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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

JUAN DIAZ, on behalf of all Aggrieved
Employees and the State of California;

Plaintiff,

vs.

LEGACY TILE AND STONE, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendant.

Case No.: CVRI2104520

*[Assigned to Hon. Craig Riemer, Dept 1 for all
purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION TO
APPROVE SETTLEMENT PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Hearing

Date: July 7, 2022

Time: 8:30 a.m.

Dept.: 1

Reservation #: 102220112985

Complaint filed: October 4, 2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County, and I manage the firm's employment law department. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion to Approve Settlement Pursuant to the

1 Private Attorney General Act of 2004 (the “PAGA”). If called as a witness, I could and would
2 competently testify thereto.

3 **I. COUNSEL’S EXPERIENCE**

4 2. I have been a member, in good standing, of the State Bar of California since
5 2001. I am admitted to practice in the United States District Courts for the Central and
6 Southern District of California and the Ninth Circuit Court of Appeal and have tried cases in
7 various courts in California.

8 3. I have handled over 500 employee vs. employer litigation matters during my 21
9 years in practice. Over the last 15 years, my practice has almost entirely consisted of
10 representing employees, the majority of which has included class action and representative
11 action wage and hour matters. In total, I have handled over 250 class action and representative
12 action wage/hour cases, and have been appointed by the court as class counsel and have
13 received final court approval and judgment over half of those actions to date, and anticipate
14 receiving final approval in many more of those in the future.

15 4. As part of these settlements and judgments, I have recovered in excess of \$250
16 million in damages for my clients and the class members (who often work as nurses, ambulance
17 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
18 countless other trades). My team and I once held the record for the largest known PAGA-only
19 case in California’s history - a \$12.5 million-dollar court approved settlement, which followed
20 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
21 50 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

22 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
23 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior
24 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
25 against Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6
26 million. Both cases were appealed.

27 6. Over each of the last several consecutive years, I have been consecutively
28 selected by my peers as a “Super Lawyer” in Employment Litigation.

1 **II. PROCEDURAL BACKGROUND**

2 7. My firm began investigating this matter in the summer of 2021. After being
3 retained by Plaintiff Diaz, my office submitted a claim on July 29, 2021, to the California Labor
4 Workforce and Development (“LWDA”) for civil penalties under the California Labor Code
5 Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.), which is attached hereto as
6 **Exhibit A.** At the same time, we sent a letter to Defendant requesting the production of
7 Plaintiff Diaz’s personnel and timekeeping records in order to further evaluate his wage and
8 hour claims while also serving a litigation hold on Defendant to preserve potentially relevant
9 electronically stored information.

10 8. Defendant immediately retained counsel who reached out to Plaintiff’s counsel
11 to discuss the claims, the financial condition of the company and to propose an early mediation.
12 The Parties scheduled a mediation even before the action was filed.

13 9. Meanwhile, the LWDA did not assert jurisdiction over the PAGA claims. On
14 October 4, 2021, Plaintiff filed a PAGA only action that alleged several causes of action,
15 including: (a) failure to pay minimum wages, (b) failure to pay for rest and recovery periods and
16 nonproductive time, (c) failure to pay overtime wages, (d) failure to provide meal periods, (e)
17 failure to provide rest breaks, (f) failure to pay vested vacation, (g) failure to timely pay wages
18 each period, (h) failure to timely pay wages upon separation of employment, (i) failure to
19 provide accurate itemized wage statements (the “PAGA Claims.”) .

20 10. In preparation for the mediation, the Parties exchanged documents and
21 information that allowed both sides to calculate the potential damages and evaluate potential
22 risk, including policies and procedures, timekeeping and payroll records, as well as Defendant’s
23 financial records (including profit and loss statements, and balance sheets). This analysis
24 enabled both parties to take a good look into the claims, in particular allegations relating to the
25 failure to pay proper regular and overtime wages, and failure to provide compliant meal and rest
26 periods, among other things. During this process, Plaintiff evaluated a sampling of employees
27 timekeeping and payroll data and determined that there were approximately 1,550 pay periods
28 at issue through mediation. This information enabled Plaintiff and his counsel to analyze,

1 research, and investigate the potential claims, including matters related to the calculation of
2 damages, trial, and appellate issues and risks.

3 11. CMO ¶¶ D(1)(b). On December 15, 2021, the Parties mediated with the Hon.
4 Jonathan Cannon, a retired judge who sat in the Orange County Complex Division for many
5 years and ruled upon countless class action wage and hour cases like this one, and now serves as
6 a well-respected class action and PAGA mediator. After a full day of mediation, Judge Cannon
7 issued a mediator's proposal that both Parties accepted, resulting in a settlement of all PAGA
8 claims alleged in the action, as well as Plaintiff's individual claims.

9 12. CMO ¶¶ D(1)(a). The Parties entered into a Memorandum of Understanding,
10 and then memorialized the terms of the settlement. The long-form Settlement Agreement is
11 now presented to this Court for approval (attached hereto as **Exhibit B**).

12 13. The Parties also settled and resolved Plaintiff's individual (non-PAGA) claims at
13 mediation. Pursuant to the CMO, the nature and valuation of Plaintiff's individual claims are
14 discussed below.

15 **III. ANALYSIS OF THE CLAIMS AND VALUATION**

16 **Nature of the Alleged Violations [CMO ¶ D(2)(a)]**

17 14. Plaintiff's Complaint included Nine Causes of Action based on the "PAGA
18 Claims" discussed above. However, as discussed herein, some of the claims are overlapping
19 due to the nature of the violation (so, in essence, there are not 9 distinct penalties recoverable).

20 15. For instance, Plaintiff's primary claim focused on the allegation Defendant paid
21 the Aggrieved Employees on a piece-rate basis, calculated based on the square footage of tile
22 installed on each project. And Plaintiff claimed that, under this pay plan, the Aggrieved
23 Employees were paid a set amount of compensation – regardless of how many hours were
24 actually spent on the task – and which resulted in unpaid wages since (1) they did not receive
25 any compensation for time spent under Defendant's control that did not involve laying tile (*i.e.*,
26 meetings, travel time between work locations, among other compensable tasks), and (2) they did
27 not receive any overtime compensation for hours above 8 per day and 40 per week. But
28 Defendant strongly opposed this claim and argued that it did not pay on a piece-rate basis at all.

1 Instead, Defendant argued (and produced documents showing) that it paid on an hourly basis
2 plus “bonuses” to account for piece-rate compensation.

3 16. Plaintiff’s Complaint alleges 3 Causes of Action arising out of the same piece-
4 rate-pay issue: unpaid minimum wages (because Plaintiff and the Aggrieved Employees were
5 allegedly not paid *anything* for certain tasks), unpaid overtime wages (because Plaintiff and the
6 Aggrieved Employees did not receive overtime for hours above 8 per day or 40 per week), and
7 violation of Labor Code § 226.2 (because Defendant did not provide the “separate
8 compensation” required by this statute when paying on a piece-rate basis).

9 17. Plaintiff also claimed that the Aggrieved Employees were often denied compliant
10 meal and rest breaks due to the nature of the work. However, Defendant argued that it provided
11 and made available meal and rest breaks to all employees, and any employee who did not take a
12 meal or rest break did so entirely of his or her own volition. As such, Defendant argued that
13 these claims were without merit because, for each violation, a fact-finder would have to
14 determine why a break was noncompliant/nonexistent, because if it was by the employee’s
15 choice, no liability attaches to Defendant.

16 18. Plaintiff also brought claims for failure to timely pay wages each period under
17 Labor Code § 204 and upon separation of employment under Labor Code §§ 201-203. Each of
18 these claims were derivative; Defendant’s liability (if any) was dependent on the above unpaid
19 wage claims. And because these claims were derivative, Defendant argued that each would fail
20 for the same reasons discussed above.

21 19. Additionally, Plaintiff alleged that Defendant failed to pay all vested vacation
22 due and owing to departing employees at the “final rate” as required by Labor Code § 227.3.

23 20. Finally, Plaintiff brought wage statement claims based on the allegation that
24 Defendant failed to provide Plaintiff and the Aggrieved Employees with wage statements that
25 complied with the requirements of Labor Code § 226(a) by failing to accurately state gross and
26 net wages earned, failing to accurately state total hours worked, failing to accurately state all
27 deductions, and failing to state all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours at each hourly rate by the employee.

1 **Number of Alleged Individual Violations [CMO ¶ D(2)(b)]**

2 21. As previously noted, an analysis of the pre-mediation data and information
3 showed that there were 1,550 pay periods at issue through the date of mediation. Using this
4 metric, we calculated that the claims for minimum wage, overtime, Labor Code § 226.2
5 violations, Labor Code § 204 violations, wage statement violations, and meal and rest break
6 violations all had 1,550 alleged violations [based on a 100% violation rate]. And the claims for
7 vested vacation (§ 227.3) and failure to timely pay final wages (§§ 201 – 203) only had 22
8 violations each since these claims were based on only one violation per *former* employee.

9 **Total Amount of Penalties for which Defendant is Potentially Liable [CMO ¶ D(2)(c)]**

10 22. Plaintiff calculated the total amount of penalties for which Defendant was
11 *potentially* liable if all allegations are proven as \$1,089,400, based on:

- 12 a. Minimum Wage: 1,550 x \$100 = \$155,000
13 b. Overtime: 1,550 x \$100 = \$155,000
14 c. Labor Code § 226.2: 1,550 x \$100 = \$155,000
15 d. Meal Period: 1,550 x \$100 = \$155,000
16 e. Rest Break: 1,550 x \$100 = \$155,000
17 f. Labor Code § 204: 1,550 x \$100 = \$155,000
18 g. Vacation (§ 227.3): 22 x \$100 = \$ 2,200
19 h. Final Pay: 22 x \$100 = \$ 2,200
20 i. Wage Statements: 1,550 x \$100 = \$155,000

21 **Total Amount of Penalties Defendant is Likely to be Found Liable [CMO ¶ D(2)(d)]**

22 23. Based on a detailed analysis of each claim, including the weight of the evidence,
23 clarity of applicable law, and strength of the factual and legal defenses asserted by Defendant,
24 Plaintiff calculated that the total amount of penalties for which Defendant would likely be found
25 liable at trial is \$306,582, based on:

- 26 a. Minimum Wage / Overtime / Labor Code § 226.2. As previously
27 discussed, these 3 claims all arise from the same facts and out of one violation (the piece-rate
28 pay). Thus, we believe that the company would only be found liable for 1 violation per pay

1 period for these collective unpaid wage violations. Here, there is great clarity of applicable law
2 regarding piece-rate pay and what is required of the company, and Defendant simply did not
3 comply with those requirements. However, the evidence shows that there would be a dispute as
4 to whether Defendant paid piece-rate or “hourly-plus-bonus” as it claimed (and as some
5 documents show). While we were very confident that this claim would succeed, the disputed
6 facts and potential \$0 value if this policy was “hourly-plus-bonus” caused us to assign a 20%
7 risk on the merits. And, due to the disputed facts, we believe that the Court would apply a
8 discretionary reduction of 30% to these claims, which resulted in risk-adjusted penalties for
9 these unpaid wage claims of \$86,800.

10 b. The failure to timely pay final wage claims was derivative of the unpaid
11 wage claims, so we applied the same 20% risk on the merits and expected another 30%
12 reduction, leading to a value of \$1,232.

13 c. Additionally, we placed very little value on the Labor Code § 204 claims
14 because these were simply derivative of the unpaid wage claims (*i.e.*, there was no direct
15 violation of the statute, such as a practice of routinely paying late). And Defendant argued that
16 it would be impermissible to apply two penalties for the same violation. Therefore, although we
17 believe there was only minimal risk (20% - aligned with the unpaid wage claims), we believe
18 the Court would apply a heavy discretionary reduction of 90% discount, leading to risk-adjusted
19 value of \$13,950.

20 d. Plaintiff’s meal and rest break claims had a maximum value of \$310,000
21 combined, but Defendant argued that these claims were inherently unmanageable since each
22 Aggrieved Employee would have to testify as to each violation, why it occurred, and whether it
23 was their personal choice. And it was also problematic that Defendant produced its handbook
24 containing what appeared to be a fully compliant written policy for meal/rest breaks. Thus, the
25 main claim here is that due to the piece-rate policy, Plaintiff and the Aggrieved Employees
26 could not take *paid* rest breaks (since any breaks would be unpaid – they could not generate
27 piece-rate pay on a break). For these reasons, we assigned a 50% risk on the merits for the meal
28 break claims and a 30% risk on the merits for the rest break claims. Additionally, because it

1 appears that Defendant used a compliant written policy and did not knowingly or intentionally
2 violate California law, we believe that the Court would apply a discretionary reduction of 30%,
3 leading to risk-adjusted values of \$54,250 for meals and \$75,950 for rest breaks.

4 e. Plaintiff's claim as to vested vacation is based on § 227.3 which requires
5 that Defendant calculate and pay vacation based on the "final rate." However, the meaning of
6 "final rate" in this sense is disputed, and my firm is currently pending an appeal in the Ninth
7 Circuit on this very issue. So there is clearly a dispute about applicable law, and we believed
8 that there was a 20% risk on the merits but that the Court would apply a large 90% discretionary
9 reduction because of the uncertainty regarding application of § 227.3. This results in a risk-
10 adjusted value of \$12,400.

11 f. Finally, Plaintiff's wage statement claims were based on the argument
12 that – because of the unpaid wage claims – the paystubs failed to accurately state all required
13 information. This was purely a derivative claim and, although we believed it would succeed
14 (20% risk on the merits), we also believed that the Court would apply a 50% discretionary
15 reduction because Defendant was already penalized for the allegedly illegal conduct with
16 imposition of PAGA penalties for the unpaid wage violations. Thus, the wage statement
17 violations had a risk-adjusted value of \$62,000.

18 **Likelihood of Violations being Proven as Knowing and Intentional [CMO ¶ D(2)(e)]**

19 24. Due to the disputed facts, the uncertainty regarding applicable law as to certain
20 claims, and the fact that Defendant had compliant written policies, we did not believe there was
21 a high likelihood that any of the violations would be deemed knowing and intentional.

22 **Other Facts to Suggest Imposition of Maximum would be Unjust [CMO ¶ D(2)(f)]**

23 25. The PAGA gives the court wide latitude to reduce the amount of civil penalties
24 "based on the facts and circumstances of a particular case" and if "to do otherwise would result
25 in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h).
26 Some factors courts have considered in reducing the amount of civil penalties include whether
27 (1) the violation arises from an unsettled legal obligation (*Cotter v. Lyft, Inc.*, (N.D. Cal. 2016)
28 193 F.Supp.3d 1030, 1037); and (2) the employer's willingness to fix the violation. (*Fleming v.*

1 Covidien, (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9). For instance, in the *Lyft* case,
2 the Court found that a \$1M PAGA settlement was fair and reasonable in light of the unsettled
3 nature of the law, which awarded \$2.52 per pay period (397,110 pay periods / \$1M PAGA
4 settlement), which was a 97.5% reduction from the maximum penalty. In *Fleming v. Covidien*,
5 the Court reduced the potential penalties by over 82 percent, awarding \$500,000 for 28,742 pay
6 periods at issue. Similarly, in *Sanchez v. McDonald's Restaurants of California*, BC499888,
7 Los Angeles Superior Court entered summary adjudication against McDonald's for violating
8 the overtime laws, but the Court's tentative ruling at trial was to award only \$750,000 in PAGA
9 penalties against McDonald's, despite a substantial number of violations at 119 stores at issue.

10 26. Additionally, Plaintiff believes that the amount obtained in settlement, and the
11 reasonable estimates provided above, are justified given that Defendant vehemently argued
12 against any contention that its violations were "knowing and intentional" since it had compliant
13 policies and practices in place at all times.

14 27. Finally, the parties only reached settlement and the agreed-upon PAGA penalties
15 after an extensive exchange of information and arms-length negotiation between the parties and
16 through an experienced mediator.

17 **How the Amount of Penalties was Calculated [CMO ¶ D(2)(g)]**

18 28. The total amount of PAGA penalties was not "calculated or otherwise arrived
19 at." Instead, the PAGA penalties make up the entire settlement amount, and the settlement only
20 occurred through after arms-length with an experienced mediator.

21 **Other Factors Material to Determination that Penalties are Fair [CMO ¶ D(2)(h)]**

22 29. I believe that the prior paragraphs of this declaration cover all factors material to
23 a determination that the penalties are fair.

24 **IV. THE AGREED UPON PENALTIES ARE FAIR**

25 30. The settlement requires Defendant to pay \$190,000 inclusive of payments to the
26 LWDA and approximately 65 Aggrieved Employees, Plaintiff's attorneys' fees (\$63,333.33)
27 and actual litigation costs (\$7,187.59), and third party administrator ("Administrator") costs
28 (\$3,500). After payment of the attorneys' fees and costs, and Administrator costs,

approximately \$115,979.08 will remain as the estimated PAGA Award.

31. The PAGA Award will be allocated to the PAGA Penalties and, pursuant to Labor Code § 2699(i), 75 percent shall be paid to the LWDA (which shall be used to assist in the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code), and the remaining 25 percent being paid to the Aggrieved Employees based the number of pay periods each Aggrieved Employee worked during the PAGA Period. A following chart reflects the estimated payments:

	Total Amount
<i>Settlement Amount</i>	\$190,000
Attorneys' Fees (1/3)	\$63,333.33
Actual Litigation Costs	\$7,187.59
Administrator Costs	\$3,500
<i>PAGA Award</i>	\$115,979.08
• 75% to the LWDA	\$86,984.31
• 25% to the Aggrieved Employees	\$28,994.77
<i>Balance</i>	\$0

32. As such, the LWDA will receive approximately \$86,984.31 (which shall be used to assist in the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code), and the Aggrieved Employees will receive \$28,994.77 on a pro rata basis. Each Aggrieved Employee will receive approximately \$446.07 on average, although the actual amount will be based on the number of eligible pay periods each person worked during the Settlement Period. The portion of each Aggrieved Employee's Individual Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental authorities.

33. In exchange for these payments and benefits, and in accordance with the Court's Case Management Order, the release in the Settlement Agreement binds the named Plaintiff only for civil penalties claims he brought under Labor Code § 2699.

///

1 **V. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE**
2 **[CMO ¶ D(3)]**

3 34. In accordance with the Settlement, the Parties agreed that my office would
4 receive one-third of the settlement amount as attorney's fees. It has been my experience that the
5 benchmark for attorney fee awards in California state cases is one-third of a common settlement
6 fund. Here, pursuant to the Settlement Agreement, and in recognition of the work performed by
7 Plaintiff's Counsel, and the results we achieved for the State and Aggrieved Employees, my
8 firm is seeking a one-third fee, which is slightly less than Plaintiff's Counsel's lodestar through
9 the conclusion of the matter resulting in a negative multiplier.

10 35. In my experience, Court's award attorney's fees in the amount of one-third of
11 the common fund settlement amount in a PAGA only case.

12 36. At my office, this case was primarily handled by Peter Carlson and me. Mr.
13 Carlson works exclusively with me on employment law matters and has been in practice for
14 over 8 years, and has handled over 120 class and representative PAGA actions as the handling
15 attorney, with over \$72 million collected for class members and the State of California. He bills
16 at the hourly rate of \$575/hour. I have been in practice for 21 years, with most of those years
17 handling complex litigation. And, for well over the last ten years, my practice has almost
18 entirely consisted of representing employees with most of that time devoted to handling class
19 action and wage and hour matters. My billing rate is \$775/hour. I believe these rates are
20 consistent with Plaintiff and Defense attorneys who handle complex class action litigation, if
21 not somewhat lower.

22 37. I have reviewed the work performed on the case and the billing inputted by the
23 timekeepers. The table below includes a summary of the hours worked, plus additional hours
24 that I will bill in finalizing and filing the motion, preparing for and attending the approval
25 hearing, and working with the administrator and defense counsel to finalize this matter. My
26 firm's lodestar totals approximately \$77,940.00 through the conclusion of this matter, resulting
27 in a negative multiplier, as follows:

28 ///

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner)	Trial Counsel	21	\$775	53.9¹	\$41,772.50
Peter Carlson (Senior Associate)	Handling Attorney	8	\$575	62.9²	\$36,167.50
Grand Total for All Attorneys				116.8	\$77,940.00

38. The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (i.e., the Laffrey Matrix at www.laffreymatrix.com indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer 2017 Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data: 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. (See Wolters Kluwer’s ELM Solutions, Inc., 2017 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area, which is based on billing entries for 1,125 partners and 1,566 associates, the Real Rate Report states that: (a) the rates for partners in Los Angeles is between \$640 and \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates in Los Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

¹ Includes an estimated 20 hours of additional work in preparation for and attending the hearing, as well as work that is anticipated to be performed after the hearing with counsel, administrator, employees, and the court. See **Exhibit C** for my billing records.

² Mr. Carlson’s billing records are attached to his declaration.

39. In the course of prosecuting this action, Plaintiff's counsel has incurred expenses that were incidental and necessary to the effective representation of the Class. These costs include mediation fees, filing fees, and other costs that include Attorney Service charges, CourtCall charges, and process service fees. My firm's expenses total \$7,187.59 through the conclusion of this matter, which includes costs of filing, serving and attend the approval hearing (see **Exhibit D** attached hereto). Defendant does not oppose this request.

VI. PLAINTIFF'S INDIVIDUAL SETTLEMENT [CMO ¶ D(4)]

Nature of Plaintiff's Unpled Individual Claims [CMO ¶ D(4)(a)]

40. Plaintiff alleged individual claims for the same underlying facts and violations as raised in the PAGA case. Thus, Plaintiff alleges that he was subjected to the same unpaid wage claims, same meal/rest break issues, and the same wage statement violations, along with the other claims detailed above.

Maximum Value of Each of Plaintiff's Individual Claims [CMO ¶ D(4)(b)(i)]

41. Plaintiff alleges that the total amount of damages, lost wages, penalties, attorneys' fees and costs, interest, and other relief that he would be awarded on his individual claims, if they were entirely successful at trial, is at least \$91,730. This is based on the following estimates.

42. *First*, as to the unpaid wage claim, Plaintiff alleges that he was subjected to 5 hours of unpaid time per workweek – and that he typically always worked in excess of 8 hours per day, so this unpaid time would always be overtime. Plaintiff's estimated hourly rate was \$28/hour, so his overtime rate was \$42/hour. However, because this was for *unpaid* time (instead of *underpaid* time), this same violation also leads to a minimum wage violation (working for free), allowing Plaintiff to seek liquidated damages of an additional \$13 per hour under Labor Code § 1194.2 (when an employee seeks to recover wages due to payment less than minimum wage, the employee "employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon"). Thus, the applicable rate (overtime + liquidated under § 1194.2) is \$55 per hour. And, because Plaintiff claims he worked for 86 workweeks, the value of these unpaid claims is \$23,650 [86 workweeks x 5 hours

1 per workweek x \$55 per hour].

2 43. Plaintiff also alleges meal and rest break violations during the estimated 430
3 shifts that he worked. If these claims were entirely successful at trial (meaning a 100% violation
4 rate), then Plaintiff's meal and rest break claims would be worth \$12,040 each, for a combined
5 \$24,080 [430 shifts x 2 penalties per shift x \$28 rate].

6 44. Additionally, Plaintiff alleges that he was not provided accurate itemized wage
7 statements. If each wage statement violated § 226, this would result in the maximum statutory
8 penalty of \$4,000 under § 226(e) and the calculations of \$50 for the initial penalty and \$100 for
9 each subsequent [since Plaintiff was paid weekly and worked 86 weeks, he would hit the cap].

10 45. Finally, I estimate that my firm would incur at least \$40,000 in recoverable
11 attorneys' fees and costs through trial if we were forced to litigate Plaintiff's individual claims.

12 **Risk-Adjusted Value of Plaintiff's Individual Claims [CMO ¶ D(4)(b)(ii)]**

13 46. The maximum amounts above do not take into account the necessary risk
14 adjustments and what Plaintiff could reasonably expect if his claims proceeded to trial, taking
15 into account the likelihood of prevailing and other risks. And while Defendant would have
16 many of the same defenses to the individual claims as it has to the PAGA claims, Plaintiff
17 believes that he would likely have a very high chance of recovering the full amount given that
18 many of Defendant's defenses were as to the manageability of a representative PAGA action,
19 whereas proving individual claims for off-the-clock work and meal/rest violations is much
20 easier given that Plaintiff's testimony is all that is necessary. Furthermore, Defendant would
21 not be entitled to the discretionary reduction it could seek under PAGA.

22 47. When considering those factors, Plaintiff estimates the risk-adjusted value for
23 damages, lost wages, penalties, attorneys' fees and costs, interest, and other relief that he would
24 be awarded on his individual claims is \$68,568 – and the risk assessments mirror those in the
25 PAGA action, discussed above.

26 48. For example, Plaintiff assigns a 20% risk on the merits for his unpaid wage
27 claim. Defendant argued that it did not pay on a piece-rate basis, and this has to be factored into
28 the analysis – thus a 20% risk is appropriate here. Thus, Plaintiff's unpaid wage claim has a

1 risk-adjusted value of \$18,920.

2 49. Plaintiff's meal and rest break claims are also based on the same facts as the
3 PAGA case, and subject to the same risk because Defendant had a compliant written policy.
4 For that reason, Plaintiff assigns the same risk to each claim and the risk adjusted value of the
5 meal period claim is \$6,020 [\$12,040 value x 50% risk] and the risk-adjusted value of the rest
6 break claim is \$8,428 [\$12,040 value x 20% risk].

7 50. Plaintiff's wage statement claims also had the same 80% chance of success (and
8 20% risk of defeat) as the PAGA claims. Thus, the \$4,000 maximum value is reduced to a risk-
9 adjusted value of \$3,200.

10 51. And, finally, Plaintiff's attorneys' fees and their maximum value of \$40,000
11 must also be reduced by the 20% risk of defeat on all claims, leaving risk-adjusted attorneys'
12 fees of \$32,000.

13 **Consideration Paid to Plaintiff for Individual Claims [CMO ¶ D(4)(c-d)]**

14 52. As set forth in paragraph 46 of the Settlement Agreement, the Parties settled
15 Plaintiff's separate individual claims for a total of \$20,000. After one-third attorneys' fees,
16 Plaintiff Diaz will receive \$13,333.34 for his individual claims, with \$3,333.34 paid on an IRS
17 Form W-2 and \$10,000 paid on an IRS Form 1099.

18 53. The facts herein show that Plaintiff received only a fraction of the asserted value
19 of his claims, meaning that he certainly did not receive a windfall as a result of the PAGA
20 settlement and further confirming that Plaintiff and his counsel fairly and properly separated the
21 individual settlements from the PAGA settlement.

22 54. Additionally, Plaintiff's individual settlement amounts are in lieu of a service
23 award, which is commonly provided in PAGA case. Although service awards are discretionary,
24 they are "intended to compensate class representatives for work done on behalf of the class, to
25 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
26 recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*
27 (9th Cir. 2009) 563 F.3d 948, 958-59.

28 ///

1 **VII. DISMISSAL OF ACTION [CMO ¶ D(6)]**

2 55. The Settlement Agreement provides for only the dismissal of this, the above-
3 captioned representative action. To my knowledge, my office has not been in contact with any
4 Aggrieved Employees apart from the named plaintiff.

5 56. Plaintiff contends that the Aggrieved Employees will not be prejudiced because
6 the dismissal is contingent on approval of the resolution of the PAGA claims, including
7 payment of PAGA penalties to the State of California and the Aggrieved Employees. And each
8 Aggrieved Employee will preserve their individual claims if they wish to pursue them.

9 **VIII. RELEASE OF CLAIMS FOR PAGA PENALTIES [CMO ¶ D(7)]**

10 57. The release in the Agreement extends to the named Defendant “together with its
11 officers, directors, employees, and agents.” The Parties contend that this limited release
12 complies with the guidance in the CMO.

13 **IX. APPOINTMENT OF ILYM GROUP AS THE ADMINISTRATOR [CMO ¶ D(8)]**

14 58. After obtaining bids from multiple settlement administrators, the Parties selected
15 ILYM Group as the Administrator to perform all duties relating to the issuance of checks,
16 mailing the notices, locating employees, and preparation and submission of tax forms for a fee
17 of \$3,500, which is a capped amount based on hourly rates, anticipated time spent on each task,
18 and per-unit costs for postage and other expenses. ILYM Group’s proposal is attached as
19 **Exhibit B** to the Declaration of Jonathan Paul explaining his fee and experience.

20 **IX. SUBMISSION TO THE LWDA [CMO ¶ D(1)(c)]**

21 59. The Motion and declarations, including the PAGA Settlement Agreement, have
22 concurrently been submitted to the LWDA through its online portal. (See **Exhibit E**).

23 **X. EXHIBITS AND CONCLUSION**

24 60. A true and correct copy of the LWDA letter is attached hereto as Exhibit “A.”

25 61. A true and correct copy of the PAGA Settlement Agreement is attached hereto as
26 Exhibit “B.”

27 62. A true and correct copy of the billing records for my office is attached hereto as
28 Exhibit “C.”

63. An itemized statement of my firm's costs is attached hereto as Exhibit "D."

64. The LWDA's confirmation of receipt of this Motion and Declarations is attached hereto as Exhibit "E."

65. The Parties' Notice Letter to the Aggrieved Employees is attached here as Exhibit "F."

66. For the foregoing reasons, it is respectfully requested that the Court approve the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 14, 2022, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin

EXHIBIT “A”



July 29, 2021

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Legacy Tile and Stone, Inc.
26825 Jefferson Ave., Suite D
Murrieta, CA 92562

Robert Blackamore Jr.
30441 Bristol Gate
Menifee, CA 92586

Lee Adame
29542 Mount Bachelor Way
Sun City, CA 92586

Re: PAGA Civil Penalty Claim
Juan Diaz vs. Legacy Tile and Stone, Inc.

To the Labor and Workforce Development Agency and Legacy Tile and Stone, Inc. and its Owners:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Juan Diaz (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his employer(s), Legacy Tile and Stone, Inc. and/or any affiliated entities, and its owners Robert Blackmore Jr., Lee Adame, among others (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately February 2020 through the present. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. In addition, the Company paid Claimant and certain Aggrieved Employees on a piece-rate basis calculated based on the square footage of tile installed. However, under this pay plan, the Company failed to provide separate hourly compensation at no less than the minimum wage for on-duty time when the Aggrieved Employees were not installing tile. And the Company also did not pay any overtime to its piece-rate employees, despite that the Aggrieved Employees often worked in excess of 8 and/or 12 hours per day.

Also, at all relevant times, Claimant and the Aggrieved Employees received additional compensation in the form of nondiscretionary bonuses. However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the job site for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Moreover, at all relevant times, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, on the occasions when the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, Defendants failed to pay the departing employees all vacation hours and, further, failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3. As a result, Claimant and the Company did not receive compensation for all accrued but unused vacation hours – in violation of Labor Code § 227.3.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, wages, and all mandated sick time since the company only paid sick time at the base rate than the statutorily mandated rate "calculated in the same manner as the regular rate of pay." Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Legacy Tile and Stone, Inc., Mr. Blackamore, and Mr. Adame and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Legacy Tile and Stone, Inc., Mr. Blackamore, and Mr. Adame acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Legacy Tile and Stone, Inc., Mr. Blackamore, and Mr. Adame are an integrated enterprise and should be treated as a single employer because Legacy Tile and Stone, Inc., Mr. Blackamore, and Mr. Adame share an interrelation of operations, with common human resources and personnel policies



and shared common offices and facilities. Upon information and belief Legacy Tile and Stone, Inc., Mr. Blackamore, and Mr. Adame share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Mr. Blackamore and Mr. Adame are now and at all relevant times were the owners of Legacy Tile and Stone, Inc., and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times Mr. Blackamore and Mr. Adame had the authority, in the interest of Legacy Tile and Stone, Inc. to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Legacy Tile and Stone, Inc., Mr. Blackamore, and Mr. Adame are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Legacy Tile and Stone, Inc., Mr. Blackamore, and Mr. Adame were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Legacy Tile and Stone, Inc., Mr. Blackamore, and Mr. Adame were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Legacy Tile and Stone, Inc. has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Mr. Blackamore and Mr. Adame have conducted their personal affairs. Adherence to the fiction of the separate existence of Legacy Tile and Stone, Inc. would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to , Legacy Tile and Stone, Inc. should be imposed jointly and severally against Mr. Blackamore and Mr. Adame.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Blackamore and Mr. Adame are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

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**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked, the failure to provide separate compensation for nonproductive time for its piece-rate employees, as well as the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE SEPARATE PAYMENT FOR REST AND
RECOVERY PERIODS AND OTHER NONPRODUCTIVE TIME**

(Labor Code § 226.2)

Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods and other nonproductive time. Claimant and the Aggrieved Employees are and/or were employees of the Company who were paid on a piece-rate/flat-rate basis, yet the Company did not comply with the requirements of Labor Code § 226.2 for its piece-rate employees. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699, among possibly other sections.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”



Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company only paid vested vacation upon separation at the base rate of pay, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

Here, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)). As such, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states "[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period."

As a result of the Company's failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.



PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements routinely only stated 8 hours of work per day, regardless of the hours actually worked); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company failed to comply with the requirements of Labor Code § 226.2(a) regarding wage statements for its piece-rate employees, as the wage statements did not state the total hours of the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those



periods, nor did the wage statement list the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com

IMI

4590 Allstate Drive, Riverside, CA 92501
Toll Free 888.959.8508

EXHIBIT “B”

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San Diego, CA 92101
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Attorneys for Defendant Legacy Tile and Stone, Inc.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUAN DIAZ, on behalf of all Aggrieved
Employees and the State of California;

Plaintiff,

vs.

LEGACY TILE AND STONE, INC., a
California Corporation; and DOES 1
through 20, inclusive;

Defendant.

Case No.: CVRI2104520

*[Assigned to Hon. Judge Sunshine Sykes, Dept
6 for all purposes]*

**PAGA REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Complaint Filed: October 4, 2021

1 **PAGA REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS**

2 This Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement
3 Agreement and Release of PAGA Claims is made and entered into by and between Plaintiff Juan Diaz
4 and Defendant Legacy Tile and Stone, Inc., subject to the terms and conditions hereof and the approval
5 of the Superior Court of the State of California for the County of Riverside. Plaintiff enters into this
6 Settlement Agreement on behalf of himself, the State of California and all current and former non-
7 exempt employees employed by Defendant in California at any time from October 4, 2020, through
8 February 13, 2022.

9 **A. Definitions**

10 1. **“Action”** means the case entitled *Diaz v. Legacy Tile and Stone, Inc., et al*, pending in
11 the Superior Court of the State of California for the County of Riverside, Case No. CVRI2104520.

12 2. **“PAGA Agreement” or “PAGA Settlement Agreement”** shall mean this PAGA
13 Representative Action Settlement Agreement and Release of PAGA Claims, including any attached
14 Exhibits.

15 3. **“Aggrieved Employees”** means Plaintiff Diaz, and all current and former non-exempt
16 employees employed by Defendant in California at any time during the PAGA Period. Defendant
17 estimates that there are 65 Aggrieved Employees covered by this PAGA Agreement.

18 4. **“Aggrieved Employee List”** shall be on one spreadsheet and include each Aggrieved
19 Employees’ full name; most recent mailing address on file with Defendant; Social Security Number;
20 and number of pay periods worked during the Statutory Period. The Aggrieved Employee List will
21 remain confidential and not be shared with Plaintiff’s counsel.

22 5. **“Attorneys’ Costs”** means an award of costs to be paid to Plaintiff’s Counsel for the
23 costs they have incurred in prosecuting the Action, subject to Court approval. Such costs shall not
24 exceed Ten Thousand Dollars (\$10,000). Any costs not approved by the Court will be reallocated to
25 the PAGA Award, with Seventy-Five Percent (75%) to be paid to the LWDA and Twenty-Five Percent
26 (25%) to the Aggrieved Employees.

27 6. **“Attorneys’ Fees”** means an award of attorneys’ fees to be paid to Plaintiff’s Counsel
28 for the services they have rendered and will render to the Aggrieved Employees in the Action, subject

1 to Court approval. Such attorneys' fees shall not exceed one-third of the Settlement Amount
2 (\$63,333.33). Any attorneys' fees not approved by the Court will be reallocated to the PAGA Award,
3 with Seventy-Five Percent (75%) to be paid to the LWDA and Twenty-Five Percent (25%) to the
4 Aggrieved Employees.

5 7. **"Complaint"** means and refers to the operative complaint filed in the Action, which
6 seeks an assessment of PAGA penalties for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay
7 for Rest and Recovery Periods and Nonproductive Time; (3) Failure to Pay Overtime Wages; (4)
8 Failure to Provide Meal Periods; (5) Failure to Provide Rest Breaks; (6) Failure to Pay Vested
9 Vacation; (7) Failure to Timely Pay Wages; (8) Failure to Timely Pay Final Wages; and (9) Failure to
10 Provide Accurate Itemized Wage Statements.

11 8. **"Defense Counsel"** means Cunningham Law, APC.

12 9. **"Effective Date"** means the date the Court enters the Final Order.

13 10. **"Eligible Pay Period"** means any pay period worked by an Aggrieved Employee in
14 California during the Statutory Period.

15 11. **"Final Order"** means the order that will be entered by the Court to approve the
16 Settlement.

17 12. **"Individual PAGA Payment"** means the portion of the PAGA Award allocated to
18 each Aggrieved Employee.

19 13. **"LWDA"** means the California Labor Workforce Development Agency.

20 14. **"LWDA Settlement Proceeds"** means the seventy-five percent (75%) of the PAGA
21 Award that shall be paid to the LWDA.

22 15. **"Notice"** means the form of notice that will be sent to each Aggrieved Employee
23 accompanying their Individual PAGA Payments.

24 16. **"PAGA Award"** means the Settlement Amount remaining to distribute to the LWDA
25 and Aggrieved Employees after the following amounts are subtracted from the Settlement Amount:
26 (a) Attorney's Fees, (b) Attorney's Costs, and (c) Settlement Administration Costs.

27 17. **"Parties"** means Plaintiff, the Aggrieved Employees, and Defendant, collectively.
28

1 18. **“Plaintiff’s Counsel”** means Brian Mankin and Peter Carlson of Lauby Mankin Lauby
2 LLP.

3 19. **“Released Claims”** means and refers to any and all rights and claims for civil penalties
4 that Plaintiff alleged against Defendant, on behalf of Aggrieved Employees and State of California,
5 based on the facts stated in the operative Complaint in the Action and in the LWDA notice letter sent
6 on July 29, 2021, including all PAGA claims seeking civil penalties premised upon (a) failure to pay
7 minimum wages, (b) failure to pay for rest and recovery periods and nonproductive time, (c) failure
8 to pay overtime wages, (d) failure to provide meal periods, (e) failure to provide rest breaks, (f) failure
9 to pay vested vacation, (g) failure to timely pay wages each period, (h) failure to timely pay wages
10 upon separation of employment, (i) failure to provide accurate itemized wage statements, and (j) all
11 other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§
12 2698 *et seq.* that were stated in the Complaint and based solely upon the facts alleged in the Complaint
13 and the notice sent by Plaintiff to the LWDA.

14 20. **“Released Parties”** means Defendant, together with its officers, directors, employees,
15 and agents.

16 21. **“Settlement”** means the terms and conditions set forth in this PAGA Settlement
17 Agreement.

18 22. **“Settlement Administration Costs”** means the amount from the Settlement Amount,
19 which shall be allocated to the Settlement Administrator for services rendered in administering the
20 Settlement, not to exceed \$3,500, subject to Court approval. Any Settlement Administration Costs
21 not approved by the Court will be reallocated to the PAGA Award, with Seventy-Five Percent (75%)
22 to be paid to the LWDA and Twenty-Five Percent (25%) to the Aggrieved Employees.

23 23. **“Settlement Administrator”** means ILYM Group, the third-party entity selected by
24 the Parties who will administrator the settlement, subject to approval by the Court, in accordance with
25 this PAGA Settlement Agreement.

26 24. **“Settlement Amount”** means the maximum amount that Defendant will be required
27 to pay if the Court approves this Settlement and the Effective Date occurs, which is One Hundred
28 Ninety Thousand Dollars (\$190,000). The Settlement Amount will be used to pay: (a) the PAGA

1 Award to the LWDA and the Aggrieved Employees; (b) the award of Attorneys' Fees; (c) the award
2 of Attorneys' Costs to Plaintiff's Counsel; and (c) Settlement Administration Costs. The Parties agree
3 that the Settlement Amount is inclusive of any possible claim for interest accrued between the
4 Effective Date and Defendant's funding the Settlement Amount. Defendant shall not be required to
5 pay any additional amounts beyond the Settlement Amount set forth herein, including any claims for
6 interest.

7 25. "Statutory Period" or "PAGA Release Period" means any time during the period of
8 October 4, 2020, through February 13, 2022.

9 **B. Procedural Posture**

10 26. On July 29, 2019, Plaintiff gave written notice to the Labor and Workforce
11 Development Agency ("LWDA") and Defendant of alleged violations of California Labor Code §§
12 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558,
13 1194, 1194.2, 1197, 1197.1, 1198, and 1199 and/or applicable sections of the California Industrial
14 Welfare Commission Wage Orders for wage and hour penalty claims. The LWDA did not assert
15 jurisdiction over the claims. Therefore, Plaintiff's complaint was filed on October 4, 2021, alleging
16 the PAGA Claims. On December 15, 2021, the Parties mediated the PAGA Action and Released
17 Claims, as well as Plaintiff's separate individual (non-PAGA) claims with Hon. Jonathan Cannon.
18 The matter resolved globally pursuant to a mediator's proposal, including a settlement of this PAGA
19 Action and Plaintiff's individual (non-PAGA) claims against Defendant.

20 27. The PAGA Action asserts representative PAGA Claims for civil penalties, including
21 an award of reasonable attorney's fees and costs, pursuant to PAGA, based on alleged predicate
22 violations of California Labor Code §§ including, but not limited to, 200, 201, 202, 203, 204, 208,
23 210, 218.6, 226, 226.2, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1,
24 1198, and 1199 *et seq.*, and Sections 3, 4, 7, 11 and 12 of the applicable Wage Order.

25 28. The Parties agree that neither the Parties' settlement, this PAGA Agreement, nor the
26 acts to be performed or judgment to be entered pursuant to the terms of the settlement and PAGA
27 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any
28 statute or law or liability on the claims or allegations in the Action.

1 29. Defendant denies all of the allegations in the Action, including all PAGA Claims, and
2 denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any
3 other actionable conduct of any kind and further deny that this PAGA Action is appropriate for PAGA
4 representative treatment for any purpose other than settling this Action. Defendant has denied and
5 continues to deny each and every material factual allegation and alleged claims asserted against it in
6 the PAGA Action.

7 30. The Parties have conducted a thorough investigation into the facts of the PAGA Action.
8 This included conducting extensive informal discovery, and exchanging information and documents
9 relating to the Released Claims. Based on the foregoing data and on their own independent
10 investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant
11 for the consideration and on the terms set forth in this PAGA Settlement Agreement is fair, reasonable,
12 and adequate and is in the best interest of the LWDA and Aggrieved Employees in light of all known
13 facts and circumstances, including the risk of significant delay, uncertainty associated with litigation,
14 various defenses asserted by Defendant, and numerous potential appellate issues. Defendant and
15 Defendant's Counsel also agree that the settlement is fair and in the best interest of the LWDA and
16 Aggrieved Employees. The Parties desire to completely dispose of the Action by this PAGA
17 Settlement Agreement and the separate Individual Settlement Agreement (as defined below). The
18 Parties further acknowledge that they are each represented by competent counsel and that they have
19 had an opportunity to consult with their counsel regarding the fairness and reasonableness of this
20 settlement.

21 31. Under California Law, the State may assess and collect civil penalties from employers
22 for violations of certain provisions of the Labor Code. (See Cal. Lab. Code §§ 2699 *et seq.*) Under
23 PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State]
24 and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the
25 State thereafter decides not to investigate, as was the case here, or does investigate and determines that
26 a citation against the employer should not issue, the employee may, "as an alternative" to enforcement
27 by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil
28 action under PAGA to recover civil penalties "on behalf of himself or herself and other current or

former employees.” *Id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

32. California Labor Code § 2699(1)(2) provides that “The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”

33. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows.

C. Terms of Settlement.

34. Subject to the Court’s approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement and disposal of the entire Action in exchange for Defendant’s agreement to pay the Settlement Amount of \$190,000.

35. The Settlement shall have three components: (a) Attorneys’ Fees and Costs; (b) Settlement Administration Costs, and (c) the PAGA Award. All of these components are included in the Settlement Amount, and will be paid by Defendant, which shall be administered by the Settlement Administrator. The Settlement Amount will be allocated as follows:

a. **Attorneys’ Fees and Costs.** The Parties agree that, subject to the Court’s review and approval, Plaintiff’s Counsel will be paid up to one-third of the Settlement Amount as attorneys’ fees (\$63,333.33), plus actual litigation costs not to exceed \$10,000 from the Settlement Amount. Any portion of the Attorneys’ Fees or Attorney’s Costs not awarded to Plaintiff’s Counsel will be reallocated to the PAGA Award. Defendant agrees not to oppose any request by Plaintiff’s counsel for attorneys’ fees under the common fund doctrine and/or lodestar multiplier method. The Settlement Administrator will report these payments on an IRS Form 1099 issued to Plaintiff’s Counsel.

b. **Settlement Administration Costs.** The costs associated with settlement administration (e.g. NOCA searches, preparing and mailing payments/notices to LWDA and Aggrieved Employees, tax documentation, etc.) shall be paid from the

Settlement Amount and shall not exceed \$3,500. Any Settlement Administration Costs not awarded by the Court will be reallocated to the PAGA Award.

c. **PAGA Award.** After deducting the amounts specified in items (a) and (b) from the Settlement Amount, the balance remaining will form the PAGA Award that will be paid to the Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Complaint and/or LWDA notice letter with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Award will be paid to the LWDA. The remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees on a pro-rata basis according to the following formula.

i. The Settlement Administrator will calculate the total number of Eligible Pay Periods worked by all Aggrieved Employees during the Statutory Period, and the resulting figure will be referred to as the “Divisor.”

ii. Each Aggrieved Employee’s *pro rata* share of the Aggrieved Employees Settlement Proceeds will be determined by dividing the Eligible Pay Periods that each Aggrieved Employee worked by the Divisor and then multiplying the product by the Aggrieved Employees Settlement Proceeds. The product of the foregoing formula shall be referred to as the Aggrieved Employee’s “Individual Share.”

d. **Taxes and Reporting.** Each Aggrieved Employee’s Individual Share shall be treated as penalties (i.e., non-wage income) for all purposes and reported by the Settlement Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental authorities. No portion of the Aggrieved Employees Settlement Proceeds is or shall be construed as wages. Nothing in this PAGA Settlement Agreement is intended to constitute legal advice regarding federal, state and/or local tax obligations or legal requirements for attribution of settlement proceeds. The Aggrieved Employees will be solely responsible for correctly characterizing any

1 compensation received under the settlement on his/her personal income tax returns for
2 tax purposes, and paying all appropriate taxes due for any and all amounts paid to them
3 under the settlement. Plaintiff, Defendant, Plaintiff's Counsel, and Defendant's
4 Counsel make no representations or warranties with respect to tax consequences of any
5 payment under this PAGA Settlement Agreement, do not intend anything contained in
6 this PAGA Settlement Agreement to constitute advice regarding taxes or taxability, nor
7 shall anything in this PAGA Settlement Agreement be relied upon as such. To the
8 extent that this PAGA Settlement Agreement or any of its attachments is interpreted to
9 contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not
10 intended or written to be used, and cannot be used, by any person for the purpose of
11 avoiding penalties under the Internal Revenue Code. Defendant, Defendant's Counsel,
12 Plaintiff and Plaintiff's Counsel are not responsible for any employee tax obligations
13 arising out of the Aggrieved Employee's Individual Share.

- 14 e. The Parties agree that the settlement is fair and reasonable and will so represent to the
15 Court. The Parties agree that should the Court deny approval of the settlement based
16 on the allocation of the Settlement Amount or the PAGA Award, the Parties agree to
17 re-negotiate the allocation of funds in good faith in an effort to obtain approval of the
18 settlement.

19 **D. Settlement Approval and Implemental Procedures.**

20 36. Plaintiff's Counsel shall prepare a motion for approval of the settlement pursuant to
21 California Labor Code § 2699(l)(2), advocating that the Settlement is fair, adequate, and reasonable,
22 and Plaintiff's Counsel shall send a draft of the motion to Defendant's Counsel allowing sufficient
23 time for review and revisions prior to filing. Plaintiff will then move the Court for approval of the
24 PAGA Settlement Agreement, including the allocation of the PAGA Award, Plaintiff's Counsel's
25 Attorneys' Fees and Costs, and Settlement Administration Costs, which Defendant will not oppose.
26 Plaintiff's Counsel will serve the Motion on Defendant's Counsel via email and submit it to the LWDA
27 through the online filing system. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff's
28 Counsel shall undertake all required submissions and disclosures to the LWDA and the Court to obtain

1 approval of the settlement. The Parties further agree to jointly request that the Court enter the Final
2 Order, including a judgment of dismissal in the form attached hereto as Exhibit 1.

3 37. The Parties have agreed to the appointment of the Settlement Administrator to perform
4 the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain
5 forwarding addresses, resolving any disputes regarding the calculation or application of the formula
6 for determining the Individual Shares, drafting and mailing the settlement checks to Aggrieved
7 Employees, issuing 1099 forms, and performing such other tasks as set forth herein or as the Parties
8 mutually agree or that the Court orders. Any disputes relating to administration of the settlement by
9 the Settlement Administrator shall be referred to the Court, if necessary, which will have continuing
10 jurisdiction over the terms and conditions of this PAGA Settlement Agreement, until all payments and
11 obligations contemplated by this PAGA Settlement Agreement have been fully carried out. Prior to
12 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute
13 without the necessity of Court intervention. The Settlement Administrator shall also be responsible
14 for issuing to Plaintiff, Aggrieved Employee, and Plaintiff's Counsel any 1099, or other tax forms as
15 may be required by law for all amounts paid pursuant to this PAGA Agreement. The Settlement
16 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all
17 payments to the appropriate government authorities.

18 38. Upon the Court's entry of the Final Order, the Settlement Administrator will perform
19 all settlement administration duties, including (i) performing a National Change of Address ("NCOA")
20 search on all Aggrieved Employees to update the addresses of the Aggrieved Employees, (ii) issuing
21 the Notice and payments to the Aggrieved Employees, (iii) issuing any required IRS forms, and (iv)
22 issuing payment to the LWDA and Plaintiff's Counsel. Within ten (10) calendar days after the
23 Effective Date, the Settlement Administrator shall send counsel for Defendant electronic wiring
24 instructions to fund the Settlement Amount.

25 39. List of Aggrieved Employees. Within ten (10) calendar days after the Effective Date,
26 Defendant will send to the Settlement Administrator the Aggrieved Employees List. This information
27 shall be treated as and remain confidential and shall be used solely by the Settlement Administrator to
28 manage the notice and payment process described herein, shall not be disclosed to anyone other than

the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.

40. Funding of the Settlement. The following payment plan will govern the payment of the Settlement Amount. The exact amounts will be adjusted based on the amount of Attorney's Fees and Attorney Costs awarded by the Court and the Settlement Administration Costs approved by the Court. On or before the Payment Due Date below, Defendant shall wire to the Settlement Administrator the amount owed for each payment, as approved by the Court and calculated by the Settlement Administrator:

Pymt #	Payment Due Date	Amount	Description of Payment
1	The later of December 1, 2022, or 5 days after the Effective Date	\$105,125 (estimated)	This payment (not to exceed \$107,500) represents and includes the following: 1. The 25% portion of the PAGA Award representing the Individual PAGA Payments to the Aggrieved Employees (estimated to be \$28,291.67), 2. Court approved Attorneys' Fees (estimated to be \$63,333.33) and Costs (estimated to be \$10,000), and 3. Court approved Settlement Administrator Costs (estimated to be \$3,500).
2	The later of December 1, 2023, or 5 days after the Effective Date	\$84,875 (estimated)	This payment represents and includes the following: 1. The 75% portion of the PAGA Award representing the payment to the LWDA (estimated to be \$84,875).
		\$190,000	

41. Disbursement of the Settlement Amount. Within ten (10) days of receiving each wire transfer from Defendant, the Settlement Administrator shall mail or wire the respective settlement checks to the Aggrieved Employees, LWDA, Plaintiff, Plaintiff's Counsel, and will pay itself for the Settlement Administration Costs, as set forth in the payment plan herein.

42. Aggrieved Employees' Check Cashing Deadline. Aggrieved Employees shall have 180 calendar days after mailing to cash their settlement checks. If any Aggrieved Employee's check is not cashed within that period, the check will be voided and a stop-payment will be issued. The release nevertheless will be binding regardless of whether an Aggrieved Employee cashes his or her

1 check within the 180-day period. In the event that any settlement check is returned to the Settlement
2 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business
3 days of receipt of the returned settlement check, perform a skip trace to locate the individual, and
4 notify Defendant's Counsel and Plaintiff's Counsel of the results. If a new address is located by these
5 means, the Administrator will have ten (10) business days to issue the check. Any funds in the
6 Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be
7 paid to the California Labor and Workforce Development Agency. Neither Defendant, Defense
8 Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks,
9 forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to
10 timely cash a settlement check within the 180-day period.

11 43. The Settlement Administrator will provide the Parties with a declaration confirming
12 that distribution of payments has been completed in accordance with the PAGA Settlement Agreement
13 and the Court's Final Order, within ten (10) business days of distributing all payments under the
14 settlement. Plaintiff's Counsel will file the declaration with the Court and any required papers (i.e.,
15 amended Final Order and/or Judgment) or as otherwise ordered by the Court. This PAGA Settlement
16 Agreement is expressly conditioned upon the Court entering the Final Order, thereby disposing of the
17 Action in its entirety. The Final Order and entry of judgment of dismissal will not release or bar any
18 claims other than the Released Claims as to Plaintiff, Aggrieved Employees, and State of California.

19 **E. Release by Plaintiff, Standing in the Shoes of the LWDA, on Behalf of the State of**
20 **California and Aggrieved Employees**

21 44. On the date that the Court enters a Final Order, Plaintiff, standing in the shoes of the
22 Labor Commissioner/LWDA, and on behalf of the State of California and all Aggrieved Employees,
23 will forever completely release and discharge the Released Parties from any and all of the Released
24 Claims. The time period governing the Released Claims shall be the Statutory Period.

25 45. It is the intent of the Parties that the Final Order entered by the Court shall have full
26 equitable and collateral estoppel and *res judicata* effect to the fullest extent permitted by law.
27
28

1 **F. Separate Release and Individual Settlement by Plaintiff.**

2 46. In addition to this PAGA Agreement, Plaintiff has entered into separate Settlement
3 Agreement and General Release of Individual Claims (the “Individual Settlement Agreement”) with
4 Defendant for all of his separate individual (non-PAGA) claims arising out of his employment with
5 Defendant, in exchange for a full release of those claims. The Parties acknowledge and agree that the
6 Individual Settlement Agreement and the covenants, promises and released claims contained therein
7 shall not serve to modify or limit Plaintiff’s right to continue with this Action and seek the Court’s
8 approval of this PAGA Settlement; however, Plaintiff shall have no right to be the representative of a
9 class action lawsuit against Defendant. The Parties further agree that if for any reason the Effective
10 Date does not occur with regard to this PAGA Settlement Agreement and/or the Final Order is not
11 entered, then the Individual Settlement Agreement shall be null and void. Therefore, subject to the
12 Court’s approval, Defendant agrees to pay Plaintiff separately, in full and complete resolution of any
13 and all such claims, and subject to confidential settlement agreements and a complete and general
14 release and waiver of claims under California Civil Code section 1542, a total sum of Twenty
15 Thousand Dollars (\$20,000), less applicable withholdings. These payments will be made separate and
16 apart from the PAGA Settlement Amount and will be allocated as follows.

- 17 a. \$3,333.34, less lawful deductions, which shall be paid to Plaintiff as compensation for
18 alleged lost wages to be reported on an IRS Form W-2;
19 b. \$10,000 to Plaintiff as compensation for alleged statutory penalties and interest, which
20 will be reported on an IRS Form 1099.
21 c. \$6,666.66 to Plaintiffs’ counsel as attorneys’ fees and costs.

22 47. While the individual settlement agreement with Plaintiff will not be filed with the
23 Court, the Parties agree to submit the monetary terms of this individual settlement, and the fact that
24 Plaintiff is releasing claims, including subject to a Section 1542 waiver, to the Court for approval, in
25 conjunction with his motion for settlement approval.

26 **G. Additional Settlement Terms and Conditions**

27 48. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
28 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at

1 this Settlement after extensive trial preparation and arm's-length negotiations by experienced counsel.
2 The Parties further acknowledge that they are each represented by competent counsel and that they
3 have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this
4 Settlement.

5 49. Denial of Liability. The Parties expressly recognize that the making of this Settlement
6 Agreement does not in any way constitute an admission or concession of liability, culpability,
7 negligence or wrongdoing on the part of Defendant or any of the other Released Parties. The Parties
8 hereto have entered into this Settlement with the intention of avoiding further disputes and litigation
9 with the attendant risk, inconvenience and expenses. Nothing in this Settlement, nor any action taken
10 in implementation thereof, nor any statements, discussions or communications, nor any materials
11 prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor
12 will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other
13 judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any
14 violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or
15 any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement
16 may be used in any court proceeding that has as its purpose the interpretation, implementation, or
17 enforcement of the Settlement or any orders or judgments of the Court entered into in connection
18 therewith.

19 50. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced
20 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
21 Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans,
22 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
23 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
24 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

25 51. No Tax Advice: Plaintiff's Counsel and Defense Counsel do not intend this Settlement
26 Agreement to constitute legal or tax advice regarding any federal, state or local tax issue. To the extent
27 that this Settlement Agreement, or any of its Exhibits, are interpreted to contain or constitute advice
28

1 regarding any federal, state or local tax issue, such advice is not intended or written to be used, and
2 cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

3 52. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
4 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
5 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
6 of action or right herein released and discharged.

7 53. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
8 the Settlement as provided herein or as may be amended by the Parties by mutual agreement, in the
9 event that the Court does not approve it; or (ii) the Settlement does not become final for any other
10 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be
11 null and void, and the Parties will be returned to their original respective positions.

12 54. Judgment/Dismissal and Continued Jurisdiction. After entry of the Final Order, the
13 Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
14 enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-
15 approval matters as may be appropriate under court rules or as set forth in this Settlement.

16 55. Entire Agreement. This Settlement Agreement, including the Exhibits attached hereto,
17 constitutes the entirety of the Parties' settlement terms of the claims released herein. All prior or
18 contemporaneous agreements, understandings, representations and statements, whether oral or written
19 and whether by a Party or such Party's legal counsel, including the Memorandum of Understanding
20 between the Parties, are merged herein.

21 56. Amendment or Modification. This Settlement Agreement may be amended or
22 modified only by a written instrument, signed by either the Parties or their successors-in-interest or
23 counsel for all Parties.

24 57. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
25 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
26 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
27 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
28 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with

1 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are
2 unable to reach agreement on the form or content of any document needed to implement the
3 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
4 this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

5 58. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
6 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

7 59. California Law Governs. All terms of this Settlement Agreement and the Exhibits
8 attached hereto will be governed by and interpreted according to the laws of the State of California,
9 regardless of its conflict of laws.

10 60. Execution and Counterparts. This Settlement Agreement is subject only to the
11 execution of all Parties. However, the Settlement Agreement may be executed in one or more
12 counterparts. All executed counterparts and each of them, including facsimile and scanned copies of
13 the signature page, will be deemed to be one and the same instrument.

14 61. Invalidity of Any Provision. Before declaring any provision of this Settlement
15 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
16 possible consistent with applicable precedents so as to define all provisions of this Settlement
17 Agreement valid and enforceable, and consistent with the intent of this Settlement Agreement based
18 on the language and terms used herein.

19 62. Captions. The captions and section and paragraph numbers in this Settlement
20 Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe
21 the scope or intent of the provisions of this Settlement Agreement.

22 63. Waiver. No waiver of any condition or covenant contained in this Settlement
23 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
24 imply or constitute a further waiver by such Party of the same or any other condition, covenant, right
25 or remedy.

26 64. Enforcement Action. In the event that one or more of the Parties institutes any legal
27 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
28 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be

entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

65. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

66. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

67. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

AGREED AND UNDERSTOOD:

Dated: March 7, 2022

Juan Díaz
Juan Díaz Guevara (Mar 7, 2022 16:56 PST)

Plaintiff Juan Diaz

Defendant Legacy Tile and Stone, Inc.

Dated: March 2, 2022

By: [Signature]
Its: Lee Adame

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APPROVED AS TO FORM:

Dated: March 7, 2022



Brian Mankin
Lauby Mankin & Lauby LLP
Attorneys for Plaintiff Juan Diaz

Dated: March 3, 2022



Michael Cunningham
Cunningham Law APC
Attorneys for Defendant

EXHIBIT “C”

Selection Criteria	
Time.Selection	Include: BJM
Clie.Selection	Include: Diaz v Legacy Tile
Slip.Transaction Type	Time
Slip.Classification	Open

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
586812	TIME	BJM	2.30	0.00	0.00
7/29/2021		Other activity	2.30	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Evaluate new file, online research of employer, review client documents and analysis of LWDA letter.			0.00		
586813	TIME	BJM	0.30	0.00	0.00
8/23/2021		Review/analyze	0.30	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Review correspondence between PJC and OC re potential mediation, informal exchange, class size and financial concerns.			0.00		
586814	TIME	BJM	2.40	0.00	0.00
9/30/2021		Review/analyze	2.40	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Review the demand for informal exchange of information and documents for mediation; evaluate draft of the complaint and claims against Def.			0.00		
586815	TIME	BJM	2.90	0.00	0.00
12/13/2021		Review/analyze	2.90	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Case development analysis including a review of Defendant's financial records and mediation brief prepared by PJC .			0.00		
586816	TIME	BJM	3.20	0.00	0.00
12/14/2021		Review/analyze	3.20	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Review report prepared by financial expert and evaluate file in preparation for mediation.			0.00		
586817	TIME	BJM	4.00	0.00	0.00
12/15/2021		Appear/attend	4.00	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	

4/26/2022
11:38 AM

Lauby, Mankin & Lauby LLP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
Attend Zoom mediation with Judge Cannon, followed by negotiating MOU with OC .			0.00		
586818	TIME	BJM	5.70	0.00	0.00
1/20/2022		Draft/revise	5.70	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Draft PAGA Settlement Agreement.			0.00		
586819	TIME	BJM	1.00	0.00	0.00
2/23/2022		Other activity	1.00	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Obtain administration bids and forward same to OC.			0.00		
586820	TIME	BJM	0.30	0.00	0.00
3/16/2022		Other activity	0.30	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Multiple correspondence with OC re hearing dates for the approval motion.			0.00		
586821	TIME	BJM	0.40	0.00	0.00
4/21/2022		Other activity	0.40	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Draft format for administrator's declaration and forward to administrator.			0.00		
586822	TIME	BJM	7.80	0.00	0.00
4/25/2022		Other activity	7.80	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Prepare initial draft of motion to approval settlement.			0.00		
586823	TIME	BJM	3.60	0.00	0.00
4/26/2022		Other activity	3.60	T	
WIP		Diaz v Legacy Tile	0.00	Do Not Bill	
Prepare initial draft of order and my declaration.			0.00		
Grand Total					
			Billable		0.00
			Unbillable		0.00
			Total		0.00

EXHIBIT “D”

Selection Criteria

Clie.Selection Include: Diaz v Legacy Tile
Slip.Transaction Type Expense
Slip.Classification Open

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description		Timekeeper Activity Client Phase/Task	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
585606 7/30/2021 WIP LWDA Order Number: ORD -000128762 to submit PAGA letter Case Number: LWDA-CM83974121	EXP	SJA Court fees Diaz v Legacy Tile	1	75.00 Do Not Bill	75.00
585614 7/30/2021 WIP 62 copies @ \$0.20 for letters to employer	EXP	SJA Copying Diaz v Legacy Tile	62	0.20 Do Not Bill	12.40
585615 7/30/2021 WIP Postage for the month of July 2021	EXP	SJA Postage Diaz v Legacy Tile	1	33.20 Do Not Bill	33.20
585885 9/28/2021 WIP JAMS Inv #5883334 for Mediation w/ Jonathan Cannon	EXP	MAA Mediation Fees Diaz v Legacy Tile	1	4450.00 Do Not Bill	4450.00
585914 10/6/2021 WIP RVSC Submission ID 10944530 to File Complaint	EXP	MAA Court fees Diaz v Legacy Tile	1	1452.00 Do Not Bill	1452.00
585954 10/14/2021 WIP RVSC Submission ID 10954473 to File Notice & Acknowledgement	EXP	MAA Court fees Diaz v Legacy Tile	1	2.00 Do Not Bill	2.00
586057 11/30/2021 WIP RVSC Submission ID 11011146 to File stip to continue	EXP	MAA Court fees Diaz v Legacy Tile	1	22.00 Do Not Bill	22.00

5/31/2022
10:19 AM

Lauby, Mankin & Lauby LLP
Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
586414	EXP	MAA	1	825.00	825.00
1/18/2022		Experts			
WIP		Diaz v Legacy Tile		Do Not Bill	
Creal & Creal Inv 16734 - Inspect books and records for affordability					
586417	EXP	MAA	1	12.35	12.35
1/18/2022		Court fees			
WIP		Diaz v Legacy Tile		Do Not Bill	
OneLegal Order #17523504 - attempt to file notice of settlement and stipulation to continue					
586420	EXP	MAA	1	36.86	36.86
1/18/2022		Court fees			
WIP		Diaz v Legacy Tile		Do Not Bill	
OneLegal Order #17532637 file notice of settlement and stipulation to continue					
586771	EXP	TLG	1	16.78	16.78
4/15/2022		Attorney Servic			
WIP		Diaz v Legacy Tile		Do Not Bill	
OneLegal Order#18040579 - file jt stmt					
586697	EXP	TLG	1	250.00	250.00
6/14/2022		Attorney Servic			
WIP		Diaz v Legacy Tile		Do Not Bill	
Estimate fees and costs for OneLegal to file MFA and supporting documents.					
Grand Total					
			Billable	0.00	0.00
			Unbillable	0.00	7187.59
			Total	0.00	7187.59

EXHIBIT “E”

EXHIBIT “F”

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment from *Diaz v. Legacy Tile and Stone, Inc.*

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed is your payment from the settlement of a lawsuit entitled *Juan Diaz, on behalf of all aggrieved employees and the State of California v. Legacy Tile and Stone, Inc., an California Corporation; and DOES 1 through 20, inclusive*, which was pending in the Superior Court of the State of California for the County of Riverside, Case No. CVRI2104520 (the “*Diaz* case” or “Lawsuit”).

The *Diaz* case was filed on October 4, 2021, against Legacy Tile and Stone, Inc., (“Legacy”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (“PAGA”). As such, the Lawsuit was brought on behalf of the State of California and all current and former non-exempt employees employed by Defendant in California any time from October 4, 2020, through February 13, 2022 (the “Aggrieved Employees”).

Specifically, in the Lawsuit, Mr. Diaz alleged that Legacy failed to pay regular (i.e. contractual) and/or minimum wages for all hours worked, failed to pay overtime wages, including, but not limited to, failed to pay at the correct and/or regular rate of pay for all such hours worked, failed to provide meal periods, failed to provide rest breaks, failed to pay the extra hour of pay due as a premium for non-compliant meal periods or rest breaks, failed to timely pay wages owing during employment, including, but not limited to, failed to timely pay wages at termination, failed to provide accurate itemized wage statements, and failed to maintain accurate records. Mr. Diaz sought PAGA penalties.

Legacy denies the allegations and denies that it owes any penalties. In an effort to avoid the time, expense and uncertainty of litigation, Mr. Diaz and Legacy agreed to settle the case. You have been identified as one of the alleged aggrieved employees on whose behalf Mr. Diaz filed his lawsuit, and for purposes of the Lawsuit, the Settlement, and the following paragraph, you are considered an “Aggrieved Employee.”

As such, the parties’ settlement resolves Mr. Diaz’s claims on behalf of all Aggrieved Employees, including those claims that were asserted or that could have been asserted in the Lawsuit or by any of the Aggrieved Employees pursuant to PAGA, including claims for violations of California Labor Code sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, and the applicable Wage Order.

The Court approved the Settlement on [REDACTED], 2022. As a result, the enclosed settlement check has been issued and shall remain valid for one hundred eighty (180) days. Checks remaining uncashed for more than 180 days after issuance will be voided and funds represented thereby will be remitted by the Settlement Administrator to the Labor and Workforce Development Agency.