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Attorneys for Plaintiff, on behalf of the State of CA and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE 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]

**[PROPOSED] ORDER APPROVING
SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
AND JUDGMENT AND DISMISSAL
WITH PREJUDICE ENTERED
THEREON**

Hearing

Date: July 7, 2022

Time: 8:30 a.m.

Dept.: 1

Reservation #: 102220112985

Complaint filed: October 4, 2021

The Motion to Approve the PAGA Representative Action Settlement Agreement and Release of PAGA Claims (the “Settlement” or “Settlement Agreement”) between Plaintiff Juan Diaz and Defendant Legacy Tile and Stone, Inc. (“Defendant” or “Legacy”) came before this Court on for a hearing on July 7, 2022, in accordance with Labor Code § 2699(1)(2) of the Private Attorneys General Act of 2004 (“PAGA”).

1 Plaintiff's Complaint and LWDA notice letters sought civil penalties against the
2 Released Parties for the "Released Claims" on behalf of the State of California and all current
3 and former non-exempt employees employed by Defendant in California at any time during
4 the period of October 4, 2020, through the February 13, 2022 (the "Aggrieved Employees").
5 The Released Claims are defined in the Settlement Agreement, as follows

6 "Released Claims" means and refers to any and all rights and
7 claims for civil penalties that Plaintiff alleged against Defendant,
8 on behalf of Aggrieved Employees and State of California, based
9 on the facts stated in the operative Complaint in the Action and in
10 the LWDA notice letter sent on July 29, 2021, including all
11 PAGA claims seeking civil penalties premised upon (a) failure to
12 pay minimum wages, (b) failure to pay for rest and recovery
13 periods and nonproductive time, (c) failure to pay overtime
14 wages, (d) failure to provide meal periods, (e) failure to provide
15 rest breaks, (f) failure to pay vested vacation, (g) failure to timely
16 pay wages each period, (h) failure to timely pay wages upon
17 separation of employment, (i) failure to provide accurate itemized
18 wage statements, and (j) all other claims for civil penalties
19 recoverable under the Private Attorneys General Act, Labor Code
20 §§ 2698 *et seq.* that were stated in the Complaint and based solely
21 upon the facts alleged in the Complaint and the notice sent by
22 Plaintiff to the LWDA.

23 The Court, having considered the Settlement, including proposed PAGA penalties,
24 embodied in the Settlement Agreement (attached hereto as Exhibit "A") between Plaintiff and
25 Defendant, pursuant to Labor Code § 2699(1)(2), having considered the papers filed in
26 support of the application for court approval and the arguments of counsel, and good cause
27 appearing, HEREBY ORDERS THE FOLLOWING:

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1 1. In a settlement of a PAGA action brought by an aggrieved employee, the Court
2 “shall review and approve any settlement of any civil action filed pursuant to this part.” Cal.
3 Lab. Code § 2699(1)(2).

4 2. The Court finds that the instant Action presented a good faith dispute of the
5 Released Claims as defined in the Settlement Agreement, and the Court finds in favor of
6 Settlement Approval and the Settlement Approval Order is hereby entered resolving all claims
7 set forth in Plaintiff’s Complaint and LWDA notice letter pursuant the terms of the Settlement
8 Agreement, and entering the Judgment of Dismissal with Prejudice.

9 3. The Court approves the Settlement of the above-captioned action, as set forth
10 in the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable,
11 and adequate. The Parties are directed to perform in accordance with the terms set forth in the
12 Settlement Agreement, including that Defendant is directed to make payments in accordance
13 with the Settlement Agreement, by and through the Settlement Administrator.

14 4. By this Order and Judgment and Dismissal with Prejudice, Plaintiff releases,
15 relinquishes, and discharges all Released Claims on behalf of themselves and the State of
16 California, as defined in the Settlement Agreement. The Parties are to bear their own costs,
17 except as otherwise provided in the Settlement Agreement.

18 5. In accordance with the Settlement Agreement, Defendant agreed to pay
19 \$190,000 (the “Settlement Amount”), inclusive of payments to the LWDA and Aggrieved
20 Employees, attorneys’ fees and litigation costs, and Settlement Administrator costs. As part
21 of the Settlement, Plaintiff’s Counsel sought an award of attorney’s fees of \$63,333.33, actual
22 litigation expenses of \$7,187.59, and \$3,500 to the Settlement Administrator, ILYM Group.
23 Defendant does not oppose these requests. The Court finds that the Settlement Amount is
24 fair, reasonable and adequate, and approves each of these payments set from the Settlement
25 Amount, and directs Defendant and Settlement Administrator to make the following payments
26 from the Settlement Amount within the time periods set forth below and in the Settlement
27 Agreement:

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- a. \$63,333.33 in attorneys' fees to Lauby Mankin Lauby LLP;
- b. \$7,187.59 in litigation costs to Lauby Mankin Lauby LLP;
- c. \$3,500 to ILYM Group for administration costs.

6. After deducting the foregoing payments, the remainder of approximately \$115,979.08 shall form the PAGA Award, which will then be allocated pursuant to Labor Code § 2699(i) with 75 percent (\$86,984.31) being paid to the LWDA, and the remaining 25 percent (\$28,994.77) paid to the Aggrieved Employees on a pro rata basis, as set forth in the Settlement Agreement. The Court approves these payments and directs the Settlement Administrator to issue checks to the LWDA and Aggrieved Employees, as set forth Settlement Agreement and in the chart below. The Court approves the proposed notice to Aggrieved Employees and orders that the Settlement Administrator mail the Notice of PAGA Settlement and Payment to the Aggrieved Employees with the settlement check (attached hereto as Exhibit "B").

7. The Court approves the handling of unclaimed funds set forth in the Settlement Agreement, specifically that any unclaimed funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be deemed void, and any unclaimed funds in the QSF as a result of the failure to cash Individual Settlement Payment checks shall be transmitted by the Settlement Administrator to the Labor and Workforce Development Agency, in accordance with the statutory objectives of PAGA, within twenty-one (21) calendar days of the date those checks became void.

8. This order and the resulting judgment are entitled to the preclusive effect on Plaintiff, the State of California and Aggrieved Employees, pursuant to *Arias v. Superior Court*, 46 Cal.4th 969 (2009).

9. The Action is Ordered dismissed with prejudice as to Plaintiff and the underlying PAGA claim for relief, as set forth in in the Complaint and LWDA notice letter for the PAGA Release Period of October 4, 2020, through February 13, 2022.

10. The Settlement is not an admission by Defendant or any of the other Released Parties, nor is this Judgment a finding of the validity of any claims in the Action or of any

wrongdoing by Defendant or any of the other Released Parties. Neither this Settlement Approval Order, the Settlement, or the Judgment of Dismissal nor any document referred to herein, nor any action taken to carry out the Settlement are, may be construed as, or may be used as an admission by or against Defendant or any of the other Released Parties of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Settlement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant or any of the other Released Parties and shall not be offered in evidence against Defendant or any of the Released Parties in any action or proceeding in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Order, the Settlement, the Judgment of Dismissal, or any related agreement or release. Notwithstanding these restrictions, any of the Released Parties may file in the Action or in any other proceeding this Order, the Settlement, the Judgment of Dismissal, or any other papers and records on file in the Action as evidence of the Settlement and to support a defense of res judicata, collateral estoppel, release, waiver or other theory of claim preclusion, issue preclusion or similar defense as to any of the Released Claims.

11. The following dates shall govern for purposes of this implementing this Final Order:

July 7, 2022	Final Order is entered and the Effective Date occurs
The later of December 1, 2022 or 5 Days After the Effective Date	Defendant shall wire <u>Payment #1</u> to the Settlement Administrator, which pursuant to Paragraph 40 of the Settlement Agreement, represents the following: 1) The 25% portion of the PAGA Award representing the Individual PAGA Payments to the Aggrieved Employees (estimated to be \$28,994.77), 2) Court approved Attorneys' Fees (estimated to be \$63,333.33) and Costs (estimated to be \$7,187.59), and 3) Court approved Settlement Administrator Costs (estimated to be \$3,500).

December 12, 2022	Settlement Administrator to issue payment to the Aggrieved Employees, Plaintiff's counsel and itself.
June 10, 2023	The estimated 180 Day Deadline for Aggrieved Employees to cash their check (assuming Payment #1 was timely mailed on December 12, 2022).
The later of December 1, 2023 or 5 Days After the Effective Date	Defendant shall wire <u>Payment #2</u> to the Settlement Administrator, which pursuant to Paragraph 40 of the Settlement Agreement, represents the following: 1) The 75% portion of the PAGA Award representing the payment to the LWDA (estimated to be \$86,984.31).
December 11, 2023	Settlement Administrator to issue payment to the LWDA for the 75% portion of the PAGA Award and 100% of the uncashed check fund.
December 15, 2023	Deadline to file a Declaration by Settlement Administrator describing: (i) the date the checks were mailed, (ii) the total number of checks mailed to Aggrieved Employees, (iii) the number of checks that were uncashed, (iv) the total value of those uncashed checks, (v) the date payment was issued to LWDA, and (vii) the amount of the payment to the LWDA.
December 22, 2023	OSC re: status of funding and filing a Declaration from the Settlement Administrator as set forth herein.

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1 **JUDGMENT**

2 12. Pursuant to California Labor Code section 2698, *et seq.*, the Court hereby
3 enters judgment of the Action, with prejudice, for the reasons set forth above, and upon the
4 terms set forth in the Settlement Agreement. Without in any way affecting the finality of this
5 Settlement Approval Order granting final judgment, this Court hereby retains exclusive and
6 continuing jurisdiction over the Action as to all matters relating to: (a) the implementation,
7 enforcement, construction and interpretation of the terms of the Settlement and this Order of
8 Judgment and Dismissal; (b) Settlement administration matters; and (c) such post-judgment
9 matters as may be appropriate under Court rules or as set forth in the Settlement.
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11 Dated: _____

12 _____
13 Hon. Craig Riemer
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EXHIBIT “A”

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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.
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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(l)(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(l)(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.
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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
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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 “B”

<<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.