 d. Certification By Settlement Administrator. The Parties have the right to
16 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
17 Administrator concerning the administration of the Settlement will be resolved by the Court, under
18 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
19 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
20 completion of administration of the Settlement, the Settlement Administrator shall provide written
21 certification of such completion to counsel for the Parties, and which shall be filed with the Court as
22 necessary.

23 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
24 by Settlement Class Members shall be deemed to be income to such Settlement Class Members solely
25 in the year in which such awards actually are received by the Settlement Class Members. It is
26 expressly understood and agreed that the receipt of such Individual Settlement Payments will not
27 entitle any Settlement Class Member to additional compensation or benefits under any company
28 compensation or benefit plan or agreement in place during the period covered by the Settlement, nor

1 will it entitle any Settlement Class Member to any increased pension and/or retirement, or other
2 deferred compensation benefits. It is the intent of this Settlement that any Individual Settlement
3 Payments provided for in this Agreement are the sole payments to be made by Defendant to the
4 Settlement Class Members in connection with this Settlement, and that the Settlement Class Members
5 are not entitled to any new or additional compensation or benefits as a result of having received the
6 Individual Settlement Payments (notwithstanding any contrary language or agreement in any benefit
7 or compensation plan document that might have been in effect during the period covered by this
8 Settlement).

9 f. Class Representative Service Award. Defendant agrees not to oppose or
10 object to a Class Representative Service Award to Plaintiff of up to Six Thousand Dollars
11 (\$6,000.00), subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099
12 – MISC to Plaintiff in connection with the Class Representative Service Award payment. Plaintiff
13 shall be solely and legally responsible to pay any and all applicable taxes on his Class Representative
14 Service Award and shall hold harmless Defendant and Class Counsel from any claim or liability for
15 taxes, penalties, or interest arising as a result of the Class Representative Service Award payment.
16 The Class Representative Service Award shall be in addition to Plaintiff's Individual Settlement
17 Payment. This Settlement is not contingent upon the Court awarding Plaintiff a Class Representative
18 Service Award in any amount, and any amount requested by Plaintiff for the Class Representative
19 Service Award that is not granted by the Court shall return to the Net Settlement Amount and be
20 distributed to Settlement Class Members as provided in this Agreement.

21 g. Class Counsel Award. Defendant agrees not to oppose or object to any
22 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
23 Settlement Amount, or Twenty-Three Thousand and Three Hundred and Ten Dollars (\$23,310.00).
24 Defendant further agrees not to oppose any application or motion by Class Counsel for the
25 reimbursement of any costs or expenses associated with Class Counsel's prosecution of this matter
26 from the Gross Settlement Amount, up to, but not to exceed Seventeen Thousand Dollars
27 (\$17,500.00). Class Counsel shall be solely and legally responsible to pay all applicable taxes on the
28 payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form

1 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is
2 not contingent upon the Court awarding Class Counsel any particular amount in attorneys’ fees and
3 costs. Any amount requested by Class Counsel for the Class Counsel Award and costs that is not
4 granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement Class
5 Members as provided in this Agreement.

6 h. Settlement Administration Costs. The Settlement Administrator shall be paid
7 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
8 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
9 \$10,000. Prior to the filing of a motion for final approval of this Settlement, the Settlement
10 Administrator shall provide the Parties with a statement detailing the costs of administration.

11 i. Payment to the LWDA. Thirty thousand dollars (\$12,000) from the Gross
12 Settlement Amount will be allocated to penalties under the Private Attorneys General Act of 2004.
13 Seventy-five percent (75%) of that amount, or \$9,000, will be paid to the LWDA and twenty-five
14 (25%) of that amount, or \$3,000, will be paid to the Settlement Class. This PAGA Payment is made
15 pursuant to California Labor Code § 2699(i).

16 59. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
17 Class Members, the Class Representative Service Award, the Class Counsel Award, Settlement
18 Administration Costs, and payment to the LWDA, shall all be distributed by the Settlement
19 Administrator within fourteen (14) calendar days of receipt of the Gross Settlement Amount from
20 Defendant. No person shall have any claim against Defendant, Defendant’s Counsel, Plaintiff,
21 Settlement Class Members, Class Counsel, or the Settlement Administrator based on distributions
22 and payments made in accordance with this Agreement.

23 60. Work Week Differential. It is currently estimated that Class Members worked 3,649
24 Compensable Work Weeks between August 17, 2017 – February 10, 2022. Defendant shall provide
25 Plaintiff with the total number of Class Members, and the total number of Compensable Work Weeks
26 worked by them, ten (10) calendar days before the date that Plaintiff informs Defendant that Plaintiff
27 will file a motion for preliminary approval. If more than 4,013 additional Compensable Work Weeks
28 are identified through February 10, 2022, or 10% more than 3,649, the Gross Settlement Amount wi

1 will be increased on a pro rata basis according to the number of additional Compensable Work
2 Weeks identified (i.e., all Compensable Work Weeks beyond 4,013)

3 61. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of
4 the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final
5 approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments;
6 (b) the Class Counsel Award; (c) the Class Representative Service Award; (d) payment to the LWDA;
7 (e) payment to the Aggrieved Employees and (f) the Settlement Administration Costs.

8 62. Nullification of Settlement Agreement. In the even the Settlement does not become
9 final for any reason, then this Agreement, and any documents generated to bring it into effect, shall
10 be null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
11 likewise be treated as void from the beginning. In the event an appeal is filed from the Court's Final
12 Approval Order and Judgment, or any other appellate review is sought, administration of the
13 Settlement shall be stayed pending final resolution of the appeal or other appellate review, and any
14 fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from
15 the Court's Final Approval Order and Judgment, or any other appellate review, shall be paid to the
16 Settlement Administrator by the party or person that filed the appeal, within thirty (30) calendar days
17 of said notification.

18 63. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class
19 Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not
20 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
21 holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

22 64. No Admission by Defendant. Defendant denies any and all claims alleged in this
23 Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or
24 admission, and shall not be used against Defendant as an admission or indication with respect to any
25 claim of any fault, concession, or omission by any Defendant.

26 65. Exhibits and Headings. The terms of this Settlement Agreement include the terms set
27 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
28 herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive

1 headings of any paragraphs or sections of this Agreement are inserted for convenience of reference
2 only and do not constitute a part of this Agreement.

3 66. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
4 except such proceedings necessary to implement and complete the Settlement, holding the Action in
5 abeyance pending the final approval hearing to be conducted by the Court.

6 67. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
7 interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance
8 with this Agreement shall be resolved as follows:

9 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
10 Member, or Defendant's Counsel, on behalf of Defendant, at any time believe that the other Party
11 has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
12 the alleged violation.

13 b. Upon receiving notice of the alleged violation or dispute, the responding Party
14 shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party
15 with the reasons why the Party disputes all or part of the allegation.

16 c. If the response does not address the alleged violation to the initiating Party's
17 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
18 differences.

19 d. If Class Counsel and Defendant's Counsel are unable to resolve their
20 differences after twenty (20) calendar days, either Party shall first contact the mediator (Steven Pearl,
21 Esq.) to try to resolve the dispute. If that proves unsuccessful, the party may file an appropriate
22 motion for enforcement with the Court. The briefing of such motion should be in letter brief form
23 and shall not exceed five (5) single-spaced pages (excluding exhibits).

24 e. Reasonable attorneys' fees and costs for work done in resolving a dispute
25 under this Section may be recovered by any Party that prevails under the standards set forth within
26 the meaning of applicable law.

27 68. Amendment or Modification. This Agreement may be amended or modified only by
28 a written instrument signed by counsel for all Parties.

1 69. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
2 the entire Agreement among these Parties, and no oral or written representations, warranties, or
3 inducements have been made to any Party concerning this Agreement or its Exhibits other than the
4 representations, warranties, and covenants contained and memorialized in the Agreement and its
5 Exhibits.

6 70. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
7 and represent they are expressly authorized by the Parties whom they represent to negotiate this
8 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
9 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
10 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
11 and use their best efforts to effect the implementation of the Settlement. In the event the Parties are
12 unable to reach agreement on the form or content of any document needed to implement the
13 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
14 this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
15 disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that
16 they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants
17 that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
18 covered by this Settlement to a third-party.

19 71. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
20 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

21 72. California Law Governs. All terms of this Settlement Agreement and the Exhibits
22 hereto shall be governed by and interpreted according to the laws of the State of California.

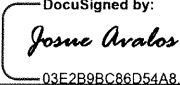
23 73. Counterparts. This Settlement Agreement may be executed in one or more
24 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
25 instrument.

26 74. This Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement
27 is a fair, adequate, and reasonable settlement of this Action and have arrived at this Settlement after
28 extensive arms-length negotiations, taking into account all relevant factors, present and potential.

75. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to approval by the Court.

76. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

Dated: 10/7/2022

By: 
03E2B9BC86D54A8...
Josue Avalos

Dated: _____

By: _____
Kenwood Floors, Inc.

Title: _____

1 75. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section
2 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and
3 enforcement of the terms of this Settlement Agreement and all orders and judgments entered in
4 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court
5 for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement
6 and all orders and judgments entered in connection therewith. All terms of this Settlement Agreement
7 are subject to approval by the Court.

8 76. Invalidity of Any Provision. Before declaring any provision of this Settlement
9 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
10 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
11 and enforceable.

12 Dated: 10/7/2022
13

By: 
14 Josue Avalos
15 03E2B9BC86D54A8

16 Dated: 10/21/2022
17

By: 
18 Kenwood Floors, Inc.
19

20 Title: C.E.O.
21
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23
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28

1 **APPROVED AS TO FORM:**

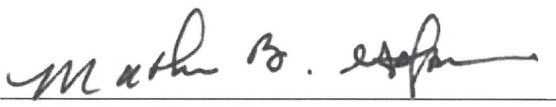
2
3 Dated: October 10, 2022

By: 

Scott E. Wheeler
Law Office of Scott E. Wheeler

Counsel for Plaintiff and the Putative Class

4
5
6 Dated: 10/21/22

By: 

Matthew B. Golper
Ballard Rosenberg Golper & Savitt, LLP

Counsel for Defendant Kenwood Floors, Inc.

EXHIBIT 1

CLASS NOTICE

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in the class action lawsuit entitled *Josue Avalos v. Kenwood Floors, Inc.*, California Superior Court, County of Los Angeles, Case No.: 21STCV29962 (the “Action”).

According to Kenwood Floors, Inc.’s (“Defendant”) records, you have been identified as a member of the Class, and therefore are receiving this Notice. Also according to Defendant’s records, your estimated share of the “Net Settlement Amount” is \$[REDACTED] and your share of the Private Attorneys General Act (“PAGA”) Payment is \$[REDACTED]. Your settlement payment is only an estimate; it may be higher or lower than estimated. See below for additional details.

Your options are further explained in this Notice. To exclude yourself from, or object to the Settlement, you must take action by certain deadlines. If you want to participate in the Settlement as proposed, you don’t need to do anything to obtain your share of the settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will be considered part of the Settlement Class and will receive settlement benefits. You will also give up your rights to pursue a separate legal action against <i>Kenwood Floors, Inc.</i> (“Defendant”), for the claims released under the Settlement.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded. However, if you do so, you will not receive any payment under the Settlement.
OBJECT	To object to the Settlement, you may object orally at the Final Approval Hearing, or you may write to the Settlement Administrator about why you don’t like the Settlement. This option is available only if you do not exclude yourself from the Settlement.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following Class:

All non-exempt employees who worked for Defendant in California from August 13, 2017 through April 10, 2022 (“Class Period”).

According to Defendant’s records, you are a member of the Class (a “Class Member”).

Also according to Defendant’s records, you were employed from June 9, 2020 to April 10, 2022, and are therefore a PAGA Aggrieved Employee as well.

What is this case about?

In the Action, Plaintiff alleges on behalf of himself and the Class the following claims against Defendant: (1) failure to provide meal periods or compensation in lieu thereof; (2) failure to provide rest periods or compensation in lieu thereof; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay timely wages; (6) failure to pay all wages owed and due at termination of employment; (7) failure to maintain required records; (8) failure to provide accurate itemized wage statements; (9) failure

to indemnify for necessary business expenditures; (10) violation of the California Unfair Competition Law; and (11) and violation of the PAGA.

Defendant denies any and all wrongdoing and maintains that it has complied with all laws alleged to have been violated. Defendant notes that this Settlement was established specifically to avoid the cost of proceeding with litigation and does not constitute an admission of liability by Defendant. The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses, however, the Court has granted preliminary approval of this Settlement.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (the "Parties"), through their attorneys and a mediator. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiff and Class Counsel believe this Settlement is in the best interests of the Class.

Who are the attorneys in this Lawsuit?

Class Counsel

THE LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler
Justin A. Wheeler
250 West First Street, Ste. 216
Claremont, CA 91711
Telephone: (909) 621-4988

Defendant's Counsel

BALLARD ROSENBERG GOLPER & SAVITT, LLP

Matthew B. Golper
15760 Ventura Boulevard, Eighteenth
Floor
Encino, California 91436
Telephone: (818) 508-3700
Facsimile: (818) 506-4827

What will I receive under the Settlement?

Subject to final Court approval, Defendant will pay the total sum of \$70,000 (the "Gross Settlement Amount"). It is estimated that, subject to Court approval, after deducting the attorney's fees and costs, service awards to Plaintiff, payment to the California Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees for PAGA penalties, and settlement administration costs from Gross Settlement Amount, there will be a Net Settlement Amount of at least **\$(ADMIN TO INSERT)**.

From this Net Settlement Amount, Individual Settlement Payments will be paid to each Class Member who does not opt out of the Settlement Class ("Settlement Class Member"). The Net Settlement Amount shall be divided among all Settlement Class Members based on the ratio of the number of Compensable Workweeks worked by each Settlement Class Member to the total number of Workweeks worked by all Settlement Class Members, calculated based on Defendant's records.

According to Defendant's records, during the period of August 13, 2017, through April 10, 2022, you worked [REDACTED] Compensable Workweeks in California, and therefore, your settlement payment as a Class Member is estimated to be \$[REDACTED].

According to Defendant's records, during the period of June 9, 2020, through April 10, 2022, you worked [REDACTED] Compensable Workweeks in California, and therefore, your PAGA penalty payment is estimated to be \$[REDACTED].

Your settlement payment is only an estimate. Your actual settlement payment may be higher or lower than estimated.

If you wish to dispute the number of Compensable Workweeks credited to you, you must submit a written dispute to the Settlement Administrator at [REDACTED] by mail, postmarked no later than **[Response Deadline]**, or by e-mail to [REDACTED]. The dispute must: (1) contain your full name, current address, telephone number, the last four digits of your Social Security number or full

employee ID number; (2) contain the case name and case number; (3) contain a clear statement explaining that you wish to dispute the number of Compensable Workweeks and the basis for your dispute; and (4) and be signed by you. You may also wish to attach any documentation in support of your dispute.

When and how will I receive payment?

If the Court grants final approval of the Settlement, and only after the Effective Date of the Settlement defined below, the Settlement Administrator will send you a settlement check. The settlement approval process takes time so please be patient.

Any settlement payment checks mailed to you under the Settlement shall remain negotiable for 180 days. If you do not negotiate (e.g., cash or deposit) a settlement check within this time period, you will be unable to receive those funds, but you will remain bound by the terms of the Settlement. Any funds that are not timely negotiated by Settlement Class Members will be paid to in the name of the Class Member to the State of California Controller's Unclaimed Property division.

The settlement payment issued to you will be allocated as follows: thirty-three percent (33%) as wages, sixty-seven percent (67%) as penalties and interest. The wage portion of the Individual Settlement Payment shall be subject to withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable payroll taxes from the wage portion of the Individual Settlement Payment. None of the Parties or attorneys make any representations concerning the tax implications of this payment. Settlement Class Members may wish to consult with their own tax advisors concerning the tax consequences of the Settlement.

How will the lawyers be paid and how will other funds under the Settlement be distributed?

Class Counsel will ask the Court to award attorneys' fees up to \$_____ (1/3 of the Gross Settlement Amount) and reimbursement of reasonable litigation costs of up to \$_____. In addition, Class Counsel will ask the Court to authorize Class Representative Service Award payments of up to \$6,000 for his efforts in representing the Class. The cost of administering the Settlement will not exceed \$_____. A payment in the amount of \$_____ will also be made to the LWDA for its share of PAGA penalties, while \$_____ will be paid to PAGA Aggrieved Employees. Any of these amounts not awarded by the Court will be included in the Net Settlement Amount and will be distributed to Settlement Class Members.

What claims are being released by the proposed Settlement?

As of the date that the Gross Settlement Amount is fully-funded by Defendant, and in exchange for the consideration provided under this Settlement, Settlement Class Members shall fully and finally release and discharge Released Parties, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action, pleaded or that could have been pleaded based on facts and claims asserted in the operative Complaint, including: any and all claims for: (a) failure to prove meal periods; (b) failure to provide rest breaks; (c) failure to pay overtime wages; (d) failure to pay minimum wages; (e) failure to pay timely wages; (f) failure to pay all wages owed and due upon termination; (g) failure to maintain required records; (h) failure to furnish accurate itemized wage statement; (i) failure to indemnify for necessary business expenditures; (j) violation of California Business & Professions Code section 17200, *et seq.*; and (k) violation of California Private Attorneys' General Act, California Labor Code section 2699, *et seq.*, predicated on any of the violations of the California Labor Code and applicable IWC Wage Order alleged in the operative Complaint. This release shall apply to all claims arising at any point during the Class Period.

In addition, PAGA Aggrieved Employees will release all claims for civil penalties under the PAGA that Plaintiff, on behalf of himself, the State of California, and all PAGA Aggrieved Employees, alleged or that could have been alleged in the operative Complaint and that Plaintiff and PAGA Aggrieved Employees are fully and irrevocably releasing the Released Parties from, in exchange for the consideration provided by this Settlement. PAGA Aggrieved Employees will only release claims alleged in, or that could have been alleged, based on the facts asserted in the PAGA Notice or within the operative Complaint. In

particular, the released claims include the underlying purported violations for failure to provide meal and rest periods to non-exempt employees, in violation of Labor Code Sections 226.7, 510, 512, 1194, 1197 and Wage Order No. 4-2001, Sections 11-12; failure to pay one additional hour of compensation to non-exempt employees at their regular rate of pay for each workday that a meal or rest period is not provided, in violation of Labor Code Section 226.7 and Wage Order No. 4-2001, Sections 11(B) and 12(B); failure to pay non-exempt employees overtime wages, and failure to properly calculate overtime wages and minimum wages, in violation of Labor Code Sections 510, 1194, 1198, and Wage Order No. 4-2001, Section 3; failure to pay non-exempt employees the unpaid balance of the full amount of overtime compensation, including interest, in violation of Labor Code Section 1194; failure to timely pay non-exempt employees all wages due, in violation of Labor Code Section 204; willful failure to pay discharged or quitting non-exempt employees all wages due, in violation of Labor Code Sections 201-203; failure to provide accurate itemized wage statements to non-exempt employees in violation of Labor Code Sections 226, 1174, and 1174.5; and failure to maintain required records of non-exempt employees, in violation of Labor Code Sections 1174, 1174.5, and Wage Order No. 4-2001, Sections 7.

Released Parties” collectively mean: (i) Defendant; and (ii) Defendant’s current officers, directors, employees and agents only.

“Effective Date” means the later of: (a) the Court’s final approval of the settlement if no objections by or on behalf of Class Members have been filed and not withdrawn; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed; and (d) the Gross Settlement Amount is fully funded.

What are my options?

You have several options under this Settlement. You may: (A) remain in the Class and receive payment under the Settlement; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement.

OPTION A. Remain in the Class. If you remain in the Class, you will receive payment and be represented by Class Counsel. If you wish to remain in the Class and be eligible to receive a payment under the Settlement, you do *not* need to take any action. By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

OPTION B. If You Do Not Want To Be Bound By The Settlement. If you do not want to be part of the Settlement, you must mail a Request for Exclusion to the Settlement Administrator at [REDACTED] or e-mail a Request for Exclusion to [REDACTED]. Your Request for Exclusion must: (1) contain your full name, address, and telephone number, the last four digits of your social security number; (2), contain the case name and case number; and (3) a clear statement you are electing to be excluded from the Settlement; and (4) be signed by you. In order to be timely, your Request for Exclusion must be postmarked, or e-mailed, on or before [REDACTED]. If you do not submit a valid and timely Request for Exclusion, your Request for Exclusion will be rejected, you will be deemed a member of the Settlement Class, and you will be bound by the release of Released Claims as described above. If you submit a valid and timely Request for Exclusion, you will *not* be entitled to any payment as a Class Member from the Net Settlement Amount but you will preserve all of the legal claims asserted in this Action against Defendant. If you are a PAGA Aggrieved Employee, you will still receive a PAGA payment and be subject to the PAGA release outlined above.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, you can appear at the Final Approval Hearing and make an oral objection. If you wish to object in writing, you must mail to the Settlement Administrator at [REDACTED], a written statement of objection, or e-mail the written objection to [REDACTED]. The written objection must: (1) contain your full name, address, and telephone number, the last four digits of your social security number; (2), contain the case name and case number; (3) the dates of your employment with Defendant; (4) state the basis for the Objection, including any legal briefs, papers

or memoranda in support of the Objection; and (5) be signed by you. In order to be timely, the written objection must be postmarked, or e-mailed, on or before [REDACTED]. Class Counsel will provide the Court with your written objection prior to the Final Approval Hearing. You can also hire an attorney at your own expense to represent you in your objection.

You cannot object to the Settlement if you request exclusion from the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a final approval hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement and the plan of distribution of the payments described herein, on _____ in Department 1 of the Los Angeles Superior Court, Spring Street Court House, located at 312 N Spring St, Los Angeles, CA 90012. The final approval hearing may be continued without further notice to Class Members unless filed an objection to the Settlement. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Los Angeles Superior Court Spring Street Court House, located at 312 N Spring St, Los Angeles, CA 90012. A copy of the Settlement Agreement was filed on [REDACTED], 2022 and is attached to the Declaration of Scott Ernest Wheeler In Support of Plaintiff's Motion for Preliminary Approval. You can also visit the Court's website at: www.lacourt.org for more information, including obtaining a copy of the Settlement Agreement and the Court's updated COVID-19 protocol.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

EXHIBIT 2

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

Scott Ernest Wheeler (SBN 187998)

2 Justin A. Wheeler (SBN 342226)

250 West First Street, Suite 216

3 Claremont, California 91711-4790

Telephone: (909) 621-4988

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12 **SPRING STREET COURTHOUSE**
13

14 JOSUE AVALOS, individually, and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 KENWOOD FLOORS INC, a California
19 corporation; and DOES 1 through 50,
inclusive,

20 Defendant.

Case No.: 21STCV29962

[Honorable Stuart M. Rice, SSC - Dept. 1]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Action Filed: August 13, 2021

Trial Date: None Set

1 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

2 The Court now has before it Plaintiff's unopposed Motion for Preliminary Approval of Class
3 Action Settlement ("Motion"). After reviewing the Motion, the Class Action Settlement Agreement
4 and Release ("Settlement Agreement") and exhibits attached thereto, and good cause appearing
5 therefore, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the settlement memorialized in the
7 Settlement Agreement appears to be fair and adequate, and falls within the range of reasonableness,
8 and therefore meets the requirement for preliminary approval.

9 2. The Court conditionally certifies for settlement purposes the following class (the
10 "Class" or "Settlement Class"):

11 All non-exempt employees of Defendant who worked for Defendant in California from
12 August 13, 2017 until April 10, 2022.

13 3. The Court finds, for settlement purposes, that the Class meets the requirements for
14 certification under California Code of Civil Procedure § 382 in that: (1) the Class is so numerous
15 that joinder is impractical; (2) there are questions of law and fact that are common, or of general
16 interest, to the Class, which predominate over any individual issues; (3) Plaintiff's claims are typical
17 of the claims of the Class; (4) Plaintiff and Plaintiff's counsel will fairly and adequately protect the
18 interests of the Class; and (5) a class action is superior to other available methods for the fair and
19 efficient adjudication of the controversy.

20 4. The Court conditionally approves the portion of the settlement pursuant to the Private
21 Attorneys General Act ("PAGA"). The PAGA period means any time between June 9, 2020,
22 through April 10, 2022.

23 5. The Court appoints, for settlement purposes, Plaintiff Josue Avalos as Representative
24 for the Class.

25 6. The Court appoints, for settlement purposes, the Law Office of Scott Ernest
26 Wheeler, as counsel for the Class.

27 7. The Parties are ordered to carry out the Settlement according to the terms of the
28 Settlement Agreement.

1 8. The Court appoints Phoenix Settlement Administrator as the Settlement
2 Administrator and is ordered to carry out the administration of the settlement according to the terms
3 of the Settlement Agreement.

4 9. The Parties are ordered to carry out the Settlement according to the following
5 implementation schedule:

Event	Date
Last day for Defendant to provide the Settlement Administrator with the Class Information	December 19, 2022 (30 th day falls on a Sunday)
Last day for Settlement Administrator to mail Notice Packet	January 3, 2023 (10 th day falls on the observance of New Year's Day)
Last day for Class Members to submit a Request for Exclusion or Objection	February 16, 2023
Last Day to file Motion for Final Approval and Request for Attorneys' Fees and Costs	Per Code.
Final Approval Hearing	March 24, 2023

16 10. The Court approves as to form and content the Class Notice (attached as Exhibit 1 to
17 the Settlement Agreement).

18 11. The Court finds that the method of giving notice to the Class constitutes the best
19 means practicable of providing notice under the circumstances. The Court further finds that the
20 Notice Packet and the method of giving notice to the Class meet the requirements of California Code
21 of Civil Procedure § 382, California Rules of Court, Rules 3.766 and 3.769, and due process under
22 the California and United States Constitutions, and other applicable law.

23 12. At the Final Approval Hearing, the Court will consider, *inter alia*, whether the
24 Settlement should be finally approved as fair, reasonable and adequate, whether a final judgment
25 should be entered, and whether the payments provided for under the Settlement,
26 including attorney's fees and costs and a class representative service award, should be finally
27 approved and granted.

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13. Pending the Final Approval Hearing, all proceedings in this Action, other than proceedings necessary to implement the Settlement and this Order, are stayed.

IT IS SO ORDERED.

DATED: _____

HONORABLE STUART M. RICE
JUDGE OF THE SUPERIOR COURT